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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2021

DELIVERED ON : 20.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE,
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

H.C.P. (MD) No.365 of 2018

Meharaj

.. Petitioner

VS

1. The State, rep. by its
Secretary to Government of Tamil Nadu
Home Department, Fort St. George
Chennai - 600 009.
2. The Additional Director General of Prison
C.M.D.A. Towers
Egmore, Chennai - 600 008.
3. The Deputy Inspector General of Prisons
Madurai Zone, Madurai - 625 016.
4. The Superintendent
Central Prison, Palayamkottai.



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5. The Union of India, through
the Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110 001.
(*Impleaded vide order dated
3.9.2021*)

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
praying for a writ of habeas corpus directing the respondents to
grant leave for six weeks to her husband, and consequently allow
her husband to take the treatment, the detenu, Siddhiqe Ali @
Sulthan, S/o.Dheen, Convict No.7369, aged about 40 years,
detained at Palayamkottai Central Prison.

For the Petitioner : Mr.R.Narayanan

For the Respondents : Mr.Shunmugasundaram
Advocate General
assisted by
Mr.A.Damodaran
Addl. Public Prosecutor
for 1st respondent

: Mr.Hasan Mohamed Jinnah
State Public Prosecutor
assisted by
Mr.S.Santhosh
Government Advocate
(Criminal Side)
for respondents 2 to 4



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: Mr.Avinash Krishnan, CGSC
for 5th respondent

: Mr.N.Dilip Kumar
Amicus Curiae

ORDER

MUNISHWAR NATH BHANDARI, ACJ

A Division Bench passed an order on 25.2.2019 referring the following two questions for consideration by a Larger Bench:

- (i) Whether the denial of conjugal rights to a convict prisoner would amount to denial of such a right to his/ her spouse and thereby, violative of Article 21 of the Constitution of India? and
- (ii) Whether the State can be directed to favourably consider the request of a convict prisoner for emergency leave or ordinary leave for the purpose of having conjugal relationship with his/her spouse, though the Tamil Nadu Suspension of Sentence Rules, 1982 do not envisage this?



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2. The reference of the questions has been in view of the order of Division Bench dated 11.1.2018 granting temporary leave for a period of two weeks to the convict. The said petition was preferred by Meharaj, wife of the detenu Siddhiqe Ali @ Sulthan, to grant leave to the convict for 30 days to have conjugal relationship, as they were not having child from the wedlock and the petitioner was advised to have infertility treatment along with her husband. The Division Bench in the said order gave general directions to the State to favourably consider the request of the prisoners to have conjugal relationship with their spouse. The prayer made in the habeas corpus petition was accepted granting temporary leave to the convict for a period of two weeks from 20.1.2018 to 3.2.2018. For the said period, the sentence was suspended and, accordingly, respondents 3 and 4 therein were directed to release the husband of the petitioner subject to certain conditions. Aggrieved by the said order dated 11.1.2018, the State filed CrI.M.P.(MD) No.832 of 2019 seeking review the said order.



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3. While the application was pending, H.C.P. (MD) No.365 of 2018 was filed by the petitioner seeking six weeks leave to her husband by relying upon the order dated 11.1.2018. The Division Bench, vide the order of reference dated 25.2.2019, noticed that there is no provision in the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity, "*the 1982 Rules*") for grant of emergency or ordinary leave for a convict to have conjugal relationship with spouse. Under those circumstances, the matter was referred to the Larger Bench to answer the questions framed and quoted above.

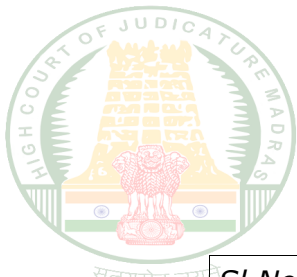
4. Before answering the questions framed by the Division Bench, it would be appropriate to refer to the brief facts of this case. The petitioner's husband, Siddhiqe Ali @ Sulthan, was convicted to life imprisonment on commission of offences under Sections 148, 302, 201 and 120B of the Indian Penal Code. The order of the trial court was confirmed by the High Court in Criminal Appeal Nos.1736 and 1807 of 2003 and also by the Apex Court in Criminal Appeal Nos.2118 and 2119 of 2009.



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5. The petitioner's husband and other persons are alleged to have committed murder and hence a case was registered bearing Crime No.59 of 1999. After getting bail in the above crime number, the petitioner's husband is stated to have been involved in the Coimbatore Bomb Blast case, apart from many other cases in Tamil Nadu and Kerala. The details of those cases have been given in the affidavit filed by the respondents and are quoted hereunder for ready reference:

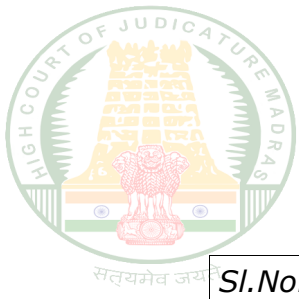
<i>Sl.No.</i>	<i>S.C.No.</i>	<i>Offence</i>	<i>Sentence</i>
1	S.C.No.140 of 2000 on the file of Fast Track Court, Thiruchirapalli	U/s 302 IPC	Life Imprisonment



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Sl.No.	S.C.No.	Offence	Sentence
2	S.C.No.8 of 2003 on the file of District and Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee.	U/s 120(B) IPC r/w section.3 of Explosive Substance Act 1908	Convicted and sentenced to undergo R.I. for 8 years.
		U/s.120(B) IPC r/w 4(a) of Explosive Substances Act 1908	Convicted and sentenced to undergo R.I. for 6 years.
		U/s.120(B) IPC r/w 4(b) of Explosive Substances Act 1908	Convicted and sentenced to undergo R.I. for 6 years.
		U/s.120(B) IPC r/w 5 r/w Sec.6 of Explosive Substances Act 1908	Convicted and sentenced to undergo R.I. for 5 years.
		U/s.120(B) IPC r/w 307 IPC	Convicted and sentenced to undergo R.I. for 8 years
		U/s.120(B) IPC r/w Sec. 4 of TNPPPL (L&D) Act 1992	Convicted and sentenced to undergo R.I. for 3 years.
		U/s.120(B) IPC r/w Sec. 9-B(1)(b) Explosive Substances Act r/w 141 of Explosive Substances Act Rules 1983	Convicted and sentenced to undergo R.I. for 2 years against the 1st charge.
		U/s 4(b) of Explosive Substances Act 1908	Convicted and sentenced to undergo R.I. for 6 years against the 2nd charge.
		U/s 4(1)(a) of Explosive Substances Act 1908	Convicted and sentenced to undergo R.I. for 6 years against the 4th charge.
		U/s.307 IPC	Convicted and sentenced to undergo R.I. for 8 years against the 5th charge.
		U/s.4(a) r/w 6 of Explosive Substances Act	Convicted and sentenced to undergo

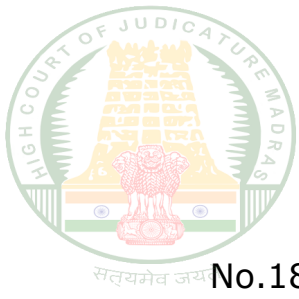


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<i>Sl.No.</i>	<i>S.C.No.</i>	<i>Offence</i>	<i>Sentence</i>
		U/s.4(a), 3r/w 6 of Explosive Substances Act	Convicted and sentenced to undergo R.I. for 6 years against the 7th charge.
3	S.C.No.2 of 2000 on the file of Sessions Judge of Bomb Blast Court, Coimbatore	U/s.307 IPC	He was sentenced to suffer rigorous imprisonment for 7 years.

6. In view of the involvement of the petitioner's husband in the Bomb Blast Case and other offences, he was held not entitled to remission under the 1982 Rules and even under the provisions of the Code of Criminal Procedure, 1973. The petitioner's husband is also said to have committed prison offence and sustained punishment for it. It is also averred that the further appeals filed by private party against the judgment in the Coimbatore Bomb Blast cases are pending consideration before the Apex Court.

7. The factual matrix aforesaid has been taken into consideration by the respondents to deny leave. It is, however, a fact that this court vide order dated 11.1.2018 made in H.C.P.(MD)



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No.1837 of 2017 granted leave to the petitioner's husband for a period of two weeks with liberty to approach the court or the jail authorities seeking extension of time by another two weeks in case further treatment is required based on the advise of the doctor. A fresh writ petition was filed by the petitioner to seek six weeks' leave to her husband on the same ground as was urged earlier while pursuing the first writ petition. The petitioner did not file an application for extension of the period of leave despite liberty given by this court in its order dated 11.1.2018. The Division Bench, while hearing the fresh writ petition, referred the aforesaid two questions for consideration by the Larger Bench.

8. To address the questions framed by the Division Bench, we need to first refer to the relevant provisions of the 1982 Rules. Rules 3, 6, 7, 20 to 25 of the 1982 Rules are quoted hereunder for ready reference:

"3. Leave is not a right.- Leave cannot be claimed as a matter of right. It is a concession granted to the prisoner.



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6. Grounds for the grant of emergency leave.-

Emergency leave may be granted for attending death or serious illness of father, mother, wife, husband, son, daughter, full brother or full sister, as the case may be, or the wedding of the prisoner or son, daughter, full brother or full sister of the prisoner, as the case may be, and for having delivery outside the prison in the case of female pregnant prisoners.

7. Eligibility for emergency leave.- No emergency leave shall be granted to a prisoner unless,-

- (i) he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends;
- (ii) his conduct in prison has been satisfactory;
- (iii) female pregnant prisoner for having delivery outside the prison provided who are not constituting high security risks or of cases of equivalent grade descriptions.

20. Grounds for the grant of ordinary leave.-

The grounds for the grant of ordinary leave to a prisoner shall be-



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- (i) to make arrangements for the livelihood of his family and for the settlement of life after release;
- (ii) To make arrangements for the admission of the children in the school or college;
- (iii) construction or repairing the homestead;
- (iv) to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sisters, as the case may be, of the prisoner;
- (v) settling family disputes like partition, etc;
- (vi) agricultural operations like sowing, harvesting, etc;
- (vii) **any other extraordinary reasons**; and
- (viii) in case of female pregnant prisoners, for having delivery outside the prison.

21. Non-eligibility for ordinary leave.- The following categories of prisoners shall not be eligible for ordinary leave :

- (a) Offenders classified as habituals;
- (b) Prisoners sentenced under sections 392 to 402 of the Indian Penal Code (Central Act 45 of 1860);
- (c) Prisoners where presence is considered dangerous or prejudicial to public peace and tranquility;



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(d) Prisoners who are considered dangerous or who are involved in the following prison offences:-

- (1) assault;
- (2) outbreak;
- (3) riot ;
- (4) mutiny;
- (5) escape;
- (6) instigation to serious violations of prison rules;
- (7) strike;

(e) Prisoners committed to prisons in default of furnishing security to keep the peace or be of good behaviour ;

(f) Prisoners suffering from unsoundness of mind or contagious diseases. In such cases the eligibility shall be decided in accordance with the opinion of the Medical Officer;

(g) female pregnant prisoners, for having delivery outside the prison, constituting high security risk or cases of equivalent grave descriptions.

22. Eligibility for ordinary leave.-

(1) No prisoner shall be granted ordinary leave unless he has been sentenced by a Court in this State to imprisonment for a term or imprisonment



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for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed three years of imprisonment from the date of initial imprisonment.

(2) The period of ordinary leave shall not exceed one month at a time unless it is extended by Government.

(3) The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave.

(4) In cases of prisoners who have got a balance of three years to serve ordinary leave not exceeding one month for each of three years, the year being calculated from the date of his return to prison from last leave, shall be granted so as to enable them to make arrangements for settling the family life after release.

23. Petition ordinary leave.-

(1) The petition for ordinary leave shall be submitted by the prisoner or by a relative of said prisoner to the Deputy Inspector-General of Prisons concerned direct or sent through the Superintendent Prison



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where the prisoner to whom leave is to be granted is confined.

(2) Each petition for ordinary leave shall be accompanied with a statement of the names of two sureties who are willing to execute the bond for the prisoner's release on leave and take care of the prisoner during the period of leave. In the petition, it shall be stated, among other things, the names and addresses of the prisoner's relatives with whom he wishes to stay during his leave period.

In case of female pregnant prisoner, for having delivery outside the prison, the petition for ordinary leave shall be submitted along with Medical Certificate or report of the Prison Medical Officer or Assistant Surgeon in respect of probable date of delivery.

24. Process of petition.- All petitions for the grant of ordinary leave submitted to the Deputy Inspector General of Prisons or to the Superintendent of Prison shall be referred to Probation Officer concerned for reports on the advisability of the ordinary leave of the prisoner in question. The Probation Officer shall personally enquire into and send his report to the



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Deputy Inspector General of Prisons or to the Superintendent in Form I. If the Probation Officer feels that the release on leave of a prisoner is likely to involve the local Sub-Inspector of Police, solely with a view to avoid any breach of peace and record the views of the Sub-Inspector of Police in the said Form. In respect of other cases where there is no likelihood of breach of peace, the Probation Officer shall send his report direct to the Deputy Inspector General of Prisons or to the Superintendent of Prisons without consulting the local Sub-Inspector of Police. Where the petition has been submitted to the Superintendent of Prisons, he shall forward the petition along with the records such as the Normal Role of the prisoner, check memorandum in Form II, statement showing the details of leave availed by the prisoner from the date of his conviction, a statement showing the offences committed by the prisoner and punishment awarded and the probation officer's report expeditiously to the Deputy Inspector-General of Prisons. The Deputy Inspector General of Prisons may, on consideration of the petition and reports, pass such orders as he deems fit.

25. General conditions governing for grant of



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emergency and ordinary leave.- The following conditions shall, invariably, be laid down while granting leave in addition to such other conditions, if any, specified by the Government, Inspector-General of Prisons or the Deputy Inspector-General of Prisons or the Superintendent of Prisons, as the case may be, as may be deemed necessary:-

- (i) that the prisoner shall execute a surety bond in Form II for rupees five hundred with two sureties for a like sum each;
- (ii) that he shall report at the Police station daily once;
- (iii) that the prisoner shall reside at the place specified by the Superintendent of Prisons or the Deputy Inspector-General of Prisons or the Government, as the case may be, and shall not go beyond the limits of that place;
- (iv) that the prisoner shall be of good behaviour and shall not commit any offence during his leave;
- (v) that the prisoner shall not associate with bad characters or lead a dissolute life;
- (vi) that the prisoner shall be liable to be recalled immediately to prison in case he violates any of the conditions;
- (vii) that the prisoner shall surrender himself to the



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Superintendent of the Prison on expiry of leave granted or on recall; and
(viii) that in case of female pregnant prisoners, for having delivery outside the prison, she shall reside at the place of delivery proposed by her."

9. As per Rule 3 of the 1982 Rules, leave cannot be claimed as a matter of right, while Rule 6 of the 1982 Rules permits emergency leave for attending death or serious illness of the family members referred to therein or even for the wedding of the prisoner or family members stated therein. Rule 7 of the 1982 Rules refers to the eligibility for emergency leave, while Rule 20 of the 1982 Rules refers to the grant of ordinary leave. Rule 21 of the 1982 Rules stipulates the categories of prisoners not eligible for ordinary leave, while Rule 22 of the 1982 Rules prescribes the eligibility for grant of ordinary leave.

10. In the framework of the 1982 Rules, referred to above, we



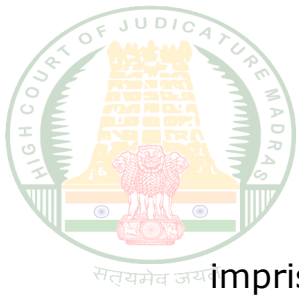
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need to answer the moot question referred to the Larger Bench, namely, whether the denial of conjugal rights to a convict would amount to denial of rights guaranteed under Article 21 of the Constitution of India. Article 21 of the Constitution of India is quoted herein under for ready reference:

"21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21 of the Constitution of India guarantees protection of life and personal liberty.

11. The question for our consideration is as to whether a convict, after the trial in the criminal case, can seek liberty for having conjugal relationship in reference to Article 21 of the Constitution of India. It is no doubt true that Article 21 of the Constitution of India guarantees protection of life and personal liberty, except according to law. In the instant case, the petitioner's husband was tried in a criminal case and has been convicted for life

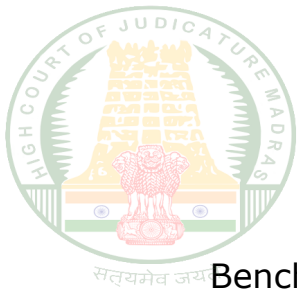


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imprisonment. The habeas corpus petition was filed by the wife seeking grant of leave to her husband for a period of thirty days for having conjugal relationship. It is in view of the fact that no child was born from their wedlock and as per the opinion of the doctors, the convict and the petitioner have to undergo infertility treatment.

12. The facts of this case show that earlier the petitioner's husband was granted leave for a period of two weeks for the purpose of undergoing infertility treatment. The petitioner's husband availed such leave. Thereafter, the present writ petition was filed seeking leave again for six weeks to the petitioner's husband for undergoing infertility treatment. The aforesaid aspect has to be considered by the Division Bench as we are answering the questions referred to us.

13. The issue of conjugal rights of the convict in reference to Article 21 of the Constitution of India was considered threadbare by the Punjab and Haryana High Court in the case of **Jasvir Singh v. State of Punjab, 2015 Cri LJ 2282**. In the said case, a Single

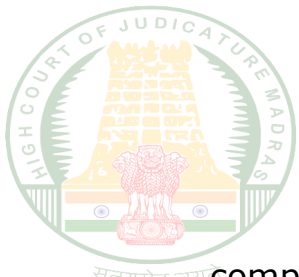


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Bench of the Punjab and Haryana High Court had made a reference to the provisions of the Prisons Act, 1894 and the judgment of the Apex Court in the case of ***Sunil Batra v. Delhi Administration, (1978) 4 SCC 494***. A consideration was also made in reference to the international perspective and the view of the foreign courts' on conjugal visits in prisons and artificial insemination. The writ petition was decided holding conjugal rights of the prisoner to be a fundamental right guaranteed under Article 21 of the Constitution of India. A similar view was expressed by the Patna High Court in the case of ***Rajeeta Patel v. State of Bihar and others, 2020 (4) PLJR 669***.

14. Before further addressing the issue, it would be relevant to analyze the meaning of the words "conjugal rights". Conjugal rights means the privilege to the husband and wife arising from the marriage, including mutual rights of companionship. The words aforesaid are commonly used when one of the partner denies the companionship to the other. In such circumstances, conjugal rights are sought to be enforced by the partner who had been denied such



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companionship. The enforcement of conjugal rights is invariably made by invoking the provisions of the Hindu Marriage Act, 1955. The words aforesaid have been imported even for the prisoner to have conjugal relationship with the spouse.

15. A convict has certain restrictions of visit, though taking into consideration the wide spectrum of Article 21 of the Constitution of India, the 1982 Rules have already been framed for suspension of sentence. The provisions of the 1982 Rules provide for grant of emergency leave to the accused not only to attend death or serious illness of father, mother, wife, husband, son, daughter, full brother or full sister, as the case may be, but even for wedding of the prisoner or son, daughter, full brother or full sister, and even for having delivery outside the prison in the case of female pregnant prisoners. Apart from the aforesaid, a provision for grant of ordinary leave also exists for a prisoner to make arrangements for the livelihood of his family and for settlement of life after release, apart from grant of leave to make arrangements for the admission of the children in school or college; construction



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or repairing the homestead; agricultural operations like sowing, harvesting, etc. In view of the above, we find Rules 6 and 20 of the 1982 Rules in consonance with Article 21 of the Constitution of India.

16. It is true that the 1982 Rules do not provide leave for having conjugal relationship with spouse. It is for the reason that if a provision for leave to have conjugal relationship is provided, the prisoner may ask for the leave invariably on that ground and, that too, time and again. It cannot, however, mean that under all circumstances except those specified in Rule 20(i) to (vi) and Rule 20(viii) of the 1982 Rules leave can be denied, rather Rule 20(vii) of the 1982 Rules provides for grant of leave for any other extraordinary reasons, which can be of the nature referred in this case, i.e., for undergoing infertility treatment. However, we need to take note of the fact that the leave on that ground cannot be sought time and again because the reference of the two questions to the Larger Bench is only for the reason that even after grant of leave on one occasion for undergoing infertility treatment, the



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second petition for leave on the same ground has been submitted.

The liberty sought by the petitioner to beget the child by granting leave to her husband for undergoing infertility treatment was allowed by this court on an earlier occasion and, accordingly, we have to analyze the issue not only in reference to Article 21 of the Constitution of India, but by referring to the 1982 Rules and the judgments on the issue.

17. Rule 20(vii) of the 1982 Rules allows grant of ordinary leave to a prisoner on extraordinary reasons. The word "extraordinary" needs to be given meaning. It would be available to the convict to seek leave on extraordinary reasons. The meaning of the word "*extraordinary*" has not been given in the 1982 Rules. Thus, we are referring to the meaning of the word "*extraordinary*" from the Black's Law Dictionary, Tenth Edition, which is as under:

"Extraordinary, adj. (15c)

1. **Beyond what is usual, customary, regular, or common** <extraordinary measures>.

2. Of, relating to, or involving a degree of care, diligence, caution, or prudence that would be



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exercised by highly fastidious and thoughtful people, though falling short of any superhuman effort <extraordinary care>.

3. Of, relating to, or involving legal proceeding or procedure not normally required or resorted to <an extraordinary sitting of the court>.

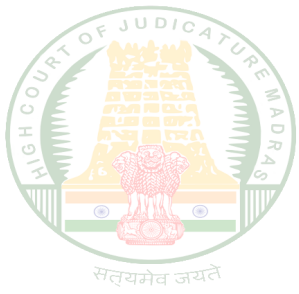
4. Of, relating to, or involving an occurrence, esp. an incident or accident, that would not have been foreseeable to someone of normal prudence <an extraordinary deluge>.

5. Surpassing the common degree, measure or allotment <extraordinary acuity>.

6. **Employed for an exceptional purpose or for a special occasion** <envoy extraordinary>. In sense 6, extraordinary frequently functions as a postpositive adjective (as in the bracketed illustration).

7. Of, relating to, or involving a course of study or one or more lectures not considered part of the core curriculum but instead of secondary importance <an extraordinary elective>."

[emphasis supplied]



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18. As per the Oxford English Dictionary, Second Edition,

Volume V, the word "extraordinary" means as under:

**"out of the usual or regular course or order;
often in expressed opposition to ordinary.**

**Of a kind not usually met with; exceptional;
unusual; singular. Now with emotional sense,
expressing astonishment, strong admiration or
the contrary.**

**Exceeding what is usual in amount, degree,
extent, or size."**

[emphasis supplied]

19. The word "extraordinary" read in conjunction with the word "reasons" makes it ample clear that the reasons should be beyond what is usual, regular or common. In other words, the reasons should be different from ordinary reasons and can be of exceptional nature.

20. The question for consideration would be as to whether the



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wife of the convict can seek leave to enable her and the convict husband undergo infertility treatment to beget a child and whether it would fall under the category of extraordinary reasons.

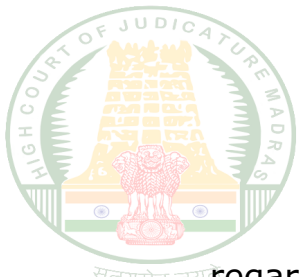
21. In the case on hand, it is evident from the facts narrated in the Division Bench order dated 11.1.2018 that leave was sought referring to extraordinary reasons and the Division Bench dealt with the issue in reference to the beliefs of psychologists and psychiatrists that, at times, denial of conjugal relationship may lead to frustration and tension, apart from ill-feelings and heart burnings. While concluding the order, the objection regarding the maintainability of the habeas corpus petition has also been dealt with.

22. We find that the prayer of the petitioner to undergo infertility treatment in a circumstance when the convict has no child from the wedlock forms an extraordinary reason for grant of leave. In view of the above, we find that the case of the petitioner was falling under Rule 20(vii) of the 1982 Rules. It is, however,



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necessary to clarify that the Rule aforesaid cannot be invoked in all situations. It can be granted to undergo infertility treatment, that too, for a convict having no child from the wedlock. If the convict has child or children from the wedlock, then to seek leave for infertility treatment or on similar ground would not fall in the definition of "extraordinary reasons". It is also that leave cannot be sought repeatedly on one and the same ground under the category of extraordinary reasons. If leave for having conjugal relationship is recognized to be a right under Article 21 of the Constitution of India, the prayer of similar nature can be made by the accused or his/her spouse time and again to have conjugal relationship. The observation aforesaid has been made in reference to the provisions of the Code of Criminal Procedure as well as the Prisons Act, 1894. A convict cannot enjoy all the liberties as are available to a common person, otherwise there would no difference between a law-abiding citizen and a law-violating prisoner. The aforesaid would not mean that prisoners do not have any right or liberty, rather we had recorded our finding that the 1982 Rules take care of Article 21 of the Constitution of India. A word of caution in



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regard to conjugal rights has been put so that the liberty, if any, may not be misused by the convict or the spouse, rather it is used for the purpose it is meant or required.

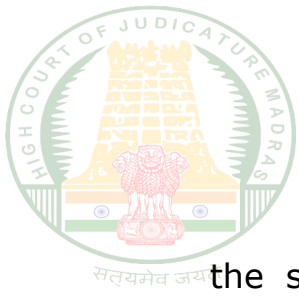
23. At this stage, we need to clarify that judgment of the Full Bench in ***The State v. Yesu, (2011) 2 LW (Crl.) 257*** referred to by the Division Bench in its order dated 11.1.2018 is in reference to grant of parole, for which only an administrative instruction under Article 162 has been issued by the State of Tamil Nadu and, accordingly, it was held that neither the government nor any other statutory authority has power to grant parole in the absence of the rules or a statute. In our opinion, the finding recorded by the Full Bench in the case of ***Yesu*** (supra) does not in any manner affect the authorities to grant leave to the convict under the 1982 Rules by suspending the sentence for the period of leave. The Full Bench decision in the case of ***Yesu*** (supra), referred by the Division Bench in the order dated 11.1.2018 does not deal with the issue referred herein.



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24. In view of the above, we need to answer the questions framed by the Division Bench. A conjugal right in common parlance is for maintaining marital status by husband and wife. The leave for a specific purpose which may be for undergoing infertility treatment, as such, may not be considered for having conjugal relationship in common parlance, but for extraordinary reason, thus we can safely hold that the 1982 Rules itself protect the rights of the prisoner guaranteed under Article 21 of the Constitution of India to the extent it is required.

25. If we hold that deprivation of conjugal right to a convict offends Article 21 of the Constitution of India, it would mean to give right to a convict for conjugal right, which in common parlance is for maintaining the marital relationship of husband and wife in continuity with companionship. The same cannot be permitted for a convict, as a difference has to be made between the law abider and violator. If the case in hand is also taken note of, the petitioner's first petition was allowed with grant of leave for two weeks for undergoing infertility treatment and immediately after availing it,



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the second petition was filed in continuity. The facts aforesaid cannot be ignored by the court because after the judgment by the court holding conjugal right to be a fundamental right, the convict would come out with an application to secure his fundamental rights guaranteed under Article 21 of the Constitution of India without any restraint and, therefore, we need to take a cautious decision so that the ratio propounded by us is used for the purpose and, accordingly, we answer the questions in the following terms:

(i) The denial of conjugal relationship of the convict for specific purpose may amount to denial of the fundamental right guaranteed under Article 21 of the Constitution of India. The specific purpose may be infertility treatment or some similar reason, but it should not be construed to be a fundamental right for having conjugal relationship as a course. This would make a difference between the law abider and violator in regard to rights guaranteed under Article 21 of the Constitution of India.

(ii) The State can be directed to consider the request



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of convict for emergency leave or ordinary leave for the purpose given while answering the question No. (i). The emergency leave or ordinary leave would be for the purpose given under the 1982 Rules and if any extraordinary reason exist, then the State need to consider the aforesaid as and when a request is made by the convict or his relative for grant of ordinary leave for extraordinary reasons. The emergency leave or ordinary leave cannot be claimed as a right for having conjugal relationship without an exceptional reason. This demarcation is necessary as the curtailment of some rights of a prisoner on account of his conviction to the extent indicated above does not offend Article 21 of the Constitution of India.

26. The Registry is directed to place the papers before the roster Bench for disposal.



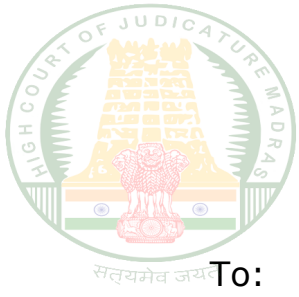
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27. The Committee constituted pursuant to the orders of this Court may continue its study and submit a detailed report to the respondent authorities for consideration in an appropriate manner in a deserving case and also for the legislature to consider if any amendment is necessary in the 1982 Rules in this regard.

28. Before parting with this Judgment, we like to place on record our appreciation for the excellent assistance rendered by learned counsel on either side and Amicus Curiae, Mr.N.Dilip Kumar.

(M.N.B., ACJ.) (P.S.N., J.) (P.D.A., J.)
20.01.2022

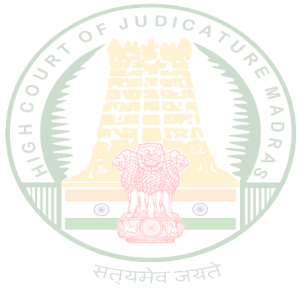
Index : Yes/No
sasi



To:

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1. The Secretary to Government of Tamil Nadu
Home Department, Fort St. George
Chennai - 600 009.
2. The Additional Director General of Prison
C.M.D.A. Towers
Egmore, Chennai - 600 008.
3. The Deputy Inspector General of Prisons
Madurai Zone, Madurai - 625 016.
4. The Superintendent
Central Prison, Palayamkottai.
5. The Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110 001.



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H.C.P. (MD) No.365 of 2018

M.N.BHANDARI, ACJ.
PUSHPA SATHYANARAYANA,J.
AND
P.D.AUDIKEVALU,J.

(sasi)

H.C.P. (MD) No.365 of 2018

20.01.2022