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WP CrI. No. 1283 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP CrI. No. 1283 of 2025

AND WPMP CRL. No. 617 of 2025

Abdul Suban
S/o.Allapichai,
No.474(B), Aladi Road,
Aladi, Virudhachalam Taluk,
Cuddalore District-606 001

..Petitioner(s)

Vs

1. State of Tamilnadu rep by its Secretary
Department of Home, Secretariat,
Fort St.George, Chennai-600 009.
2. The Deputy Inspector General of Prison,
Egmore, Chennai-600 008.
3. The Superintendent of Central Prison,
Central Prison, Vellore, Vellore District.

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a WRIT OF MANDAMUS, directing the respondent to
consider the representation dated 25.09.2025 of the petitioner Raja
Mohammed S/o.Allapichai aged about 53 years CT.No.23686 and



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consider his release from prison on the ground parity with other Co-Accused as per the judgement of Hon'ble Supreme Court in CrI.A.No.697-698/2012 and 481/2015 dated 16.02.2018 and order of this Court in W.P.No.5298/2025 dated 12.08.2025 on humane grounds to secure the ends of justice.

For Petitioner(s): Mr.R.Sankarasubbu

For Respondent(s): Mr.C.R. Malarvannan,
Counsel for Government of Tamil Nadu
(Criminal Side)

Order

(Order of the Court was made by Sunder Mohan J.)

The brother of the convict prisoner-Raja Mohammed S/o.Allapichai, aged about 53 years [CT.No.23686], who is confined at Central Prison, Vellore, has filed this writ petition praying for a mandamus directing the respondents to consider his representation dated 25.09.2025 and release the convict prisoner from prison.

2.(i) The facts leading to the filing of the above writ petition are as follows:



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(ii) The petitioner's brother, was arraigned as A3 in SC.No.301 of 2003 on the file of the learned Additional District Sessions Judge [FTC-III], Vridhachalam and was tried with four other accused for the offences under Sections 457, 395 and 396 of the IPC.

(iii) It is the case of the prosecution that the 5 accused robbed 4.788kgs of gold jewels and 5.595 kgs of silver ornaments worth about Rs.12 Lakhs from a pawn broker shop and caused the death of the guard at the shop; that A2 had caught hold of the deceased and A4 sat on the chest of the deceased and strangled the deceased with hands and caused his death.

(iv) The learned Additional District Sessions Judge [FTC-III], Vridhachalam, found all of the accused guilty of the offences under Sections 457 and 396 r/w 34 of the IPC and sentenced them as follows:

Accused No.	Offence under Section	Sentence imposed
A1 to A5	457 IPC	Each of them to undergo ten years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for two years.



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	302 and 395 IPC	No separate sentence imposed
The sentences were directed to run concurrently.		

(v) The State filed an appeal in CrI.A.No.69 of 2006, challenging the judgment, since, the trial Court had not imposed any separate sentence for the offences under Sections 302 and 395 of the IPC. A2 and A3 filed CrI.A.Nos.1096 and 1097 of 2006, challenging the conviction and sentence. This Court by a common judgment dated 03.09.2010, allowed the appeal filed by the State and enhanced the sentence imposed for the offence under Section 396 of the IPC to life imprisonment and dismissed the appeals filed by A2 and A3.

(vi) Thereafter, three accused viz., A1, A2 and A4 filed CrI.A.Nos.697 and 698 of 2012 and 481 of 2015 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by the judgment dated 16.02.2018 while confirming the conviction modified the sentence imposed on the accused viz., A1, A2 and A4, to ten years imprisonment.



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(vii) Subsequently, the wife of A5 i.e., Balu @ Balasubramani filed WP No.5298 of 2025, praying for a mandamus to direct the State and the prison authorities to consider her representation and consequently, release the prisoner/A5 on the ground of parity based on the above judgment of the Hon'ble Supreme Court.

(viii) This Court by the order dated 12.08.2025 held that the sentence of ten years imprisonment imposed by the Hon'ble Supreme Court for the other accused will hold good for A5 also and released A5 in exercise of the power under Article 226 of the Constitution of India.

(ix) The petitioner has filed this writ petition seeking similar relief for his brother, who is arrayed as A3 in the above said Sessions Case.

3. The learned counsel for the petitioner would submit that the petitioner's brother who was arrayed as A3 in this case was not involved in the offence of murder even according to the prosecution and his role is similar to that of A5, who was released by this Court in exercise of the



power under Article 226 of the Constitution of India and hence, prayed for a direction to the authorities to release the petitioner's brother/A3.

4. The learned counsel for the Government of Tamil Nadu (CrI.Side) fairly conceded that the *overt acts* attributed to the accused/A1, whose sentence was reduced by the Hon'ble Supreme Court and that of A5, who was released by this Court in WP No.5298 of 2025, are similar to the *overt acts* attributed to A3. He would state on instructions that the order dated 12.08.2025 passed by this Court in WP.No.5298 of 2025 had become final as the State had not challenged the same.

5. As it could be seen from the above discussion, admittedly, the *overt act* attributed to the petitioner's brother/A3 is similar to that of A5. In fact, the *overt acts* as regards the offence of murder is attributed to A2 and A4 only. The Hon'ble Supreme Court in its judgment dated 16.02.2018 in CrI.A.Nos.697 and 698 of 2012 and 481 of 2015 had held as follows:

“11. While maintaining the conviction under Section 396 IPC, the sentence of imprisonment imposed upon the appellants-



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Basheer, Shajahan and Babu @ Nawab Sahib is modified as ten years of imprisonment and the appeals are partly allowed. Since the appellants are stated to be in custody for more than ten years, the appellants are ordered to be released forthwith, if not required in any other case.”

6. Based on the above judgment, A5 had filed WP No.5298 of 2025 and this Court vide order dated 12.08.2025 had held as follows:

“7. Before we address the bare facts, touching upon the case of A5 before the Trial Court, it would be appropriate to summarize the ratios laid down by the Hon-ble Supreme Court on the scope of extending parity to an unappealed accused on par with the appealed accused. The earliest case for this proposition is Harbans Singh (Harbans Singh v. State of Uttar Pradesh @ Others, [1982] 2 SCC 102). Three persons were convicted for the offence under Section 302 IPC and sentenced to death by the Trial Court. The appeals preferred before the High Court were dismissed, confirming the death sentence of all the three accused. The Special Leave Petition of one of the co~accused -JS- was dismissed by the Hon-ble Supreme Court, following which, his death sentence was executed. The Special Leave Petition filed by another co~accused -KS- was partly allowed and his sentence of death was commuted to one of imprisonment for life. The SLP filed by the other accused -HS- was dismissed, so also his fresh petition before the Hon-ble President of India. When the date of execution of -HS- was fixed, he filed a Writ Petition before the



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Hon-ble Supreme Court, praying for commutation of his death sentence, among other reliefs. While passing final orders, the Hon-ble Supreme Court took cognizance of the fact that the earlier Bench, in the case of -HS-, had not been appraised of the judgement in -KS-s case, wherein his death sentence had been commuted to imprisonment for life and had held that it would be grave injustice to the co~accused when the benefits of a judgement of the other accused was not extended to him. The relevant portion of the judgement in Harbans Singh (supra) in reads as follows:

“18. To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his co~accused for the very same offence is commuted to one of life imprisonment and the life of the co~accused is shared (sic spared).

.....

19. In the circumstances hereinabove stated, I am of the opinion that it will be manifestly unjust to allow the death sentence imposed on the petitioner to be executed. The question that, however, troubles me is whether this Court retains any power and jurisdiction to entertain and pass any appropriate orders on the question of sentence imposed on the petitioner in view of the fact that



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not only his special leave petition and review petition have been dismissed by this Court but also the further fact that his petition for clemency has also been rejected by the President.

20. Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere.”

A similar view was also taken in Javed Shaukat Ali Qureshi-s case (supra) in the following manner:

“19. We have found that the case of Accused 2 stands on the same footing as Accused 1, 5 and 13 acquitted by this Court. Accused 2 must get the benefit of parity. The principles laid down in Harbans Singh¹ will apply. If we fail to grant relief to Accused 2, the rights guaranteed to Accused 2



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under Article 21 of the Constitution of India will be violated. It will amount to doing manifest injustice. In fact, as a Constitutional Court entrusted with the duty of upholding fundamental rights guaranteed under the Constitution, it is our duty and obligation to extend the same relief to Accused 2. Therefore, we will have to recall the order passed in the special leave petition filed by Accused 2.”

Likewise in Pawan Kumar-s case (supra), the Hon-ble Supreme Court had reiterated the aforesaid proposition in the following manner:

“17.

.....One of such grounds may be, as it exists like in the present case, where this Court while considering appeal of one of the accused comes to the conclusion that conviction of appealing as well as non~appealing accused both was unwarranted. Upon the aforesaid conclusion arrived at by the Apex Court of the land, further detention of the non~appealing accused, by virtue of the judgment rendered by the High Court upholding his conviction, being without any authority of law, infringes upon the right to personal liberty guaranteed to the citizen as enshrined under Article 21 of the Constitution. In our view, in cases akin to the present one, where there is either a flagrant violation of mandatory provision of any statute or any provision of the



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Constitution, it is not that this Court has a discretion to exercise its suomotu power but a duty is enjoined upon it to exercise the same by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated. In view of the foregoing discussion, we are of the opinion that accused Balwinder Singh alias Binder is also entitled to be extended the same benefit which we are granting in favour of the appellant.”

8. The petitioner-s husband, who is undergoing life imprisonment pursuant to the sentence enhanced by this Court and who has not preferred further appeal, is placed in a predicament, similar to that of all the three cases of the Hon-ble Supreme Court cited above.

9. Before the Trial Court, the petitioner-s husband was arrayed as the fifth accused and was found guilty of having committed the offence punishable under Section 396 IPC and sentenced to undergo rigorous imprisonment for 10 years, along with other convictions.

10. The case of the prosecution before the Trial Court was that on 14.11.2002 at about 1.30 a.m., all the five accused, with a common intention to commit robbery, broke into a pawn shop. During the course of committing robbery, A2 was alleged to have held the legs of the deceased, who was sleeping inside the shop, while A4 was alleged to have sat on the deceased and



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strangled him to death using a jute rope. The other accused, including A5 are alleged to have committed robbery of jewellery about 4.788 Kgs of gold and 5.595 Kgs of silver.

11. On the strength of the oral and documentary evidences before the Trial Court, all the accused were convicted for the offence under Section 396 IPC. In view of such conviction, the Trial Court had not recorded a separate conviction under Section 302 IPC. On appeal by the State, the High Court enhanced the sentence of imprisonment from ten years to life imprisonment, by holding the accused guilty of having committed the offence under Section 302 IPC.

12. While serious overt acts in the commission of the offence under Sections 396 and 302 IPC were attributed to A2 and A4, fixing the culpability for the crime of dacoity and murder directly on them, A5 and the other co-accused were alleged to have been present during the commission of the offence and had also indulged in robbing gold and silver jewellery. When A1, A2 and A4 had filed appeals against their conviction and sentence of life imprisonment before the Hon-ble Supreme Court, their conviction under Section 396 IPC was confirmed. However, their respective sentences of life imprisonment were reduced to ten years, through the judgement dated 16.02.2018. The relevant portion of such modification reads as follows:

“10.Placing reliance upon Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771, the High Court took the view that commission of murder in the course of dacoity is to be viewed with seriousness. We are also of the view that the



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offence under Section 396 IPC is to be viewed with seriousness, especially, when the dacoits are armed. But in the case in hand, the accused were not armed. Accused Babu @ Nawab Sahib is alleged to have sat on deceased Muthukrishnan and pressed his nose and mouth and is alleged to have tightened his neck with the rope. The occurrence was of the year 2002. Considering the long lapse of time and the facts and circumstances of the case, the sentence of imprisonment for life is modified as ten years as directed by the trial court.

11. While maintaining the conviction under Section 396 IPC, the sentence of imprisonment imposed upon the appellants~Basheer, Shajahan and Babu @ Nawab Sahib is modified as ten years of imprisonment and the appeals are partly allowed. Since the appellants are stated to be in custody for more than ten years, the appellants are ordered to be released forthwith, if not required in any other case.”

13. On an overall appraisal of the prosecution-s case against A5, including the overt acts attributed to him, as well as the evidences available, we have no difficulty in arriving at the inevitable conclusion that had A5 also preferred an appeal before the Hon-ble Supreme Court, along with A1, A2 and A4, there was every possibility that his sentence too would be reduced to ten years. Even otherwise, such a benefit of reduced sentence ought to be extended to A5 as well, by applying the principle of parity,



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in line with A1, A2 and A4, as held by the Hon-ble Supreme Court in three judgements cited supra. Failure to do so would be violative of Article 21 of the Constitution of India and may amount to travesty of justice. A Co-ordinate Bench of this Court in the case of Alamelu Vs. Secretary to Government, Department of Home & others, reported in 2014(1) MLJ (CrI) 257, had also applied the principles laid down in Harbans Singh-s case (supra), and by invoking the powers under Article 226 of the Constitution of India, extended the benefit of parity by reducing the sentence in that case. Similar is the situation of A5, who has invoked the extraordinary powers of this Court under Article 226.

14. We will look at the issue presented before us from the angle of Constitutional philosophy.

15. Aristotle laid the foundations, on which, the superstructure of equality was built by Western Philosophers. According to Aristotle, equality implies:

(i) Equality in moral means this: things that are alike should be treated alike, while things that are unlike should be treated unlike in proportion to their unlikeness.

(ii) Equality and justice: to be just is to be equal, to be unjust is to be unequal.

Aristotle articulated this in reference to Plato: “treat like cases as like” (Aristotle, Nicomachean Ethics V~3, 1131A10~B15 Politics III.9.1280A8~15, 123.12.1282B18~23).

16. This principle was captured by Clause I of the XIV amendment to the Constitution of United States of America. The said clause declares “ No state shall deny to any person within its jurisdiction the equal protection of the laws.”



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17. *This principle is incorporated in our Constitution too under Article 14. The clause not only guarantees equality before law, but also equal protection of the law.*

18. *Justice Thomas Stanley Mathews pithily put it as “the equal protection of the laws is a pledge of the protection of equal laws”. (See, Yick WO v. Hopkins, 118 U.S. 356 (1880)). His view has been approved by the Supreme Court in the State of Gujarat v. Ambica Mills (1974) 4 SCC 656, wherein Justice Mathew adopted this principle. So did Y.V.Chandrachud, CJ in in re The Special Courts Bill, AIR 1979 SC 478. In paragraph 74, he laid down several propositions with respect to Article 14. The portion relevant for this judgment is extracted herein:*

“The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.”

19. *The principle that flows out of the aforesaid discussion is that the individuals in similar situation or with similar*



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characteristics should be subject to the same laws and receive the same treatment, rights and liabilities under those laws. The constitutional goal is not to have laws that are themselves equal, but to ensure that the protection afforded by those laws is also equal for everyone, reflecting the ideals of fairness and justice in the legal system. Unlike the concept of “equality before law“, which emphasises the absence of special privileges, equal protection of the laws, is a positive concept. It allows for special treatment to promote substantive equality, which would resolve social inequalities. Article 14 demands that laws are applied fairly and impartially, preventing discriminatory treatment, while giving enough room for carefully designed measures that pushes the society towards a just and equitable one.

20. Extending the aforesaid principles to the case on hand shows the constitutional principle of equal protection demands that the protection of laws by which persons, who have been punished for the same act, cannot be imprisoned for varying sentences.

21. The factual discussions show that A1, A2 and A4 had been found guilty for the same acts as committed by the writ petitioner, who was A5. The Supreme Court found that A1, A2 and A4, guilty as charged and punished them with imprisonment for 10 years. By the same order, it had set them at liberty as they had spent more than 10 years in imprisonment by the time their appeals came to be considered. As pointed out in paragraph 13 of the order, had A5 preferred an appeal, he would have been treated similarly.

22. We cannot lose sight that there are several reasons



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including poverty, which prevent a person from appealing before the higher forums of law. The lack of a procedural appeal should not prevent equal treatment of similarly placed accused. When a person has been punished for a period more than what he ought to be, it offends the principle enshrined in Articles 14 and 21. By resorting to these constitutional provisions, it becomes the constitutional duty of this Court to ensure parity. Therefore, applying the principles of equality and curtailment of right to life in accordance with law, we are of the view that A5 should be treated on par with A1, A2 and A4.

23. In fine, we hereby hold that the petitioner-s husband Balu @ Balasubramanian, CT.No.12299, confined at Central Prison, Cuddalore, is entitled to a reduced sentence, on par with the judgement rendered in favour of A1, A2 and A4 by the Hon-ble Supreme Court in Crl.A.Nos.697, 698 of 2012 and 481 of 2015 dated 16.02.2018.

24. We are conscious of Section 362 of the Code of Criminal procedure. We have to point out, we are neither reviewing, altering or revising the judgment in Crl.A.No.69 of 2006. All that we are doing is performing our constitutional duty of rendering parity between A1, A2, A4 and the petitioner herein. Our powers under Article 226 are wide and they have been granted so only to enable us to do justice. This court also has the inherent power and the jurisdiction, while dealing with the situations as presented in the present case, to render justice and prevent manifest injustice. This power, as pointed out in Harban Singh-s case, will have to be used in exceptional circumstances for furthering the ends of justice.



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25. When the petitioner complains that her husband-s constitutional right under Article 21 had been violated, we cannot shrug off our duties and ask the petitioner to follow the same route as taken by A1, A2 and A4 and prefer an appeal to the Supreme Court. This is especially so when the judgment of this Court in CrI.A.No.69 of 2006 was pronounced in the year 2010, and a decade and an half year have already gone by. Consequently, we hold the sentence of 10 years imposed by the Supreme Court in CrI.A.No.697 of 2012, 698 of 2012 and 481 of 2012 will hold good for the petitioner-s husband also. Since the convict prisoner has already undergone the modified sentence of ten years, the respondents are directed to forthwith release the petitioner-s husband Bala @ Balasubramanian, CT.No.12299, unless his confinement is warranted in connection with any other case.”

7. The above observations are self-explanatory. This Court had held that the benefit of the judgment of the Hon’ble Supreme Court reducing the sentence of three other accused would enure in favour of A5. This Court also held that Article 226 of the Constitution of India can be exercised in such extraordinary circumstances to ensure parity for all the accused who did not have the benefit of filing an appeal. We respectfully agree with the aforesaid observations of this Court. The petitioner’s brother/A3, as stated earlier, is similarly placed and is in custody for



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nearly 23 years. Hence, we direct the respondents to forthwith release the petitioner's brother/A3 viz., Raja Mohammed S/o.Allapichai, aged about 53 years [CT.No.23686], who is confined at Central Prison, Vellore, unless his confinement is required in connection with any other case.

8. The Writ Petition stands allowed, accordingly. Consequently, the connected Writ Miscellaneous Petition is closed.

(A.S.M.,J.) (S.M.,J.)
19-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Issue Order Copy by 21.08.2026

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**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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To

1. The Secretary to Government,
Department of Home,
Secretariat, Fort St.George, Chennai-600 009.
2. The Deputy Inspector General of Prison,
Egmore, Chennai-600 008
3. The Superintendent of Central Prison,
Central Prison, Vellore, Vellore District.
4. The Public Prosecutor,
High Court, Madras.

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AND
WPMP CRL. No. 617 of 2025**

19-08-2026