

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1167 of 2014

M.Mymunisa Begam

.. Petitioner

vs.

1.The Government of Tamil Nadu,
Special Secretary to Government,
Home (Prison-IV) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director General of Prisons,
Directorate of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3.The Superintendent of Prison,
Central Prison,
Trichy - 8.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to direct the respondents to produce the petitioner's son Sidik S/o.(Late) K.Mohamed Ali, life convict (C.P.No.99077), now confined at Central Prison, Trichy, before this Court and set him at liberty considering his entitlement for release under G.O.Ms.No.1155 Home (Prison-IV) Dept. dated 11.09.2008 to secure the ends of justice.

For Petitioner : Mr.G.Muthukumar

For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor

O R D E R

(The order of the Court was made by C.T.SELVAM, J.)

Petitioner, who is the mother of Sidik S/o.(Late) K.Mohamed Ali, life convict (C.P.No.99077), has filed this petition seeking a direction to respondents to treat her son as having become eligible for premature release under G.O.Ms.1155, Home (Prison-IV) Department dated 11.09.2008 and to consider him for premature release.

2. Petitioner's son, hereinafter referred to as the accused, is a life convict. He was tried in S.C.No.163 of 2000 on the file of learned Additional District Judge, Tiruchirappali, for offences u/s.302 and 498-A IPC. Under judgment dated 06.07.2001, the trial Court convicted the accused and sentenced him to undergo life imprisonment and fine of Rs.1,000/- i/d.6 months R.I. for offence u/s.302 IPC and 1 year R.I. and fine of Rs.1,000/- i/d. 3 months R.I. for offence u/s.498-A IPC. The trial Court directed that the sentences run concurrently. Appeal against such judgment in C.A.No.881 of 2001 before this Court was dismissed under orders dated 07.12.2004.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

4. Learned counsel for petitioner submits that on the Birth Centenary of the former Chief Minister of Tamil Nadu, Perarisingar Annadurai, Government formulated a scheme for premature release of convicts. G.O.(Ms)No.1155, Home (PRI.IV) Department, dated 11.09.2008, was issued in keeping therewith. It is submitted that as on 15.09.2008, the accused had undergone seven years of imprisonment and hence, he was entitled to release thereunder. However, he wrongly stands denied such relief.

5. Learned Additional Public Prosecutor raises strong objections placing reliance on the counter filed by respondents and prays for dismissal of the petition.

6. This Court has considered the rival submissions and perused the materials available on record.

7. The question which would fall for consideration is whether the accused would be entitled to premature release in keeping with G.O.(Ms)No.1155, Home (PRI.IV) Department, dated 11.09.2008. The benefit of such Government Order is sought to be denied to the accused by contending that under G.O.(Ms)No.1121, Home (Prison.IV) Department, dated 24.12.2009, G.O.(Ms)No.1155, Home (PRI.IV) Department, dated 11.09.2008, was amended whereby conviction for offence u/s.498-A IPC was included under the ineligibility criteria. Accepting such submission would lead to equals being treated unequally. On the one hand, we would have prisoners convicted for offence u/s.498-A IPC having been released by virtue of G.O.(Ms)No.1155, Home (PRI.IV) Department, dated 11.09.2008 and on the other, those convicted for the very same offence not being granted relief owing to the subsequent amendment. Such is an unacceptable position.

This Habeas Corpus Petition is allowed. The accused Sidik S/o.(Late) Mohamed Ali, life convict (C.P.No.99077), confined at Central Prison, Trichy, is directed to be released forthwith, unless he is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Special Secretary to Government,
Home (Prison-IV) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Prisons,
Directorate of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison,
Central Prison, Trichy - 8.
4. The Joint Secretary to Government Public
(Law & Order) Dept, Fort St. George, Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras.

+ 2 ccs to M/s. G. Muthukumar, Advocate Sr.58747

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SAI (CO)

EU 27.11.15