

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM:

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

H.C.P.No.584 of 2014

A.Selvi

... Petitioner

vs.

- 1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
2. The Additional Director General of Police
and Inspector of Prisons,
Gandhi Irwin Road, Egmore,
Chennai-600 008.
3. The Superintendent of Prison,
Central Prison-I, Puzhal, Chennai-66. ... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of habeas corpus directing the respondents to produce the petitioner's husband namely Arumugam, S/o.Chinnathambi, CT.No.1635, Life Convict, aged about 50 years, now confined in the Central Prison-1, Puzhal, Chennai-66 before this Court and directing the respondents to consider the petitioner's husband immediately under G.O.Ms.No.1155 Home (Prison-IV) Department, dated 11.09.2008 for premature release and to set him at liberty.

For Petitioner : Mr.P.Pugalenthiraj
For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor

O R D E R

(Order of the Court made by C.T.SELVAM, J.)

Petitioner, who is the wife of Arumugam, S/o.Chinnathambi, life convict (1635), aged about 50 years, has filed this petition seeking a direction to respondents to treat her husband 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 husband, hereinafter referred to as the accused, is a life convict. He was tried in S.C.No.6 of 1988 on the file of learned Sessions Judge, Chengalpattu, for offence u/s.302 IPC. Under judgment dated 22.10.1992, the trial Court convicted the accused and sentenced him to undergo life imprisonment. Appeal against his conviction in C.A.No.680 of 1992 was dismissed by this Court under judgment dated 23.12.1996. Accused presently is confined at Central Prison I, Puzhal, Chennai.

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

4. Learned counsel for petitioner submitted that the accused was granted parole for 15 days under Government telex message No.79232/Prison.3/1997-1 dated 11.08.1997. Though he should have returned to the prison on 27.09.1997, he did so only on the next date owing to circumstances beyond his control. Having completed 12 years of actual imprisonment as on 15.09.2008, the accused now has undergone more than 14 years of imprisonment as a life convict. He is entitled to premature release. His case has not been considered by the authorities and representations to them have been of no avail. Learned counsel contended that the breach of parole conditions by reporting to prison on the date next to the appointed date could not be put against the accused in considering his case for premature release. Informing that in identical circumstances, this Court favourably had considered a similar plea of a convict, learned counsel produced a copy of the order of this Court in H.C.P.No.627 of 2013 dated 23.04.2013.

5. Learned Additional Public Prosecutor raises strong objections placing reliance on the counter filed by respondents and prays for dismissal of the petition. The primary contention in the counter of the respondents is that the accused had been granted ordinary leave for 15 days on 11.09.1997 and ought to have returned to prison on 27.09.1997. He, however did so only on 28.09.1997. His conduct was in violation of Rule 25(vii) of the Tamil Nadu Suspension of Sentence Rules, 1982 and hence, was recorded as a complaint in his history sheet. Breach of

conditions of ordinary leave is a prison offence as per Rule 297(62) of Tamil Nadu Prison Rules, 1983. As his behaviour thus was not satisfactory, the accused was not eligible for premature release on general amnesty. It is the policy of the State not to consider the cases of prisoners who have violated leave conditions as also committed prison offences, even if their overstay of leave was condoned.

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

7. In granting relief under orders in H.C.P.No.627 of 2013 dated 23.04.2013, this Court had observed that overstay of leave did not render a prisoner ineligible for relief under G.O.Ms.No.1155 Home (Prison-IV) Department, dated 11.09.2008. We respectfully concur and more particularly, since the overstay complained of in the instant case was but for a period of one day in the year 1997. To consider the same a barrier to relief envisaged in the year 2008 would be totally irrational and unreasonable.

This Habeas Corpus Petition is allowed. The accused Arumugam, S/o.Chinnathambi, aged 50 years, life convict No.1635, confined at Central Prison I, Puzhal, Chennai, is directed to be released forthwith, unless he is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vga/gm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
- 2.The Additional Director General of Police
and Inspector of Prisons,
Gandhi Irwin Road, Egmore,
Chennai-600 008.
- 3.The Superintendent of Prison,
Central Prison-I, Puzhal, Chennai-66.

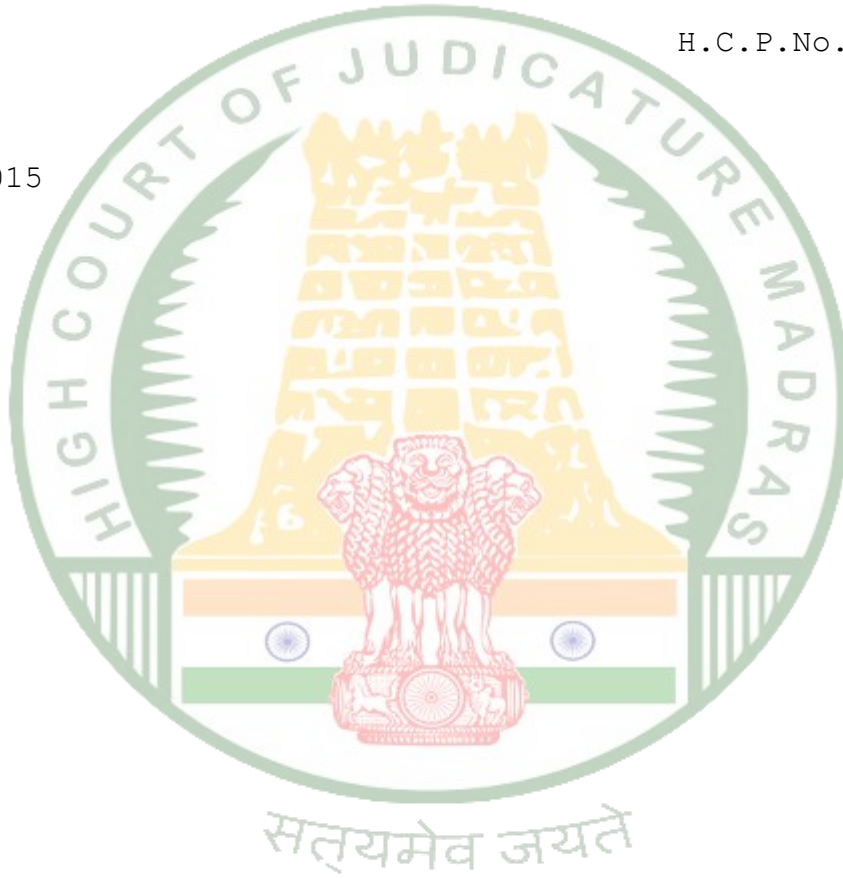
4.The Public Prosecutor,
High Court of Madras, Chennai.

5.The Secretary to Government
Public Law & Order Fort St.George,
Chennai-6

+1 cc to Mr.P.Pungalenthi Advocate sr.53970

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