

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Habeas Corpus Petition No.384 of 2014

Rathinam
S/o.Kulanthaivelu ... 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 - 600 008. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus directing the respondents to produce the petitioner's son viz., Chandrasekaran S/o.Rathinam, Life Convict No.98400, 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) Department dated 11.09.2008 in view of the order passed in W.P.No.16177/2011 on 20.07.2013 after set aside the G.O.(D) No.770 dated 24.09.2013 issued by the first respondent and release him from prison.

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 father of Chandrasekaran S/o.Rathinam, life convict (98400), has filed this petition seeking a direction to respondents to treat his 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.61 of 2000 on the file of learned II Additional District Judge (PCR), Tiruchirappalli, for offences u/s.302, 304-B, 498-A and 302 r/w 201 IPC. Under judgment dated 22.11.2000, the trial Court convicted the accused and sentenced him to undergo life imprisonment and fine of Rs.5,000/- i/d. 1 year R.I. for offence u/s.302 IPC, 8 years R.I. for offence u/s.304-B IPC, 3 years R.I. and fine of Rs.5,000/- i/d 1 year R.I. for offence u/s. 498-A IPC and 7 years R.I. and fine of Rs.5,000/- i/d 1 year R.I. for offence u/s.302 r/w 201 IPC. The trial Court directed that the sentences run concurrently. There against, the accused preferred C.A.No.1161 of 2000 before this Court. Under judgment dated 20.08.2003, this Court while confirming the conviction and sentence for offences u/s.302, 498-A and 304-B IPC, acquitted the accused of offence u/s.302 r/w 201 IPC. Appeal against such judgment before Supreme Court in CrI.M.P.No.5542 of 2004, was dismissed under orders dated 07.07.2004.

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, Perararignar 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 would be 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 Chandrasekaran S/o.Rathinam, life convict No.98400, confined at Central Prison, Trichy, is directed to be released forthwith, unless he is required in connection with any other case.
Gm

Sd/-
Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

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 Public Prosecutor,
High Court, Chennai.

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5. The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George,
Chennai - 600 009

+2 C.C. To MR.G.Muthukumar, Advocate in SR.NO.55846

H.C.P.No.384 of 2014

AK(CO)
sd : 25/11/2015



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