

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-08-2015

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN
AND
THE HON'BLE MR.JUSTICE C.T.SELVAM

H.C.P.No.2855 of 2013

N.Murugeswari

..... Petitioner

vs

1. The State of Tamil Nadu
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
 2. The Additional Director General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
 3. The Superintendent of Prison
Central Prison,
Palayamkottai.
- Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for a Writ of Habeas Corpus directing the respondents to produce the petitioner's father Navaneethakrishnan, son of Ponnaiyan Thevar, aged about 52 years (Life Convict No.1872) now confined in the Central Prison, Palayamkottai, before this Court and to set him at liberty.

For petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor

ORDER

(Order of the Court was made by S.TAMILVANAN, J)

Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

2. This Habeas Corpus Petition has been filed invoking Article 226 of the Constitution of India, seeking an order directing the respondents to produce the petitioner's father Navaneethakrishnan, son of Ponnaiyan Thevar, aged about 52 years, a life convict, now confined in Central Prison, Palayamkottai on the date of filing of the petition.

3. It is an admitted fact that the convict Navaneethakrishnan is undergoing life imprisonment and also rigorous imprisonment for one year in the Central Prison, Palayamkottai, pursuant to the conviction and sentence imposed on him for the offences punishable under Sections 302 and 341 of IPC in S.C.No.309 of 1983 on the file of the Principal District and Sessions Judge, Tirunelveli. Subsequently, as per G.O.(Ms).No.873, Home (Prison IV) Department, dated 14.09.2006, a remission order was passed by the first respondent, as he had undergone 10 years of the sentence imposed on him. However, Mr.A.N.Thambi Durai, learned Additional Public Prosecutor submitted that it was a conditional order passed by the Government, whereby remission was granted on condition that the convicted persons shall not involve in any other offence, otherwise, the remission of sentence would be revoked. The learned Additional Public Prosecutor further submitted that the said convict Navaneethakrishnan had involved in three other cases, hence, he is not entitled to get remission of sentence, that was granted by the Government.

4. However, learned Additional Public Prosecutor has not disputed the fact that in the cases in Cr.No.196 of 2006 and 236 and 252 of 2007, the said life convict had been prosecuted and he was acquitted in two cases and in one case, though he was convicted by the trial court, subsequently, acquitted by the appellate court. It is not in dispute that the appellate Court recorded acquittal in the said third case. Hence, in all the three cases, the said Navaneethakrishnan was acquitted. However, learned Additional Public Prosecutor submits that as there were three cases registered against the life convict, it could be presumed that there was violation of the condition imposed in the remission order passed in G.O.(Ms).No.873, Home (Prison IV) Department, dated 14.09.2006 and further, according to the Additional Public Prosecutor, the issue relating to the eligibility of getting remission has to be decided by the Board, constituted for deciding the same.

5. It is submitted by the learned counsel for the petitioner that a written representation was given by the petitioner on 13.08.2013 to the respondents, however, there was no response from them as on date. In support of his contention, the learned counsel for the petitioner drew the attention of this Court to a copy of the representation and postal receipt available in the typed set of papers and submitted that the representation is pending for about two years and according to him, keeping the convict in prison, after granting remission under the G.O.(Ms).No.873, Home (Prison IV) Department, dated 14.09.2006 is illegal. Mr.Radhakrishnan, learned counsel for the petitioner submitted that there is violation of the Fundamental Right of the person, whose personal liberty is guaranteed under Article 21 of the Constitution and the plea of the petitioner is not based on any disputed question of fact. Hence, the Habeas Corpus Petition be allowed, in order to safeguard the Constitutional mandate.

6. Learned counsel for the petitioner also drew the attention of this Court to the decision rendered in H.C.P.No.2606 of 2014, dated

20.01.2014, passed by a Division Bench of this Court and argued that the detenu is entitled to be released as the continuation of detention and keeping him in prison, even after the order of remission would be construed as illegal detention.

7. In this Habeas Corpus Petition, the short point that arose for consideration is as to whether the convicted person Navaneethakrishnan has to be released, in view of the remission of sentence granted by the Government Order passed in G.O.Ms.No.873, Home (Prison IV) Department, dated 14.09.2006 or he is not entitled to seek the relief, in view of the subsequent cases registered against him, in spite of the fact that all the said cases were subsequently ended in acquittal and also reached finality.

8. In State of Rajasthan v. Shera Ram @ Vishnu Dutta, reported in (2012) 1 SCC 602, the Hon'ble Supreme Court, referring various earlier decisions, has held thus :

"13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court..."

9. In Sumit Mehta v. State of N.C.T. of Delhi, reported in 2013 AIR (SCW) 5947, the Hon'ble Apex Court has ruled as follows :

"13. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution."

10. Referring various earlier decisions, the Hon'ble Supreme Court has categorically held that till the guilt is proved, an accused should be presumed to be innocent and he is entitled to all the fundamental rights, including the right of liberty, guaranteed under Article 21 of the Constitution. When there is acquittal in a criminal charge, the right vest in him to be a free citizen and the Court has to be cautious in taking away the valuable right of the person, as ruled by the Hon'ble Apex Court.

11. In the instant case, it is an admitted fact that the said Navaneethakrishnan was convicted to life under Sections 302 and 341 of IPC and sentenced to undergo life imprisonment and one year respectively. As per G.O.Ms.No.873, Home (Prison IV) Department, dated 14.09.2006, remission was ordered by the Government, considering all requirement, the said Government Order is not under

challenge. Learned counsel appearing for the petitioner submits that only after completing 10 years of sentence, the remission was ordered, as per the G.O. Ms.No.873, dated 14.09.2006.

12. It is not in dispute that remission was granted on condition that the convicted accused shall not involve in any other offence or offences. The G.O.(Ms).No.873, Home (Prison IV) Department, dated 14.09.2006 reads thus :

"In the interest and welfare of the prisoners and on the occasion of the 98th Birthday of Peraringnar Anna, the Government have decided to release all life convicts, who had completed 10 years of actual imprisonment on 15.09.2006 subject to the following conditions :

- i. That the prisoners who are convicted for the offences specified in G.O.Ms.No.1762, Home, dated 20.07.1987 are not be eligible for this concession;
- ii. That their general behaviour in the prison should have been satisfactory;
- iii. That the life of the convict would be safe if released;
- iv. That they would be accepted by the members of their families or any other social organization, which can give guarantee for the safety of their lives;
- v. That their cases do not come under Section 435 Criminal Procedure Code; and
- vi. That they will execute bonds, according to the usual terms and conditions."

13. It is an undisputed fact that in all the three cases, the convicted accused Navaneethakrishnan was acquitted, which has reached its finality. After the acquittal, as per law, in the light of the decisions rendered by the Hon'ble Supreme Court, the convicted accused should be presumed to be innocent. Hence, legally it cannot be presumed that the convict relating to this HCP had involved in any offence, after the remission of sentence, granted by the Government, as per G.O.(Ms).No.873, Home (Prison IV) Department, dated 14.09.2006.

14. The remission order passed in G.O.(Ms).No.873, cannot be challenged by the respondents, since it was passed only by the Government. In fact, the respondents are estopped from raising a plea against the Government Order, whereby remission of sentence was given in favour of the convicted accused. The decidable issue involved in this HCP is whether he has violated any condition imposed, as per the Government Order. Admittedly, the cases registered against the convicted accused, Navaneethakrishnan were ended in acquittal. It is not proper on the part of the respondents to raise a plea that the issue has to be decided by the Board. When the matter is before the High Court and the relief sought for relates to fundamental rights, guaranteed under Article 21 of the

Constitution, it cannot be justified on the part of the respondents to raise a plea that the Board has to decide. We are of the view that there is no disputed question of fact involved in the matter and the matter is purely a question of law. Hence, this Court has the competency to interpret the law, in view of the Constitutional mandate. Hence, the aforesaid submission made by the respondents is unsustainable in law.

15. It is well settled that after acquittal, the Court cannot presume that the said convict Navaneethakrishnan has involved in any other criminal case or committed any offence, since the competent Court has held that the said Navaneethakrishnan has to be acquitted, either by the trial Court or the Appellate Court and hence, on the aforesaid circumstances, we are of the view that the Court cannot presume that he has violated any condition imposed in G.O.(Ms). No.873, Home (Prison IV) Department, dated 14.09.2006, whereby remission was granted by the Government. As there is a constitutional safeguard and this Court is dealing with Article 226 of the Constitution of India, it would not be proper to refer this issue to any Board. This Court can decide independently without considering the decision of the Board or any other Forum, as it relates to personal liberty of a person, as there is no disputed question of fact.

16. It is crystal clear that the Fundamental Right of any citizen is paramount under Article 21 of the Constitution of India. Having considered the said constitutional provision, we are of the view that after the remission order passed and subsequent cases, which were admittedly ended in acquittal, the convicted person, Navaneethakrishnan shall not be detained further, as that would be only an illegal detention.

17. In the result, this Habeas Corpus Petition is allowed and the detenu, Navaneethakrishnan, (Life Convict No.1872), the father of the petitioner shall be set at liberty forthwith and he is entitled to be released immediately unless and otherwise, his presence is required in any other case.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

tsvn

To

1. The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

3. The Superintendent of Prison
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Palayamkottai.

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

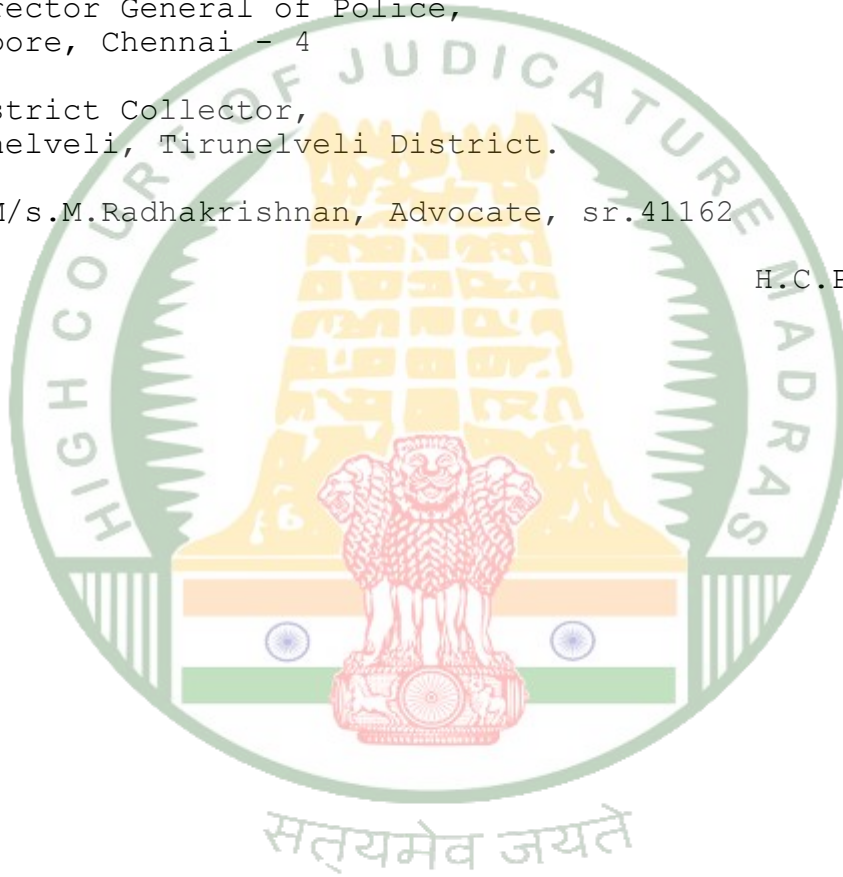
5. The Director General of Police,
Mylapore, Chennai - 4

6. The District Collector,
Tirunelveli, Tirunelveli District.

+1 cc to M/s.M.Radhakrishnan, Advocate, sr.41162

H.C.P.No.2855 of 2013

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