

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

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

H.C.P.No.3304/2013

Rajendran

... Petitioner

Vs

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

.... Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus directing the respondents to produce the petitioner/detenu, namely Rajendran, son of Govindasamy, Life Convict, aged about 55 years, confined in the Central Prison-I, Puzhal, Chennai-66 before this Court and direct the respondents to consider the petitioner immediately under G.O.Ms.No.1155, Home [Prison-IV] Department dated 11.09.2008, for premature release and set him at liberty.

For Petitioner : Mr.P.Pugalenthir

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

ORDER

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

The petitioner, who is the detenu, namely, Rajendran, Son of Govindasamy, aged about 55 years, [Life Convict No.313], has come forward with this petition praying to direct the respondents to consider the petitioner's case immediately under G.O.Ms.No.1155 for premature release and set him at liberty.

2. Learned counsel for the petitioner submitted that the petitioner is entitled to get pre-mature release as per G.O.Ms.No.1155 Home (Prison-IV) Department dated 11.09.2008. In the said Government Order, it is specifically stated as follows:

"In the interest and welfare of the prisoners and on the occasion of the Birth Centenary of Peraringnar Anna on 15.09.2008, the Government have decided that all the life convicts

(i) who have completed 7 years of actual imprisonment as on 15.09.2008 (ii) who are aged 60 years and above and have completed 5 years of actual imprisonment as on 15.09.2008.

may be released prematurely subject to the satisfaction of the following conditions:-

(i) That the following categories of prisoners will not be eligible for this concession:-

a) The prisoners who are convicted for the offences specified in G.O.(Ms) No.1762, Home dated 20.07.1987.

b) the prisoners who were awarded death penalty and whose sentence was later commuted to life imprisonment by the appellate Court and the prisoners who committed offences on religious prejudices.

(ii) That their general behaviour in the prison should be satisfactory.

(iii) That the life of the convict would be safe if released;

(iv) That they would be accepted by the members of their family or any other social organization which can give guarantee for the safety of their lives.

(v) That their cases should not come under section 435 Cr.P.C. and

(vi) That they will execute the bonds as per usual terms and conditions.

Hence, he prays for premature release of the detenu.

3. Learned Additional Public Prosecutor submits that as rightly contended by the learned Counsel for the petitioner/detenu, though the prisoner is eligible for premature release, it should be accepted by his family members. But, in this case, the family members of the detenu are objecting for the detenu's premature release. Further, the learned Additional Public Prosecutor contended that the said condition has been incorporated, considering the safety of the convicted person. Hence he prays to dismiss the present petition.

4. We are not satisfied with the said submission made by the learned Additional Public Prosecutor since the release of the prisoner relates to his individuality which cannot be construed based on the views of the family members by invoking Article 13 (2), 14 and 21 of the Constitution of India which read as follows:

"Article 13 (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Article 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law."

Therefore, in our considered view, the petitioner, who is a convicted person is also entitled to get premature release as on that of the similarly placed persons. As we have cited supra, based on the views of the family members and others, it cannot be decided. It is made clear that fundamental rights cannot be taken away by any enactment and the person's liberty cannot be curtailed based on the views of the family members and others.

5. Learned Additional Public Prosecutor has not raised any objection in respect of the other conditions stipulated in the said Government Order.

6. On the aforesaid circumstances, we find it just and reasonable to allow this petition. Accordingly, this Habeas Corpus Petition is allowed and the petitioner/detenu [Life Convict No.313] who is confined in the Central Prison-1, Puzhal, Chennai-600 066 is directed to be released forthwith in terms of G.O.Ms.No.1155, Home [Prison-IV], dated 11.09.2008.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Secretariat, Chennai 600 009.
2. The Additional Director General of Police &
I.G. 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, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to M/s.P.Pugalthi, Advocate, S.R.No.51171

MP(CO)
CA(27/10/2015)

HCP.No.3304 of 2013