

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

Coram :

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.658 of 2015

John David @
John Marimuthu

... Petitioner

Vs.

The Superintendent of Prisons
Central Prison-I
(Convict Prison)
Puzhal
Chennai-600 006.

... Respondent

Habeas Corpus Petition has been filed under Article 226 of the Constitution of India for a Writ of Habeas Corpus, directing the respondent to provide the petitioner with "A" class facility in Central Jail, Puzhal, Chennai, immediately.

For petitioner : Mr.S.Arivazhagan

For respondent : Mr.S.Shanmugavelayutham,
Public Prosecutor
assisted by Mr.A.N.Thambidurai
Additional Public Prosecutor

ORDER

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

The petitioner is the life convict in S.C.No.63 of 1997 on the file of the learned Principal Sessions Judge, Cuddalore, by judgment dated 11.03.1988. The conviction of the petitioner was reversed by this Court, by judgment dated 05.10.2001, which in turn was reversed by the Hon'ble Supreme Court in Crl.A.No.384 of 2002, by judgment dated 20.04.2011, by which, the Hon'ble Supreme Court restored the conviction of the petitioner as imposed by the Trial Court. In pursuance of the same, now, the petitioner is lodged in the Central Prison-I, Puzhal, Chennai. The petitioner has now come up with this Habeas Corpus Petition, seeking a direction to the respondent/The Superintendent of Prisons, Central Prison-I, Puzhal, Chennai, to provide the petitioner with "A" class facility in the Central Prison-I, Puzhal, Chennai.

2. Mr.S.Arivazhagan, learned counsel for the petitioner would submit that as per the Tamil Nadu Prison Rules, 1983, in Tamil Nadu Prison Manual Volume-II, the petitioner is entitled for "A" class facility. He would further submit that the petitioner has already made a representation to the respondent on 24.02.2015, seeking such classification and consequential, facility, but, the same has not been considered. In those circumstances, the petitioner has come up with this petition.

3. The respondent has filed a detailed counter, wherein, after referring to Rules 225 and 226 of the Tamil Nadu Prison Rules, 1983 (hereinafter referred to as, "The Rules") has stated that as per the said Rules, the Prison Authority does not have power to provide "A" class facility to a convict prisoner, without any order from the Court.

4. But, the learned counsel appearing for the petitioner would submit that as per Rule 227 of the Rules, the State Government has got power to consider the request and the respondent is obliged to forward the said representation made by the petitioner to the Government.

5. Mr.S.Shanmugavelayutham, the learned Public Prosecutor, would submit that though, the respondent has got no power to classify the petitioner as "A" class prisoner and to provide him with all facilities, he is bound to forward the representation made by the petitioner to the Government for action under Rule 227 of the Rules.

6. We have considered the above submissions.

7. Rule 227 of the Tamil Nadu Prison Rules, 1983, reads as follows:-

"227.Petition to Government for Classification.-- The Government may also action a reference from the Superintendent of the prison on a petition from the prisoner. The Superintendent shall forward the petition through the Inspector-General to the Government. The Government may also act suo-motu or on a representation by the prisoner's relatives and friends. Except as provided under the rule 226, the Superintendents shall place every convicted prisoner in class B."

8. A plain reading of the said Rules would go to show that the ultimate authority lies with the Government to decide, whether a particular individual/convict prisoner should be given "A" class facility in the prison or not. Rule 227 of the Rules further states that except, as provided under the Rule 226, the Superintendents shall place every convicted prisoner in class "B". Rule 226 of the Rules states

classification of the prisoners by Courts. But, a reading of Rule 226 of the Rules would go to show that the Court, which convicts the accused, has got power only to make a recommendation for classification of a particular convict as "A" class prisoner to the Government, going by the other eligibilities as enumerated in Rule 225 of the Rules. At any rate, even the Court has not been empowered to order for such classification, instead, the Court has been empowered only to make a recommendation to the Government and it is for the Government to consider the claim of the convict and to classify him or not to classify him as "A" class prisoner.

9. In the instant case, the Court has not made any recommendation so far. It is seen from the records that subsequent to the conviction, the petitioner had made an application to the Sessions Judge, seeking an order for classification of the petitioner as "A" class prisoner, but, that was rejected.

10. From the foregoing narration of facts, it is crystal clear that, as of now, there has been no recommendation made by the Court to classify the petitioner as "A" class prisoner. At the same time, the fact remains that the representation made by the petitioner on 24.02.2015, is pending with the respondent.

11. The learned Public Prosecutor submitted that the respondent would duly forward the same to the Government and the Government would take appropriate action on the said representation dated 24.02.2015, as per Rule 227 of the Rules, strictly in accordance with law. His statement is recorded.

12. In view of the above, this Habeas Corpus Petition is disposed of, with the following terms:-

- i. The respondent shall forward the representation of the petitioner, dated 24.02.2015, to the State Government within a period of four weeks from the date of receipt of a copy of this order.
- ii. On receipt of the said representation, the Government shall consider the same, independently, as per Rule 227 of the Tamil Nadu Prison Rules, 1983, strictly in accordance with law, by going in detail with regard to the eligibility of the petitioner for "A" class facility, then pass appropriate orders, within a further period of three months thereafter.

Sd/-
Assistant Registrar(CO)

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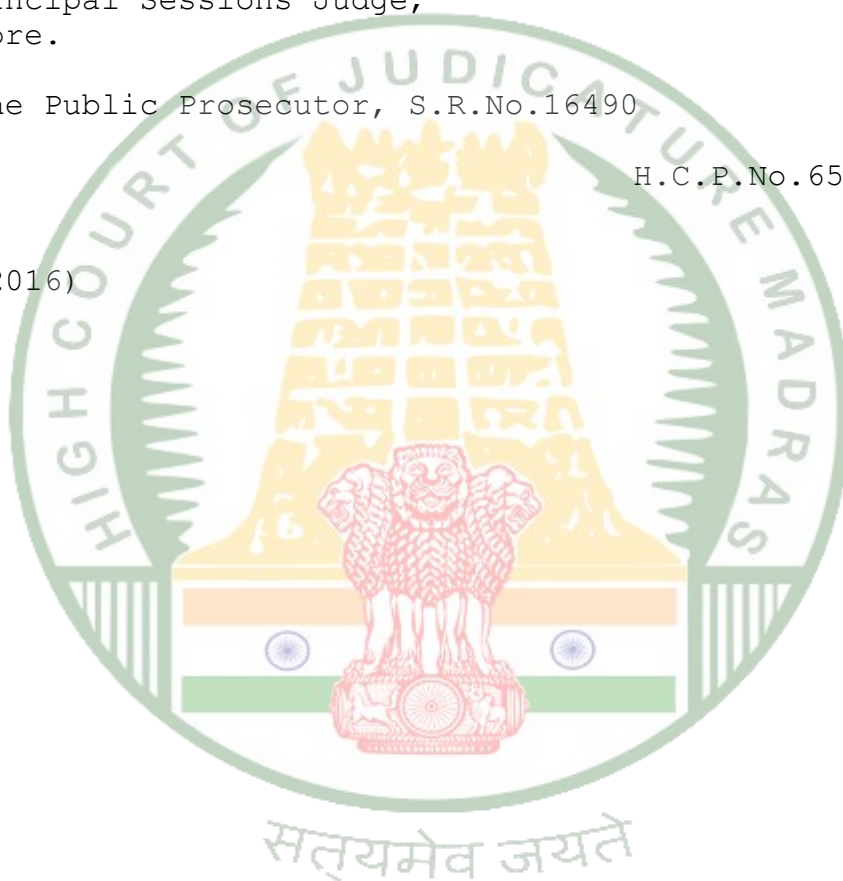
1. The Superintendent of Prisons
Central Prison-I
(Convict Prison)
Puzhal
Chennai-600 006.

2. The Principal Sessions Judge,
Cuddalore.

+1cc to the Public Prosecutor, S.R.No.16490

H.C.P.No.658 of 2015

ALA (CO)
CA(28/03/2016)



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