

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Habeas Corpus Petition No.425 of 2014

Lakshmi

... Petitioner

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Home,
Fort St. George, Chennai - 600 009.

2. The Superintendent,
Central Prison,
Puzhal, Chennai - 66.

... Respondents

PETITION under Section 226 of The Constitution of India
praying for the issuance of Writ of Habeas Corpus directing the
respondents to produce the detenu Damu @ damodharan, S/o
Thiruvengadam, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor
(Crl.Side)

O R D E R

(Order of the Court was made by P.N.PRAKASH,J.)

This Habeas Corpus Petition is filed by the wife of the
detenu Damu @ Damodharan for a direction to the respondents to
produce the detenu Damu @ Damodharan, S/o Thiruvengadam, before
this Court and set him at liberty.

2. It is the case of the petitioner that the detenu Damu @ Dhamodharan is a life convict undergoing life imprisonment for the offence punishable under Section 302 IPC in S.C.No.21 of 1994 dated 19.03.1996. It is the contention of the petitioner that though he is entitled to be released under G.O.Ms.No.1155 dated 11.09.2008, he has not yet been released. Hence, the present petition has been filed on the ground that his further detention in prison is illegal.

3. Countering the contentions made by the petitioner, the Deputy Secretary to Government, Home Department, has filed counter, wherein, in paragraph No. 7, it is stated as follows:

"7. On 12.11.1997 the prisoner was sent on ordinary leave for 15 days as per the Government telex message No.51236/Prison.3/1997-4 dated 06.10.1997, though the Life Convict Prisoner got extension of leave for 12 times. After completion of his leave the Life Convict Prisoner had to return on 01.05.1998. However, the convict returned only on 10.05.1998. Thus Life Convict Prisoner overstayed by 9 days, which amounts to escape from the clutches of law. His absence after the period of leave is violation to Rule No.25(vi) of the Tamil Nadu Suspension of Sentence Rule 1982 and this was reported as complaint in his history sheet. Breaches of the conditions of Ordinary leave is a prison offence as per Rule No.297(62) of Tamil Nadu Prison Rules, 1983. Hence his behavior is considered as not satisfactory and thus he is not eligible for premature release on General Amnesty. It is the policy of the Government not to consider the cases of prisoners on general amnesty, who had violated the Prison Rules even if their overstay was condoned. Hence the life convict was not considered for the premature release."

4. Learned counsel appearing for the petitioner submitted that though it is alleged that the petitioner had overstayed for a period of 9 days, but the same was condoned by the Government and he was not prosecuted under Section 224 IPC. Under such circumstances, he cannot be denied the benefits of G.O.Ms.No.1155 dated 11.09.2008.

5. Be that as it may. These are all issues that are to be considered by the appropriate authority. This Court, while

considering the similar claim, in H.C.P.Nos.14 of 2013 etc. batch dated 03.11.2015, held as follows:

"7 The order which this Court proposes to pass in the above said petitions, is solely on the ground that the Government Order, viz., G.O.Ms.No.1155 dated 11.09.2008, as amended by G.O.Ms.No.1121, Home [Prison IV] dated 24.12.2009, provides for premature release of life convicts who have completed 7 years of actual imprisonment as on 15.09.2008 and who have completed 60 years of age and above and have completed 5 years of actual imprisonment as on 15.09.2008. It also provides certain conditions, as referred to above, which are to be taken note of by the Authorities concerned while extending the benefits of the said Government Order.

8 A further perusal of the respective counter affidavits would reveal that in certain cases, the representations made by the detenus/detenues have been considered by the Superintendents of respective Central Prisons, who are not competent to act so and it is only the Home Secretary of the State who has to consider the claims of the life convicts seeking premature release. Hence, the statement made in certain counter affidavits that the representations of the life convicts were rejected by the Superintendents of respective Central Prisons, may not be appropriate. It is further seen that the rejection of the representations were not communicated to the detenus/life convicts in an appropriate manner, to which they are legally entitled and so also, to enable them to work out their further remedy as per law.

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

[1] The detenu/life convict in the above Habeas Corpus Petition is directed to submit a fresh representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order by the petitioner, by enclosing a copy of this order.

[2] The Superintendent, Central Prison-1, Puzhal, Chennai, shall, on receipt of such representation, forward the same to the 1st respondent along with his remarks and Probation

Officer's Report within a further period of eight weeks therefrom.

[3] The 1st respondent, on receipt of the remarks from the Superintendents of the respective Central Prisons, shall consider the same and if the life convict / detenu is found to be eligible to be released prematurely as per G.O.Ms.No.1155, Home [Prison IV] Department, dated 11.09.2008, the papers may be placed before His Excellency The Governor, State of Tamil Nadu for passing appropriate orders. If found ineligible, orders with reasons shall be passed and communicated to the life convict/prisoner through the prison authorities.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Department of Home,
Fort St. George, Chennai - 600 009.
2. The Superintendent,
Central Prison,
Puzhal, Chennai - 66.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.459

H.C.P.No.425 of 2014

KGK(CO)
CA(25/01/2016)