

In the High Court of Judicature at Madras

Dated: 04.01.2016

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The Honourable Mr.JUSTICE R.SUDHAKAR
and

The Honourable Mr.JUSTICE P.N.PRAKASH

Habeas Corpus Petition Nos.1329 of 2009 and 164 of 2015

Tmt.N.Visalakshi Petitioner in both HCPs

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Home,
Fort St. George, Chennai - 600 009.
2. The Superintendent of Central Prison,
Palayamkottai, Tirunelveli District.
..... Respondents in HCP No.1329 of 2009
1. Government of Tamilnadu,
rep. by its Secretary to Government,
Home (Prison IV) Department,
Fort St. George, Chennai - 600 009.
2. The Additional Director General of Prisons,
Thalamuthu Natarajan Maaligai,
2nd Floor, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Central Prison,
Puzhal, Chennai.
..... Respondents in HCP No.164 of 2015

H.C.P.No.1329 of 2009:

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 Nagendran son of Ponnusamy,
C.No.2646 Life now confined in Central Prison, Palayamkottai and
set him at liberty.

H.C.P.No.164 of 2015:

PETITION under Section 226 of The Constitution of India
praying for the issuance of Writ of Habeas Corpus directing the

respondents herein to produce the body of the detenu by name Nagendran Life Convict No.244 now confined in Central Prison, Puzhal, Chennai before this Honourable Court and set him at liberty as having become eligible for premature release by virtue of G.O.Ms.No.1155 Home (Prison IV) Department dated 11.09.2008.

For Petitioner in HCP No.1329 of 2009 : Mr.R.Sankarasubbu
For Petitioner in HCP No.164 of 2015 : Mr. E.K.Kumaressan
For Respondents in both HCPs : Mr.A.N.Thambidurai
Addl. Public Prosecutor (Crl.Side)

C O M M O N O R D E R

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

Today when the matter is called, Mr.R.Sankarasubbu, learned counsel appearing for the petitioner in H.C.P.No.1329 of 2009 submits that he has given consent for change of vakalat to the petitioner and he has no instruction in this matter.

2. Learned Additional Public Prosecutor, on instruction, submits that the very same petitioner has filed another petition in H.C.P.No.164 of 2015 through another counsel Mr.E.K.Kumaressan for the same relief.

3. We find that both the Habeas Corpus Petitions are filed by the same person for the very same relief. In the affidavit filed in H.C.P.No.164 of 2015 there is no whisper about the pendency of H.C.P.No.1329 of 2009 before this Court. Therefore, on the short score of suppression, H.C.P.No.164 of 2015 deserves to be dismissed and is accordingly dismissed.

5. As far as H.C.P.No.1329 of 2009 is concerned, though Mr.R.Sankarasubbu, learned counsel appearing for the petitioner has withdrawn his appearance, in the interest of justice, we went through the records before passing the following order.

6. It is the case of the petitioner that her husband Nagendiran (Life Convict No.2644), is entitled to be released prematurely in terms of G.O.Ms.No.1155 dated 11.09.2008, as he had completed 10 years of imprisonment as on 11.09.2008.

7. The Additional Secretary to the Government (Prisons), Home Department has filed a detailed counter wherein it is stated as follows:

"5.With reference to paragraphs 3 and 4 of the affidavit, it is submitted that in G.O.Ms.No.1155, Home, dated 11.9.2008, on the occasion of the Birth centenary of Peraringnar Anna on 15.9.2008, the Government issued orders under Article 161 of the

Constitution of India for premature release of all life convicts who have completed 7 years of actual imprisonment as on 15.9.2008 and who are aged 60 years and above and have completed 5 years of actual imprisonment as on 15.9.2008 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.

The Inspector of Police, P3 Vyasarpadi Police Station, in his report dated 4.8.2008 has reported that the members of the two families affected by the act of the above prisoner, have murdered his brother Birla Bose at Vysarpadi on 23.3.1999 and therefore, the enmity between both the families still exists. Hence, if the prisoner is released there is danger to his life as well as the life of the members of the affected families. Consequently, the law and order problem will arise. He has also reported that the following criminal cases are pending against the above prisoner.

(1) Nambiyur Police Station Cr.No.22/2002 under sections 120-B 363-A and 395 Indian Penal Code read with sections 397, 384, 347, 216-A and 506(ii) Indian Penal Code

(2) N3 Muthiyalpet Police Station Crime No.816/2002 under section 302 Indian Penal Code.

In view of the above report of the Inspector of P3

Vysarpadi Police Station, Chennai the Probation Officer - 3, Chennai - 600 104 has not recommended for his premature release. Though the life convict Nagendran had completed seven years of imprisonment as on 15.9.2008, he was not considered for premature release as per the above G.O. for the reason that he has not satisfied the condition that the life of the convict would be safe, if released and also for the reason that there were criminal cases pending against the above prisoner at that time."

8. In view of the above, we find that the petitioner is not entitled to be released in terms of G.O.Ms.No.1155 dated 11.9.2008.

9. Accordingly, H.C.P.No.1329 of 2009 stands closed and H.C.P.No.164 of 2015 stands dismissed on account of suppression of facts.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, The State of Tamil Nadu,
Department of Home, Fort St. George, Chennai - 600 009.
2. The Superintendent of Central Prison,
Palayamkottai, Tirunelveli District.
3. The Additional Director General of Prisons,
Thalamuthu Natarajan Maaligai,
2nd Floor, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
4. The Superintendent of Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor, High Court, Madras.
6. The Secretary, The state of Tamilnadu,
Department of Home (Court IV),
Fort St. George, Chennai 9.

H.C.P.Nos1329 of 2009 & 164 of 2015

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