

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **08.08.2017**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

H.C.P.No.233 of 2016

A.Rizana Banu Petitioner

Vs.

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

2. The Additional Director General of Prison
C.M.D.A.Towers,
Egmore, Chennai - 600 0008.

3. The Superintendent of Prison
Central Prison,
Coimbatore.

....Respondents

Petition filed under Article 226 of the Constitution of India,
praying to issue a WRIT OF HABEAS CORPUS, directing the
respondents to consider the G.O in G.O.(Ms).No.1155, dated
11.09.2008 and produce the detenu Amanullah, aged about 41
years, S/o. Khaja Hussain, Convict No.6580 detained at Central
Prison, Coimbatore.

For Petitioner :Mr.S.Manoharan

For Respondents :Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

(Order the Court was made by P.KALAIYARASAN, J)

This Petition has been filed under Article 226 of the Constitution of India, praying to issue writ of Habeas Corpus directing the respondents to consider the G.O in G.O.Ms.No.1155, dated 11.09.2008 and release the life convict Amanullah aged about 48 years, S/o.Khaja Hussain, Convict No.6580 detained at Central Prison, Coimbatore prematurely.

2. It is averred in the petition that the Tamil Nadu State Government passed the G.O.(Ms) No.1155, Home (PRI.IV) Department, dated 11.09.2008 releasing some of the prisoners prematurely before the completion of their sentence by invoking the powers under Article 161 of the Constitution of India on the occasion of 100th Birthday Centenary of Peraringnar Anna on 15.09.2008. The State Government while doing so arbitrarily classified the prisoners and denied some of them from premature release.

3. As per the above G.O., the convicts who have completed seven years of actual imprisonment as on 15.09.2008 were released prematurely. The petitioner's husband has completed 8 years and 7

months of actual imprisonment as on 15.09.2008; but he was not released prematurely. The petitioner's husband was convicted for the offence under Section 302 r/w 109, 449, 324 and 149 IPC in S.C.No.240 of 2003 by the learned Sessions Judge, Nagapattinam, dated 06.04.2005. There is no other case pending against him except the case he is undergoing life imprisonment. The respondents exercised their power in a discriminatory and arbitrary manner and they did not follow the guidelines of the above said G.O. Therefore, the petitioner has come forward with this writ petition.

4. The respondents in their counter averred that the petitioner's husband / life convict Prisoner No.6580, Amanullah was convicted and sentenced to imprisonment for life in S.C.No.240 of 2003, dated 06.04.2005 by the learned Sessions Judge, Nagapattinam. The conviction and sentences were confirmed by this Court in Crl.A.No.359 of 2005, dated 23.07.2008. The detenu was also concerned in Coimbatore Serial Bomb blast case and he was convicted and sentenced to undergo life imprisonment for the offence under Sections 120-B(1) r/w 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468 and 471 of the Indian Penal Code, 1760, Sections 3, 4(b), 5 and 6 of the Explosive Substances Act, 1908, Section 3 r/w Section 25(1-B) (a) of the Arms Act, 1959 and Section

3 (i) and (4) of the Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992 and Rigorous Imprisonment for 3 years under Section 153 (a) (1) of the Indian Penal Code, 1860 and Rigorous Imprisonment for 7 years under Section 307 of the Indian Penal Code, 1860 in S.C.No.2 of 2000 on the file of the Sessions Judge for Bomb blast cases, Coimbatore on 24.10.2007. On appeal preferred by the detenu, the above conviction and sentences were set aside by this Court in Crl.A.No.1111 of 2007, dated 18.02.2009.

5. The prisoner was not eligible for premature release granted during the year 2008 as per G.O.(Ms).No.1762, Home, dated 20.07.1987, as the above conviction under Section 471 of the Indian Penal Code was in force against the petitioner. Further the Government in their Letter (Ms).No.416, Home (Prison-IV) Department, dated 02.04.2008 have issued clarification that the life convict prisoners who are convicted for specified term of imprisonment to run concurrently for the offences under the Arms Act, 1959 / Indian Explosive Substances Act, 1908 shall not be considered for premature release ordered on specific occasions such as birthday of leaders etc., by invoking Article 161 of the Constitution of India and the order of the Union Government is necessary for premature release of such prisoners. The petitioner's husband was

not considered for premature release during the year 2008 in view of the above mentioned Government Letter. The prisoners who were eligible for premature release as per the above Government Order on the crucial date will only be considered and the Government Order cannot be extended to the prisoners who became eligible on subsequent dates. The detenu was orally informed the reason of denial of release. There is no violation of Articles 14 and 21 of the Constitution of India. The power was not exercised in a discriminatory or arbitrary manner in considering the premature release of the petitioner's husband. The detenu has also committed prison offences and punished for the same. The consideration of premature release of the life convict is a prerogative of the State Government. Action is also being taken to place the case of the detenu before the Advisory Board for consideration of premature release as per rule 341 of the Tamil Nadu Prison Rules, 1983.

6. The main gravamen of the petitioner is that her husband / detenu Amanullah though has completed 8 years 7 months of actual imprisonment as on 15.09.2008, he was not released prematurely as per G.O.Ms.No.1155 dated 11.09.2008 by which the life convicts who have completed 7 years of actual imprisonment were released.

7. G.O.(Ms) No.1155, Home (PRI.IV) Department, dated 11.09.2008 reads thus :

"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; and

(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."

8. On the date of G.O., i.e., 11.09.2008, there is no dispute that the detenu Amanullah was convicted in two cases. One by the District and Sessions Judge, Nagapattinam in S.C.No.240 of 2003 dated 06.04.2005 and confirmed by this Court in CrI.A.No.359 of 2005 dated 23.07.2008 to undergo life imprisonment. The detenu was convicted in another case by the Sessions Court for Bomb Blast Cases, Coimbatore and sentenced to life imprisonment for the offences under Sections 120-B(1) r/w 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468 and 471 of the Indian Penal Code, 1760, Sections 3, 4(b), 5 and 6 of the Explosive Substances Act, 1908, Section 3 r/w Section 25(1-B) (a) of the Arms Act, 1959 and Section 3 (i) and (4) of the Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992. The Bomb Blast Court convicted the detenu in its Judgment, dated 24.08.2007. The said conviction of the

trial Court was set aside by this Court in Crl.A.No.1111 of 2007 on 18.12.2009. G.O.Ms.No.1155 is dated 11.09.2008 for premature release. Therefore, on the date of G.O., the detenu was convicted and sentenced to life imprisonment in two cases, one in Nagapattinam Sessions case and the second in Coimbatore Bomb Blast Court Sessions Case. It is clearly stated in the above said G.O., that the prisoners who were convicted for the offences specified in G.O.(Ms).No.1762, Home, dated 20.07.1987 would not be eligible for the concessions of premature release.

9. There is no dispute that the offence under Section 471 is specified offence in G.O.(Ms).No.1762, Home, dated 20.07.1987. Since the detenu was convicted for various offences including Section 471 of Indian Penal Code by the Bomb Blast Court, Coimbatore, he was not eligible for premature release as per the G.O. The detenu cannot take advantage of the subsequent acquittal by the appellate Court to invoke the benefit under the G.O. The Government after examining the list of life convict persons, ordered for premature release of 1336 life convicts who have completed 7 years of actual imprisonment as on 15.09.2008. There is no arbitrariness or discrimination in denying the premature release of the petitioner's husband.

10. The Constitutional Bench of the Hon'ble Supreme Court in **Union of India v. V.Sriharan** reported in **(2016) 7 SCC 1** has held as follows :

"Life imprisonment in terms of Section 53 read with 45 IPC means the entirety of the life of the prisoner unless it is curtailed by remissions validly granted under Section 432 CrPC or Articles 72 or 161 of the Constitution. A life convict only has the right to claim remission, etc., as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State or under Section 432 CrPC.

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The power of remission always vests with the State executive and the Supreme Court at best can only give a direction to consider any claim for remission and cannot grant any remission and provide for premature release. It has time and again been reiterated that the power of commutation exclusively rest with the appropriate Government.

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There is every scope and ambit for the

appropriate Government to consider and grant remission under Sections 432 and 433 CrPC even if such consideration was earlier made and the power exercised under Article 72 by the President and under Article 161 by the Governor. As far as the implication of Article 32 of the Constitution is concerned, it is not for the Court to exercise the power under Sections 432 and 433 CrPC and it is always left to be decided by the appropriate Government, even if someone approaches the Supreme Court under Article 32 of the Constitution."

Therefore, as per the decision of the Constitutional Bench of the Hon'ble Supreme Court, the claim for remission and for premature release has to be considered only by the Government.

11. The respondents in their counter contended that the case of the petitioner is being considered by the Advisory Board as per Tamil Nadu Prison Rules, 1983. It is left open to the Government to consider the case of the petitioner on his representation as per Rules.

With the above observation, this Habeas Corpus Petition is disposed of.

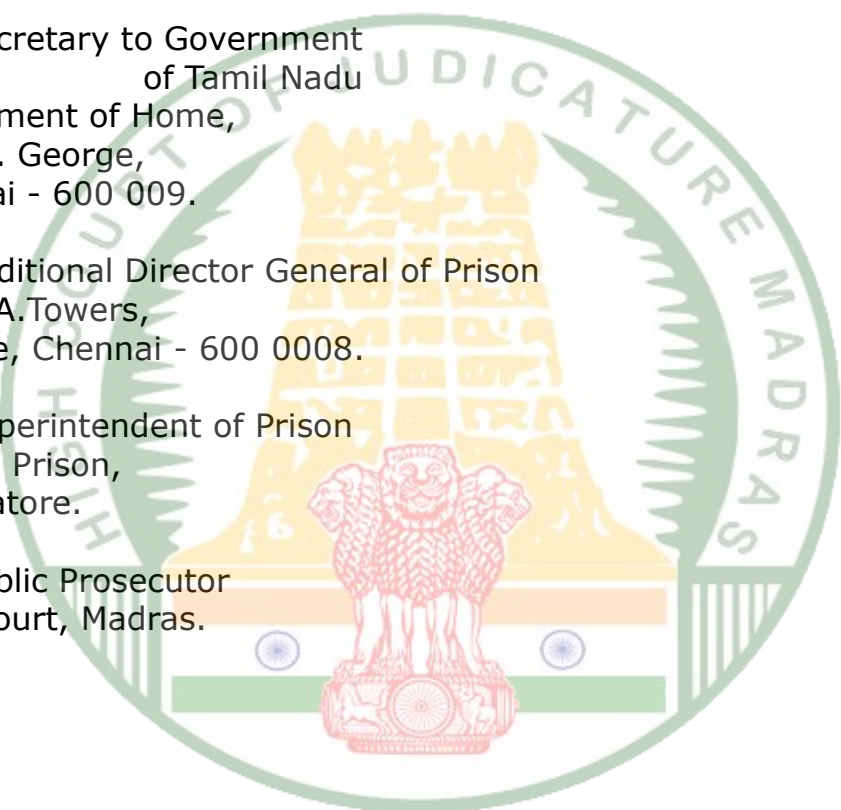
(A.S., J.) (P.K., J.)
08.08.2017

Index : Yes / No

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To

1. The Secretary to Government
of Tamil Nadu
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Fort St. George,
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C.M.D.A.Towers,
Egmore, Chennai - 600 0008.
3. The Superintendent of Prison
Central Prison,
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4. The Public Prosecutor
High Court, Madras.

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

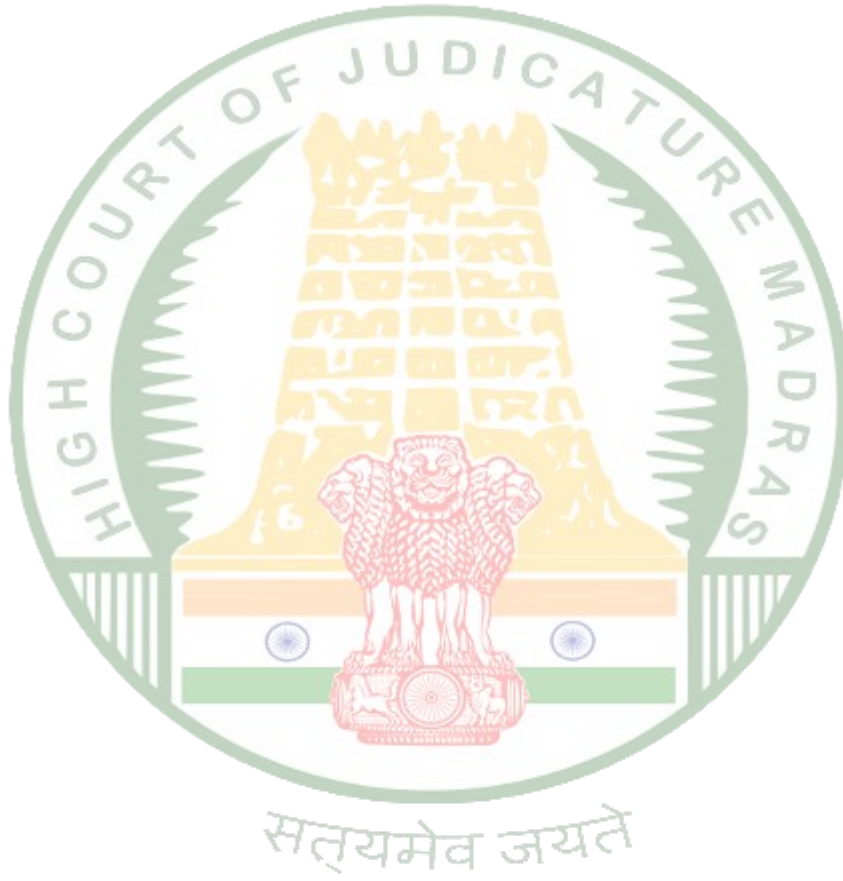
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**Pre-Delivery Order in
H.C.P.No.233 of 2016**

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