

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.5.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.17907 of 2016

A.Chitra

... Petitioner

Vs

1. The Chief Electoral Officer
Public (Elections) Department
Government of Tamilnadu
Secretariat Fort St. George
Chennai-600 009
2. The Returning Officer
Thiruvottiyur Assembly Constituency
Thiruvottiyur Zonal Office
Corporation of Chennai Zone-1
Chennai-600 019
3. The Principal Secretary to Government
Home Department Secretariat
Fort St. George Chennai
4. The Additional Director
Tamil Nadu Prison Department
Gandhi Irvin Road Egmore
Chennai-8
5. The Deputy Inspector General of Prison
Chennai Range
CMDA Tower-II
No.1 Gandhi Irvin Road
Egmore Chennai 600 008.
6. The Superintendent of Prison
Central Prison Puzhal-II
Chennai-600 066
7. The Commissioner of Police
Veppery Chennai-600 007
8. The Inspector of Police
M-5 Ennore Police Station
Chennai-600 057

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to grant parole to the petitioner's brother C.Dhanasekar son of Chandran aged about 33 Years lodged in the 6th respondent prison (TPDA No. 7570) to enable him to effectively canvass votes for his Diamond symbol and to participate in the election process as his nominations as an independent candidate had been accepted by the 2nd respondent in the Thiruvottiyur Assembly Constituency in the ongoing Tamil Nadu State Assembly General Elections till the votes are counted.

For Petitioner : Mr.M.Purushothaman
For RR 1 and 2 : Mr.Niranjana Rajagopalan for
M/s.G.R.Associates
For RR 3 to 8 : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

The prayer in the writ petition is a mandamus directing the respondents to grant parole to the petitioner's brother C.Dhanasekar son of Chandran aged about 33 Years lodged in the 6th respondent prison (TPDA No. 7570) to enable him to effectively canvass votes for his Diamond symbol and to participate in the election process as his nominations as an independent candidate had been accepted by the 2nd respondent in the Thiruvottiyur Assembly Constituency in the ongoing Tamil Nadu State Assembly General Elections till the votes are counted.

2. The case of the petitioner is that the petitioner's brother viz., C.Dhanasekar, has been detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offender, Goondas, Immoral Traffic Offender and Slum Grabbers Act, 1982 (in short 'Act 14/1982) and confined in Central Prison, Puzhal, Chennai, classifying him as Goonda. On 28.4.2016, he has filed his nomination to contest in the ongoing Tamil Nadu State Assembly Elections in Thiruvottiyur Constituency in Thiruvallur District, his nomination was accepted by the second respondent and he was allotted with a symbol of 'diamond'. Since his nomination is accepted, he has every right to campaign in the election and a representation was made to the respondents to allow him to go on parole enabling him to appoint booth agents and also to make tour in his constituency to meet his supporters. Since his representation was not considered, the present writ petition has been filed seeking a direction to grant parole to the

petitioner's brother viz., C.Dhanasekar enabling him to effectively canvass in the ongoing Assembly Elections, till the votes are counted.

3. Mr.M.Purushothaman, learned counsel for the petitioner submitted that his nomination is accepted, he has every chance of winning in the election, and he has to canvass in the election, also has to take steps to appoint his booth agents in the ongoing election and he has every right to come on parole.

4. Mr.M.Maharaja, learned Additional Public Prosecutor submitted that the petitioner is a 'goonda' and he has been detained under Act 14/1982, number of criminal cases are pending against him, he is a notorious criminal in that area and if parole is granted to him, the peace and tranquility in the constituency will be affected and he is likely to create law and order problem during the election.

5. I have heard Mr.Niranjana Rajagopalan, learned counsel appearing for respondents 1 and 2 viz., Election Commission, submitted that contesting in election is only a statutory right, and under section 62(5) of the Representation of the People Act, 1951 (in short 'the Act'), a person confined in prison, whether under a sentence of imprisonment or in a lawful custody of the police, has no right to vote, however, an exception was given to persons subjected to preventive detention. Apart from that under section 60(d) of the Act, any person subjected to preventive detention has a right to give his vote by postal ballot. Apart from that, there is no other statutory right conferred on the detenu like the petitioner's brother.

6. I have heard the counsel for either side. Without going into the merits of the case, since the petitioner made a representation to the authority as early as on 9.5.2016 seeking parole for the detenu C.Dhanasekar, and the same is pending, the authority concerned is directed to consider the representation of the petitioner as early as possible and pass suitable orders on merits and in accordance with law. Since the election is to be held on 16.5.2016, the third respondent is directed to pass orders on or before 14.5.2016.

7. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

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To

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+1cc to Mr.M.Purushothaman, Advocate, S.R.No.28243

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CA(12/05/2016)