

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 No.853 of 2012

P.Iyappan

..... Petitioner

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Additional Director General of Prisons,
Gandhi Irwin Road, Egmore,
Chennai - 600 008.
3. The Superintendent of Prisons,
Central Prison - I, Puzhal,
Chennai - 600 066. 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 petitioner namely, P.Iyappan, S/o Pichandi aged about 45 years Life Convict, C.T.No.1441, confined in the Central Prison -1, Puzhal, Chennai - 600 066 before this Court and direct the respondents to consider the petitioner for premature release immediately under G.O.Ms.No.1155 Home (Prison-IV) Department dt. 11.09.2008 and set him at liberty.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.A.N.Thambidurai
Addl. Public Prosecutor (Cr1.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 detenu P.Iyappan for a direction to the respondents to produce the petitioner

namely, P.Iyappan, S/o Pichandi aged about 45 years Life Convict, C.T.No.1441, confined in the Central Prison -1, Puzhal, Chennai - 600 066 before this Court and also direct the respondents to consider the petitioner for premature release immediately under G.O.Ms.No.1155 Home (Prison-IV) Department dated 11.09.2008 and set him at liberty.

2. It is the case of the petitioner that he is a life convict undergoing life imprisonment for the offence punishable under Section 302 IPC in S.C.No.63 of 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. The Superintendent of Prisons, Central Prison - I, Puzhal, Chennai has filed counter, wherein, in paragraph Nos. 4 and 5, it is stated as follows:

"4. I humbly submit that the petitioner/Life convict Prisoner was convicted under section 4 and 5 of Indian Explosive substances Act and when the petitioner was confined at Palayamkottai Central Prison, 2 pockets of ganja was seized from the petitioner while making a general search on 10.11.2007 for the same the petitioner/Life convict was punished and transferred to this Central Prison-1, Puzhal on administrative ground as per the order of the Additional Director General of Police and Inspector General of Prisons vide Letter no.56688/PW.2/2007 Dated:28.12.2007, While in Government order (Ms) No.1155. Para-1(ii) says "that their general behavior in the Prison should be satisfactory". The Petitioner/Life convict Prisoner no.1441, Iyappan would not comes under the Government order (Ms) No.1155. Hence the petitioner was not considered for premature release on that occasion as per the rule.

5. I humbly submit that the content made in Para-4 is false. The fact of Petitioner premature release was already informed to the Petitioner/Life convict from this office."

4. From the above, it appears that the petitioner is not entitled to be released in terms of G.O.Ms.No.1155 dated 11.09.2008, nevertheless, we are inclined to direct the

appropriate authority, namely, the first respondent to consider the claim of the petitioner in the light of the stand taken by us earlier in H.C.P.Nos.14 of 2013 etc. batch dated 03.11.2015, wherein, this Court 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.

5. 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 3rd 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/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary, The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Additional Director General of Prisons,
Gandhi Irwin Road, Egmore, Chennai - 600 008.
3. The Superintendent of Prisons,
Central Prison - I, Puzhal, Chennai - 600 066.
4. The Public Prosecutor, High Court, Madras.

1 cc to Mr.P. Pugalenthir, Advocate, Sr. 703

H.C.P.No.853 of 2012

NM (CO)
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