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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

H.C.P. (MD) No.1213 of 2015

Nisha

: Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its
Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
2. The Superintendent of Central Prison,
Cuddalore Central Prison,
Cuddalore.
3. The Inspector of Police,
Vadacheri Police Station,
Nagercoil,
Kanyakumari District
(Crime No.206 of 1993)
4. The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyuakumari District
(Crime No.1151 of 1994)

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, directing the respondents to produce the person or the body of the petitioner's brother / detainee namely Sheik Meeran S/o.E.M.S.Ali, aged about 43 years and issue a direction for undergoing the two life sentences in S.C.No.392 of 1997, dated 05.10.1998 on the file of the District Sessions Court, Tirunelveli and in S.C.No.90 of 1997 dated 06.01.2003 on the file of the District Sessions Court, Kanyakumari imposed upon the petitioner brother namely Sheik Meeran to run concurrently as per Section 427(2) of Cr.P.C., and set him at liberty

For Petitioner
For Respondents

: Mr.R.Venkatesan
: Mr.A.Ramar
Additional Public Prosecutor

**ORDER**

(Order of this Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner is the sister of the life convict viz., Sheik Meeran S/o.E.M.S.Ali. The said convict along with Selvam, Radhakrishnan, Pauldurai, Oliver, Doss @ Andhikannan Doss and Ramesh were convicted for the commission of the offences under Sections 302, 302 r/w 149, 148, Section 3 of Indian Explosives Substances Act, 1908 and Sections 326 and 392 r/w 149 of IPC., sentenced to death and various spells of imprisonment.

2. The convicts challenging the legality of the conviction and sentence passed by the learned Principal Sessions Judge, Tirunelveli, vide Judgment, dated 05.10.1998, in S.C.No.392 of 1997, filed appeal in Crl.A.No.1010 of 1998. Since death sentence was imposed, referred trial was also made. This Court vide Judgment dated 30.04.1999, has confirmed the said conviction and sentence and Special Leave Petition preferred against the Criminal Appeal, before the Supreme Court, had also ended in dismissal vide order dated 21.06.1999.

3. The petitioner along with Radhakrishnan, Arumai @ Arumai Raj and Selvam had tried for the commission of offences under Sections 148, 341 and 302 IPC., on the file of Court of Additional Sessions Judge, Kanyakumari District at Nagercoil. He along with other accused were imposed sentence of life and other sentences. Challenging the legality of the same, they filed Crl.A.Nos.343 and 1149 of 2003 and vide Judgment dated 22.08.2006, the appeals were dismissed and further challenge made in the form appeal before the Hon'ble Supreme Court were also ended in dismissal.

4. The learned counsel appearing for the petitioner would contended that subsequent to the confirmation of death sentence by the Hon'ble Supreme Court of India, all the accused had moved His Excellency the President of India by submitting Mercy Petitions and His Excellency the President of India in exercise of power under Article 72 of the Constitution of India, had commuted the death sentence awarded to the condemned prisoners viz., Sheik Meeran, Selvam, Radhakrishnan to life imprisonment with a condition that the petitioners shall remain in prison and there shall be no revision on the term of the imprisonment.

5. One of the co-accused viz., C.Vijayakumar had also filed Crl.O.P.(MD)No.11394 of 2014 praying that the sentences awarded to him in S.C.Nos.392 and 90 of 1997 shall run concurrently and the Single Bench of this Court had taken note of the Presidential order and granted the relief vide order dated 24.06.2014 and since the petitioner is also a similarly placed, he may be granted the said benefit also.



6. Per contra, Mr.A.Ramar, the learned Additional Public Prosecutor appearing for the State would contend that the petitioner along with other accused were involved in commission of heinous offence for which they were awarded with death sentence, which was confirmed by this Court as well as by the Hon'ble Supreme Court of India and latter on, by way of Presidential pardon, it was converted to life imprisonment subject to the condition that they shall remain in prison, since the expiry of their natural life and as such, no purpose will be served in ordering this petition and prays for dismissal.

7. The Court heard the rival submissions and also perused the materials placed before it.

8. It is relevant to extract Section 427(2) of Cr.PC., which reads as follows:-

(2) When a person already undergoing of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

9. Tvl. Sheik Meeran, Selvam, Radhakrishnan, who were awarded with death sentence in S.C.No.392 of 1996, which was confirmed by this Court as well as by the Hon'ble Apex Court, had moved His Excellency The President of India for pardon and it was positively considered and their death sentence was also converted to life sentence and in this regard, the Principal Secretary to Government had sent a letter in Letter No.58227/Cts.VIA/2008-14, dated 25.06.2012. which is extracted hereunder:-

"I am directed to invite your attention to the Government letter first cited wherein the Mercy petitions received from the condemned prisoners Sheik Meeran, Selvam and Radhakrishnan have been forwarded in Government of India for order of his Excellency The President of India.

2. In the letter second cited, the Joint Secretary (Judicial) to Government of India, Ministry of Home Affairs, New Delhi has reported that the President of India, has in exercise of the powers under Article 72 of the Constitution of India been pleased to commute the sentence of death awarded to condemned prisoners Sheik Meeran, Selvam and Radhakrishnan by the order dated 5th October,



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1998 of Principal Sessions Judge, Tirunelveli, which was confirmed by the Madras High Court and the Supreme Court of India vide their order dated 30th April 1999 and 21st June, 1999 respectively, to life imprisonment with the condition that the prisoners shall remain in prison for the whole of the remainder of their natural lives and there shall be no remission of the term of imprisonment. The prisoners may be informed of the orders of the President accordingly.

3. The receipt of the letter may kindly be acknowledged and a report of compliance may be sent to Government."

10. As rightly contended by the learned counsel appearing for the petitioner, one of the accused viz., C.Selvam moved Crl.O.P.(MD)No.11394 of 2014 praying for the similar relief and the Single Bench of this Court had taken note of the above such communication dated 25.06.2012 and granted him the relief as ordering the life sentence awarded in S.C.No.90 of 1997 with life sentence commuted the life sentence in S.C.No.392 of 1997 subject to the condition imposed in the said communication. In the considered opinion of this Court, the petitioner is similarly placed like that of one of the co-accused viz., C.Selvam.

11. In the result, the Habeas Corpus Petition is disposed of and the sentence of death awarded in S.C.No.392 of 1997 vide Judgment dated 05.10.1998 commuted to life, and the life sentence awarded to the detainee viz., Sheik Meeran S/o.E.M.S.Ali vide Judgment dated 06.01.2003 in S.C.No.90 of 1993 on the file of the District Sessions Court, Kanyakumari, shall run concurrently, subject to the condition that in the light of the communication, dated 25.06.2012 made in Letter No.58227/Cts.VIA/2008-14, he shall remain in prison for the whole of his natural life and there shall be no remission of sentence of imprisonment.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar



To

1. The Principal Secretary to Govt. of TamilNadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2. The Principal Sessions Judge,
Tirunelveli.

3. The Superintendent of Central Prison,
Cuddalore Central Prison,
Cuddalore.

4. The Inspector of Police,
Vadacheri Police Station,
Nagercoil, Kanyakumari District.

5. The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.R.Venkatesan, Advocate in SR 58613

Order made in
H.C.P. (MD) No.1213 of 2015
Dated:
04.10.2016

MPK

ANR/SK-SKN/03.11.2016/5P/8C