



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

and

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

H.C.P (MD) No.1365 of 2016

M.Mareeswari

.. Petitioner

Vs.

- 1.The Secretary to Government
Home (Prison IV) Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Superintendent of Police,
Madurai.
- 4.The Inspector General of Prison,
Chennai.
- 5.The Superintendent,
Central Prison, Madurai.

.. Respondents

Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records relating to the impugned order of the 1st respondent in G.O. (2D) No.241 Home (Prison - IV) Department dated 23.07.2015 quash the same and consequently direct the respondents herein to produce the body and person of the petitioners husband Nalla Maruthu @ Maruthu S/o.Bose now detained in Central Prison Madurai and set him at liberty.

For Petitioner : Mr.Veera Kathiravan
Senior counsel for
M/s.Veera Associates

For Respondents : Mr.A.Ramar
Addl. Public Prosecutor

**ORDER**

(Order of the Court was made by S.NAGAMUTHU, J.)

WEB COPY The petitioner is the wife of one Mr.Nallamarudhu, S/o.Bose Thevar. Mr.Nallamaruthu was involved in a case of murder, in which, by the trial Court, he was convicted to undergo imprisonment for life. Thus, as a life convict (Life Convict No.3536), he was lodged in Central Prison, Madurai. While so, the Government issued G.O.Ms.No.1155 Home (Pri IV) Department, dated 11.09.2008 on the occasion of the birth centenary of former Chief Minister of Tamil Nadu Mr.Anna on 15.09.2008, granting premature release to 1405 life convicts, who satisfied the conditions stipulated therein on 15.09.2008. Mr.Nallamaruthu, the life convict prisoner No.3536, was one among the 1405 life convicts, who were given the benefit of premature release, as per the Government Order No.1155. While so releasing as per terms of the Government order, a bond was obtained from Mr.Nalla Maruthu, by which, he gave an undertaking that he would not involve in any other crime and he would not show any misconduct. To be precise, clause 5 of the bond reads as follows:

"(5) that during the period of supervision by the said Probation Officer or other officer -

(a) I shall not quit the said district without the written permission of the said probation or other officer;

(b) I shall not associate with persons of bad character or lead a dissolute life;

(c) I shall live honestly and peaceably and shall endeavour to earn an honest livelihood;

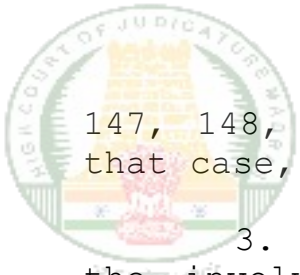
(d) I shall not commit any offence punishable by any law in force in the Indian Union;

(e) I shall abstain from taking intoxicants; and

(f) I shall carry out such lawful directions as may, from time to time, be given by the said Probation Officer or other officer for the due observance of the conditions mentioned above."

2. After the release, it is alleged that the life convict No.3536 (hereinafter referred to as 'the detenu') involved in two other crimes, one in Crime No.130/2009 on the file of the Avaniyapuram Police Station. The said case was initially registered under Section 304A IPC and later on altered into under Sections 147, 148, 120(b), 364, 302, 201 and 212 IPC. The occurrence in this case was on 16.04.2009. In that case, on thorough investigation, a final report was filed, upon which, the jurisdictional Magistrate has taken cognizance for offences under Sections 147, 148, 120(b), 364, 302 and 201 IPC. It is reported to this Court that the detenu has been facing trial before the lower

<https://hcservices.courts.gov.in/hcservices> also brought to our notice that Mr.Nallamarudhu involved in yet another case in Crime No.283/2009 under Sections



147, 148, 324 and 307 IPC and Section 3 of the TNPPDL Act. In that case, investigation is still under progress.

3. Based on the report from the Police Department informing the involvement of Mr. Nalla Maruthu in the above crimes, the Government issued G.O.(2D) No.241 Home, Prison(IV) Department dated 23.07.2015 withdrawing the premature release given to the petitioner on the ground of violation of the terms and conditions of the bond. Accordingly, he was arrested and now lodged in the Central Prison, Madurai. In this Habeas Corpus petition, the petitioner challenges the Government order in G.O.(2D) No.241 Home (Prison IV) Department, dated 23.07.2015.

4. we have heard the learned senior counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and we have also perused the records.

5. In this petition, the learned senior counsel, by taking us through the records, more particularly, the grounds raised in the petition, would urge two grounds:

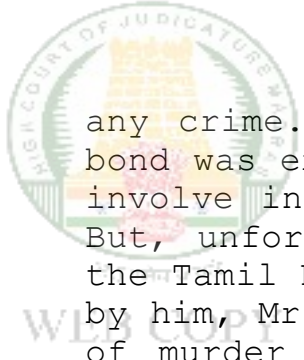
(i) the first and foremost ground is that the cases, in which, the detenu has been arrayed as accused are false cases. But, without affording any opportunity whatsoever to the detenu, the impugned order came to be passed. Thus, according to him, the principles of natural justice have been seriously violated, which has caused prejudice to the petitioner.

(ii) The 2nd ground urged by the learned senior counsel is that as per the Prison Manual, there has to be a report from the Probation Officer and in the instant case, there was no such report at all obtained from the Probation Officer and thus, the petitioner was deprived of the report of the Probation Officer, which would have gone in his favour.

6. The learned Additional Public Prosecutor would vehemently oppose this petition. According to him, it is true that no opportunity was afforded before passing the impugned order. But that has not caused any prejudice to the petitioner. It is not necessary always that such an action can be taken only on the report of the Probation Officer. Thus, according to the learned Additional Public Prosecutor, the petition deserves to be dismissed.

7. We have considered the above submissions.

8. At the outset, we should state that the detenu, who is a life convict, will have to spend his entire life only in prison, because the Hon'ble Supreme Court has time and again interpreted that "life" means the rest of the life of the convict. <https://hcjudicemadurai.org.in/hcscservices/> by which, premature release was granted to the petitioner was a concession shown to Mr. Nallamaruthu on the assurance that he would abide by law and he would not involve in



any crime. That is the reason why as per the Prison Manual, a bond was executed by Mr.Nallamaruthu undertaking that he would not involve in any other crime or he would not show any bad conduct. But, unfortunately, within a period of three years, as stated in the Tamil Nadu Prison Manual and in violation of the bond executed by him, Mr.Nallamaruthu has involved in two other crimes, ie., one of murder and the other is attempt to murder. In the case of murder, chargesheet has been laid and he is facing trial. Thus, his involvement in two crimes cannot be disputed at all.

9. It is true that Mr.Nallamaruthu was not afforded any opportunity before passing the impugned order. But, in our considered view, it has not caused any prejudice at all to him. Even if any such opportunity had been given to him, he would not have denied the fact that he is involved in two other crimes within a period of three years of his release. Thus, there was failure to afford an opportunity to Mr.Nallamaruthu has not caused any prejudice to him. Thus, on that ground, we cannot set aside the impugned order. In otherwords, affording an opportunity to the detenu now would only amount to observing an empty formality. In view of the same, the first ground urged by the learned senior counsel is rejected.

10. So far as the second ground raised by the learned senior counsel, as we have already pointed out, according to the learned senior counsel, as per Rule 17 and 18 of the Tamil Nadu Probation of Offenders Act, the Probation Officer has got a duty to submit a report as and when, he would have found the detenu/life convict showing adverse conduct.

11. In the instant case, according to the learned senior counsel, there was no such report at all received from the Probation Officer. In our considered view, it is not on the ground of any bad character simpliciter, the impugned order has been passed, but on the ground that he has got involved in two crimes within a period of three years from the date of the release. This fact cannot be disputed. Therefore, though there was no report submitted by the Probation Officer, the impugned order cannot be found fault with on that ground. Thus, the 2nd ground urged by the learned senior counsel is also liable to be rejected.

12. The learned senior counsel has not urged any other point before us. Thus, we do not find any merit at all in this petition. Accordingly, this petition is dismissed.

Sd/-
Assistant Registrar (Writs)

/True copy/



To

- 1.The Secretary to Government
Home (Prison IV) Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Superintendent of Police,
Madurai.
- 4.The Inspector General of Prison,
Chennai.
- 5.The Superintendent,
Central Prison, Madurai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

ORDER MADE IN
H.C.P (MD) No.1365 of 2016
17.10.2016

RR

SH/SKS-RR:30.11.2016:5P/7C