

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **06.09.2017**

CORAM:

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

H.C.P.No.133 of 2017

S.Glory

.... 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.

....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.(Ms).No.873 of 2006 on 14.09.2006, G.O.(Ms).No.1326 of 2007 on 15.09.2007 and G.O.No.1155 of 2008, dated 11.09.2008 and produce the detenue, Oliver, S/o. Devadasan, Convict No.3452 detained at Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty.

For Petitioner :Mr.S.Manoharan

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

ORDER

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

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India by the wife of the life convict for premature release.

2. It is averred in the petition that the prisoner, Oliver, s/o. Devadasan was convicted for the offence under Section 302 r/w 149 IPC and under Section 3 of Indian Explosives Act, 1902. As a life convict the detenu has been languishing in the prison for the past 23 years in actual imprisonment. Though the detenu is eligible for premature release under G.O.Ms.No.873 of 2006 dated 14.09.2006, G.O.Ms.No.1326 of 2007 dated 15.09.2007 and G.O.Ms.No.1155 of 2008, dated 11.09.2008 he was not considered by invoking powers under Article 161 of the Constitution of India. The detenu sent several representation including the one recently sent on 24.01.2017 to the respondents, but no action has been taken. Therefore, the petitioner has come forward with this petition.

3. The respondents in their counter contends that the petitioner's husband Oliver, s/o. Devadasan was convicted and

sentenced to undergo life imprisonment for the offence under Section 302 r/w 149 IPC and Rigorous Imprisonment for six months under Section 148 IPC and Rigorous Imprisonment for three months under Section 3 of the Explosive Substances Act (Central Act 6 of 1908) and also Rigorous Imprisonment for five years under Section 326 IPC as per the Judgment of the Principal Sessions Judge, Tirunelveli in S.C.No.392 of 1997, dated 05.10.1998. The above conviction and sentences were confirmed by this Court in CrI.A.No.1010 of 1998, dated 30.04.1999. Further appeal to the Supreme Court was also dismissed. As on 30.01.2017, the prisoner completed 20 years 2 months and 20 days of actual imprisonment. Since the life convict was also convicted for the offence under Section 3 of the Explosive Substances Act, 1908, he was not considered for premature release during the year 2006 to 2008. The premature release granted to the prisoners by the Government is a concession based on certain conditions and norms fixed by the Government and the detenu cannot claim his premature release as a matter of right. The Government had granted the benefit of premature release to the life convict prisoners who had fulfilled the conditions as mentioned in the G.Os. Therefore, the petition is to be dismissed.

4. The fact remains that Oliver, s/o. Devadasan, husband of the petitioner is a life convict for the offence under Section 302 r/w 149 IPC and he was also convicted and awarded imprisonment for other IPC offences including for the offence under Section 3 of Explosive Substances Act by the Principal Sessions Judge, Tirunelveli in S.C.No.392 of 1997 and the same was confirmed in appeals up to the Hon'ble Supreme Court.

5. The main gravamen of the petitioner is that the case of the detenu was not considered for premature release under G.O.Ms.No.873 of 2006, dated 14.09.2006 and G.O.Ms.No.1326 of 2007, dated 15.09.2007, though the detenu completed actual imprisonment more than what is specified in the G.Os. On the side of the respondents, it is argued that the detenu was not considered for premature release under the G.Os as his case does not conform to the conditions mentioned in the said G.Os. Both the above mentioned G.Os, prescribe premature release after completion of the specified years of imprisonment, subject to certain conditions. The first condition in the said G.Os is as follows :

"(i) The Prisoners who are convicted for the offences specified in G.O.(Ms).No.1762, Home, dated 20.07.1987 are not eligible for this concessions as follows :

a) Prisoner convicted of rape, forgery, dacoity, terrorist crimes, offence against the State and prisoners sentenced under Section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489A, 489B and 489D of the Indian Penal Code."

6. In the Government Letter (Ms).No.416, Home (Prison-IV) Department, dated 02.04.2008, it has also been clarified that prisoners who are also convicted for a specified term of imprisonment to run concurrently for the offences under the Arms Act, 1959 and 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. There is no arbitrariness in considering the case of the life convict Oliver for premature release by the respondents.

7. 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 power of remission is vested only with the Government. In this case, this Court has already granted leave to the life convict Oliver on emergency basis for a initial duration of three months for treatment, as he was diagnosed to be suffering from intestinal cancer.

8. Considering the health condition of the detenu, the detenu or petitioner is directed to give a fresh representation to the respondents and it is left open to the Government to consider the representation and take a decision as per Rules.

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

(A.S., J.) (P.K., J.)
06.09.2017

Index : Yes / No

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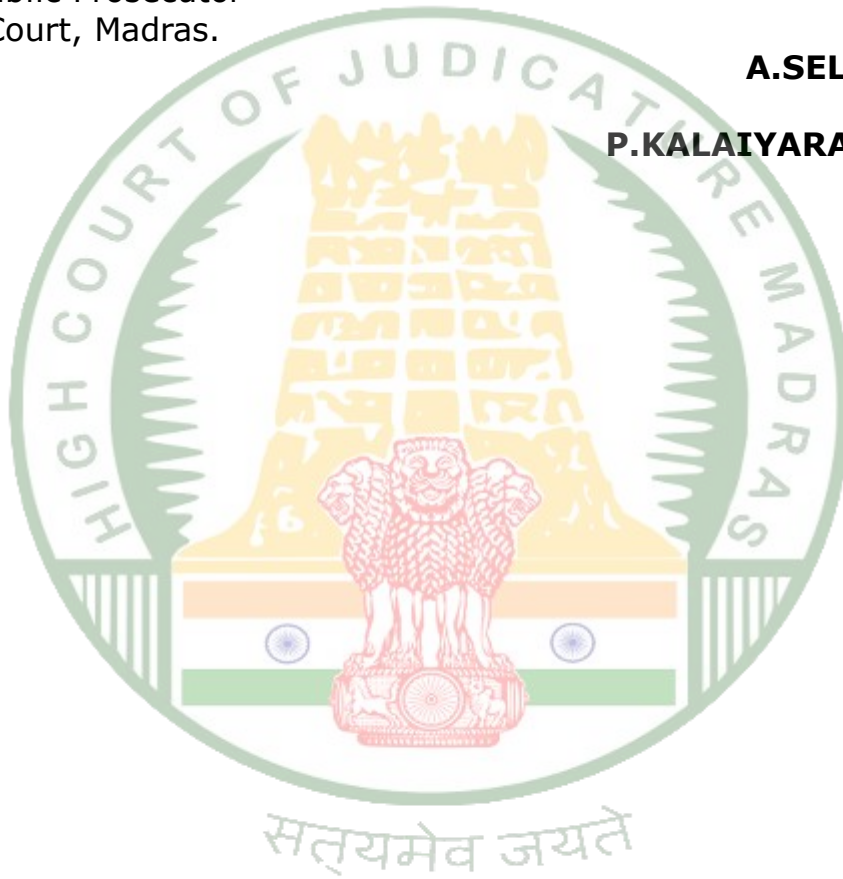
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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

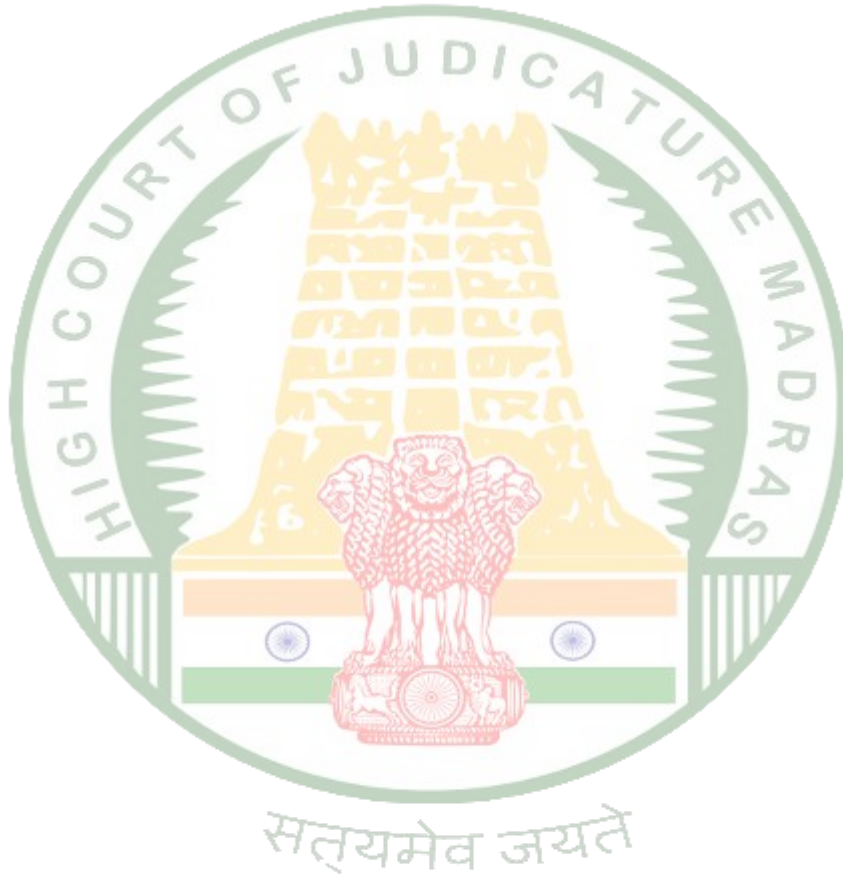
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**Pre-Delivery Order in
H.C.P.No.133 of 2017**

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