

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1606 of 2017

Vahitha Sulthana

... Petitioner/sister of the
detenue

-vs-

The State represented by its

1. The Secretary to Government of Tamilnadu,
Home Department,
Fort St. George,
Chennai - 600 009.

2. The Superintendent,
Central Prison,
Kovai.

... Respondents

* * *

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to entitle the detenue, for the premature release in considering the G.O.(Ms)No.1155, dated 11.09.2008, and prouduce the detenue, Jabroo @ Sayed Jafer Ahmed, S/o.Sayed Habeeb, Life convict prisoner Convict No.1484, detained at Central Prison, Kovai-18, before this Court and set him at liberty.

* * *

For Petitioner: Mr.S.Lakshmi

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

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O R D E R

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. The only issue, which arises for consideration in this petition is: as to whether or not, the detenue ought to have been given the benefit of G.O.Ms.No.1155, Home (Prison IV) Department, dated 11.09.2008 (in short, "G.O. dated 11.09.2008").

2. It is not in dispute that as per the condition prescribed in the G.O. dated 11.09.2008, the detainee has undergone more than seven (7) years of actual imprisonment.

3. As per the counter affidavit filed on behalf of the State, as on 15.09.2008, the detainee had suffered, as a matter of fact, actual imprisonment of ten (10) years, two (2) months and four (4) days.

4. The reason that the State denied the detainee, the benefit of G.O. dated 11.09.2008, was that his case came within the ambit of condition (i) (a). The said condition reads as follows :

"..... (i) That the following categories of prisoners will not be eligible for this concession :-

a) The prisoners who are convicted for the offences specified in G.O.(Ms) No.1762, Home, dated 20.07.1987."

(emphasis is ours)

5. Thus, the State has taken a stand that as on 15.09.2008, the petitioner's case fell within the ambit of G.O.Ms.No.1762, Home (Prisons VI) Department, dated 20.07.1987, and therefore, even though, he had completed more than seven (7) years of actual imprisonment, he could not be released from incarceration.

6. G.O.Ms.No.1762, dated 20.07.1987, excludes certain prisoners from the benefit of premature release (G.O. dated 11.09.2008). These are those prisoners, who are convicted for offences set out in clause (i) of the G.O.Ms.No.1762, dated 20.07.1987. Amongst various provisions of the IPC referred to therein, one such provision adverted to therein is Section 471 of the IPC. Since, the detainee had been convicted in Crime No.151 of 1998, inter alia, under Section 471 of the IPC, the State denied the detainee the benefit of G.O. dated 11.09.2008, by invoking condition (i) (a) of the very same G.O. As indicated above, the said condition triggered the provisions of G.O.Ms.No.1762, dated 20.07.1987.

7. However, the counter affidavit filed by the State shows that though, the detainee was convicted by the Sessions Court in S.C.No.2 of 2000 on 24.10.2007 - in an appeal preferred to this Court, the conviction was overturned via a judgement dated 18.12.2009, rendered in C.A.No.1130 of 2007.

8. Thus, the State takes the stand that on the given date, i.e., 15.09.2008, the detainee was not eligible for premature release under the provisions of G.O. dated 11.09.2008.

9. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

10. According to us, the stand taken by the State is erroneous for the reason that, while, on the given date, the detinue was not eligible for the benefit of G.O. dated 11.09.2008, as his appeal was pending before this Court, his subsequent acquittal vide judgement dated 18.12.2009, would relate back to the date when, the case was instituted against him. The acquittal of the detinue in C.A.No.1130 of 2007 would efface the charge levelled against the detinue, inter alia, under Section 471 of the IPC. Clearly, if, that provision is taken out of the equation, the detinue would be entitled for release under G.O. dated 11.09.2008.

11. We may also note that the detinue has already undergone, even according to the State, actual imprisonment as on 31.08.2017, equivalent to nineteen (19) years, one (1) month and twenty (20) days.

12. Consequently, the Habeas Corpus Petition is allowed. The detinue, namely, Jabroo @ Sayed Jager Ahmed, S/o.Sayed Habeeb, is directed to be released forthwith, unless his detention is required, in connection with another case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The State of Tamil Nadu
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Superintendent,
Central Prison, Kovai.
3. The Additional Public Prosecutor,
Madras High Court, Madras.
4. The Principal Secretary to Government
Home, Department, Secretariat Chennai-600 009

+1 cc to M/s.S.Lakshmi Advocate sr 89139

H.C.P.No.1606 of 2017

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