

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **20.09.2017**

CORAM:

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

H.C.P.No.279 of 2017

P.Sekar

..... 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 Superintendent
Central Prison,
Coimbatore.

.....Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records pertaining to the order of the first respondent, dated 18.08.2016 in G.O.(D).No.748 and quash the same and directing the respondents to entitle the detenu for the premature release by considering the G.O. in G.O.(Ms).No.1155, dated 11.09.2008 and produce the detenu P.Sekar, s/o. Pachaiyappan, Life convict prisoner Convict No.77958 detained at Central Prison, Coimbatore-18 before this 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 Petition has been filed under Article 226 of the Constitution of India, seeking to quash the G.O.(D).No.748, dated 18.08.2016 and to release the detenu / petitioner, P.Sekar, s/o. Pachaiyappan, Life convict prisoner Convict No.77958 prematurely.

2. It is averred in the petition that the petitioner was convicted for the offences under Sections 302, 364, 392 and 201 IPC in S.C.No.31 of 1998 by the learned Sessions Judge, Udthagamandalam, dated 31.08.2000 and imposed death sentence. On appeal, the death sentence was modified to life imprisonment in CrI.A.No.903 of 2000, dated 16.06.2002 by this Court. The Tamil Nadu State Government passed G.O.(Ms) No.1155, Home (PRI.IV) Department, dated 11.09.2008 to release the prisoners prematurely who have completed 7 years of their sentence by invoking powers under Article 161 of the Constitution of India. The petitioner had completed 7 years of actual imprisonment as on 15.09.2008. But the petitioner was denied premature release arbitrarily. The petitioner has been languishing in prison for more than 15 years and he is entitled to have the benefit of premature release. When the

petitioner approached this Court in H.C.P.No.2418 of 2016, this Court ordered the petitioner to submit a fresh representation to the respondents and directed the respondents to consider the representation. The petitioner submitted his representation on 27.01.2016 and the same was rejected by the Government in G.O.(D).No.748, dated 18.08.2016, stating that the petitioner is not eligible as the death penalty awarded was later commuted to life imprisonment by the appellate court. This Court in H.C.P.No.1894 of 2008 struck down the above said condition in view of the conflict with Section 341 of the Tamil Nadu Prison Manual and Section 433A of the Code of Criminal Procedure and the same was confirmed by the Hon'ble Supreme Court. Without considering the above said order, the Government rejected the petitioner's representation unreasonably and therefore, the petitioner is eligible for the premature release. Therefore, he has come forward with this petition.

3. The respondents in their counter contends that the petitioner / life convict prisoner No.77958, P.Sekar, s/o. Pachaiyappan was convicted and sentenced to death for the offence under Section 302 IPC, life imprisonment for the offence under Section 364 IPC, Rigorous Imprisonment for 14 years for the offence under Section 392 IPC and Rigorous Imprisonment for 7 years for the offence under

Section 201 IPC by the learned Sessions Judge, Udhagamandalam in S.C.No.31 of 1998, dated 31.08.2000. The above sentences were ordered to run concurrently. On his appeal before this Court, the death sentence awarded by the trial Court was modified as imprisonment for life and other sentences were confirmed by this Court in Crl.A.No.903 of 2000, dated 16.06.2002. As on 15.09.2008, the petitioner had completed 7 years 9 months and 29 days of actual imprisonment. The Tamil Nadu Government issued orders in G.O.Ms.No.1155, Home (Pri.IV) Department, dated 11.09.2008 and as amended vide G.O.Ms.No.1121, Home (Pri.IV) Department, dated 24.12.2009 to release the life convicts subject to the satisfaction of certain conditions. As per the G.O., one of the ineligible category is as follows :

"(i) (b) the prisoners who were awarded death penalty and whose sentence was later commuted to life imprisonment by the appellate Court and the prisoners who committed offences on religious prejudices."

4. Since the petitioner / life convict was awarded with sentence to death by the Sessions Judge and later modified as life imprisonment by this Court, he is not eligible for premature release as per the above condition of the G.O. Hence, he was not released

prematurely on 15.09.2008. The prisoner has completed 15 years 10 months and 28 days of his actual imprisonment on 17.02.2017. There is no violation of Articles 14 and 21 of the Constitution of India in not releasing the petitioner on 15.09.2008. As per the directions passed by this Court in H.C.P.No.2418 of 2014, a representation was obtained from the petitioner and after obtaining the report from the probation officer and remarks from the Superintendent of Prisons, the Government examined the request of the petitioner along with the relevant records and rejected his request on the ground that the petitioner was sentenced to death by the trial Court and on appeal death sentence was modified as life imprisonment, for which he is not eligible for premature release as per condition (i) (b) of G.O.Ms.No.1155, Home (Pri.IV) Department, dated 11.09.2008, which was issued to commemorate the birth centenary of Perarignar Anna on 15.09.2008.

5. This Court in H.C.P.No.1894 of 2008, dated 24.09.2009 struck down the condition that the prisoners who were awarded with death penalty and whose sentence was commuted to life imprisonment by the appellate court are not eligible for premature release. Representation given by the life convict in that case namely Ezhil was considered for premature release through the Advisory

Board scheme as per the Government Letter No.65313/Prison IV/2008-1, dated 04.08.2008. Premature release is the prerogative of the policy matter of the State and the prisoner cannot claim as a matter of right.

6. The petitioner has been convicted and awarded death sentence by the Sessions Court of Udhagamandalam in S.C.No.31 of 1998, dated 31.08.2000 and on appeal, this Court modified the death sentence as to imprisonment for life. The petitioner moved this Court earlier in H.C.P.No.2418 of 2016 and this Court ordered the petitioner to submit a fresh representation and directed the respondents to consider the representation. Accordingly, the petitioner submitted his fresh representation and the same was rejected after consideration by the Government by passing the impugned G.O.(D).No.748, dated 18.08.2016.

7. The only ground urged by the learned counsel for the petitioner is that the Government rejected the representation relying the condition in G.O.Ms.No.1155, Home (Pri.IV) Department, dated 11.09.2008, which was already struck down by the Court. The learned Additional Public Prosecutor appearing for the respondents contend that the Government after getting the probation officer's

report and remarks of the Superintendent of Prisons and after considering all the materials rejected the representation and the same does not require any interference.

8. The relevant ineligible condition in G.O.Ms.No.1155, Home (PRI.IV) Department, dated 11.09.2008 reads thus :

"(i) (b) The prisoners who were awarded death penalty and whose sentence was later commuted to life imprisonment by the appellate Court and the prisoners who committed offences on religious prejudices."

9. Proviso to Section 341 of Tamil Nadu Prison Manual reads thus :

"By virtue of provision contained in Section 433-A of the Code of Criminal Procedure, 1973 (Central Act, 2 of 1974) of the cases of prisoners sentenced to imprisonment for life on or after 18th December, 1978, for an offence for which death is one of the punishments provided by law, or in whose case a sentence of death imposed has been commuted under section 433 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) into one of the imprisonment for life, shall be placed before the Advisory Board only

if they have served at least fourteen years of imprisonment."

10. Section 433-A of Code of Criminal Procedure 1973 is as follows :

"433-A. Restriction on powers of remission or commutation in certain cases - Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

11. As per Section 433 of Code of Criminal Procedure, 1973, the appropriate Government is empowered to commute the sentence. Therefore, Section 433-A of Code of Criminal Procedure and the proviso to Section 341 of Tamil Nadu Prison Manual speak about the commutation of death sentence into one of imprisonment for life under Section 433 Cr.P.C. But the condition laid under (i) (b) of the above said G.O., makes a prisoner awarded death penalty and whose sentence was later commuted to life imprisonment by the

appellate Court ineligible. This condition is not inconsonance with Section 433A of the Code of Criminal Procedure, 1973 and Section 341 of Tamil Nadu Prison Manual. Therefore, the Division Bench of this Court struck down the above condition as unreasonable restriction in H.C.P.No.1894 of 2008, dated 29.04.2009. Admittedly, the same was confirmed by the Hon'ble Supreme Court in CrI.A.No.239 of 2014, dated 21.01.2014. But as far as the petitioner is concerned the death sentence awarded to him by the Sessions Court was modified by the appellate Court and not commuted by the Government under Section 433 Cr.P.C.

12. A cursory perusal of the impugned G.O.(D).No.748, dated 18.08.2016 depicts that the rejection of the petitioner's representation was made relying the condition of ineligibility in G.O.Ms.No.1155, dated 11.09.2008, which was already struck down by the Court. Therefore, the impugned G.O., is liable to be quashed.

13. The contention of the learned Additional Public Prosecutor that the case of Ezhil, life convict was considered on the basis of the Government Letter No.65313/Prison IV/2008-1, dated 04.08.2008 is not acceptable, in the light of the orders of this Court striking down the above said ineligible condition in G.O.Ms.No.1155,

Home (Pri.IV) Department, dated 11.09.2008 and confirmed by the Hon'ble Supreme Court.

14. 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 or 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.

...

...

...

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 claim for remission and for premature release has to be considered only by the Government.

15. In fine, the impugned G.O.(D).No.748, dated 18.08.2016 is quashed. The petitioner is directed to give a fresh representation and the respondents are at liberty to pass appropriate orders, in the light of the above observations.

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

(A.S., J.) (P.K., J.)
20.09.2017

Index : Yes / No

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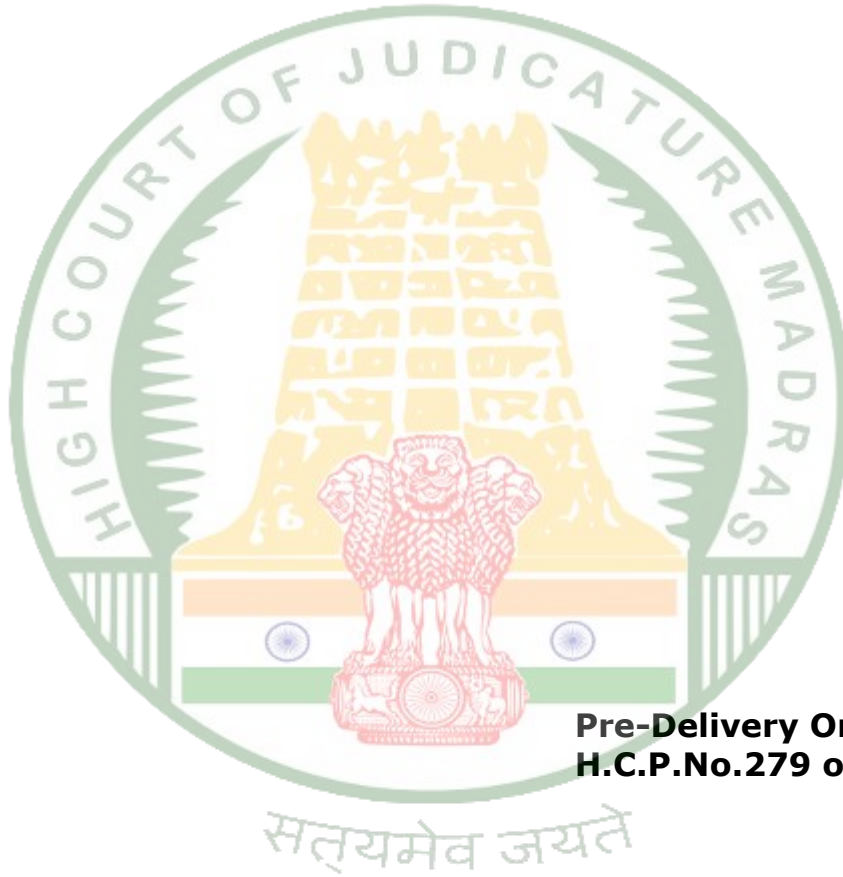
1. The Secretary to Government of Tamil Nadu
Department of Home,
Fort St. George,
Chennai - 600 009.
2. The Superintendent
Central Prison,
Coimbatore.
3. The Public Prosecutor
High Court, Madras.



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

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**Pre-Delivery Order in
H.C.P.No.279 of 2017**

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