

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.580 of 2017

Madhu

... Petitioner

-vs-

1. The State of Tamil Nadu,
rep. by the the Principal Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
2. The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
Central Prison, Salem. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records from the respondent No.1 in connection with order in G.O.(D) No.715 Home (Prison IV) Department dated 09.08.2016 and quash the same and direct the respondents to produce the petition namely Madhu S/.Appu, CT.No.391, Life Convict, aged about 48 years, now confined in the Central Prison, Salem.

For Petitioner : MR.Radhakrishnan for
Mr.P.Pugalenth

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

O R D E R

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

1. This is a petition, which seeks to challenge Government Order G.O.(D) No.715 Home (Prison.IV) Department, dated 09.08.2016.

2. By virtue of the impugned Government Order, first respondent rejected the request of the petitioner, who is a life convict, for grant of premature release in terms of G.O. (Ms.) 1155 Home (Prison-IV) Department, dated 11.09.2008 (hereafter referred to as the 2008 G.O.)

3. The 2008 G.O. was evidently issued by the first respondent, whereby, premature release was granted to life convicts, who had completed 7 years or more of actual imprisonment as on 15.09.2008, subject to fulfillment of the conditions stipulated therein.

4. We may also note that, according to the official respondents, the 2008 G.O. also applied to those prisoners, who, on the given date had reached the age of 60 years or more and had completed 5 years of actual imprisonment as on 15.09.2008.

4.1. Be that as it may, insofar as the petitioner is concerned, this part of the 2008 G.O. is not relevant.

5. The respondents, upon issuance of notice in the petition, have filed their counter affidavit, wherein they have accepted the fact that the petitioner had completed 7 years, 8 months and 26 days, as on 15.09.2008. The respondents, however, have taken the stand that the benefit of the 2008 G.O. cannot be granted to the petitioner on account of the following condition contained in clause (i)(b) of said G.O. For the sake of the convenience, the same is extracted hereunder :

"the petitioners 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."

6. The facts set out in the counter affidavit reveal that the petitioner was convicted in Sessions Case No.384 of 1999 on 19.12.2000, by the III Additional Sessions Judge, Salem. The petitioner was sentenced to death, which, on appeal to this Court was modified to life imprisonment. The said judgement, which is, dated 27.04.2001 was passed in Criminal Appeal No.62

of 2001. The State appears to have not preferred an appeal against this judgement to the Supreme Court. Mr. Rajentran, learned APP on being queried did state anything to the contrary.

7. Be that as it may, the petitioner made a representation to the first respondent on 25.02.2016 for premature release based on the 2008 G.O. It is this representation, which was rejected by the first respondent vide Government Order dated 09.08.2016. The petitioner being aggrieved, has preferred the instant petition challenging the rejection of his representation.

8. As indicated above, the only issue which arises for consideration is:

Whether the impugned Government Order dated 09.08.2016 can be sustained on the basis of the stand taken by the first respondent?

9. The stand of the first respondent is that since the petitioner's death sentence was modified to life imprisonment by this Court, the condition (i)(b) of the 2008 G.O. would kick in and therefore, he would not be entitled for premature release notwithstanding the fact that on 15.09.2008, he had completed more than 7 years of actual imprisonment.

10. The learned counsel for the petitioner, in rebuttal to the submission advanced on behalf of the first respondent, relies upon the decision of the Supreme Court dated 21.01.2014 rendered in Criminal Appeal No.239 of 2014. Based on this decision, learned counsel submits that since clause (i)(b) of the 2008 G.O. has been declared as being violative of Article 14 of the Constitution it cannot be relied upon by the State to deny the petitioner the benefit of pre-mature release as provided for in the 2008 G.O.

11. We may note that the State has in fact extracted that part of the judgement of the Supreme Court, passed in Criminal Appeal No.239 of 2014, whereby, it has held clause (i)(b) of the 2008 G.O. to be exclusionary and hence violative of Article 14 of the Constitution. However, after having extracted the observations of the Supreme Court, the respondents have taken the stand that the said observations would not apply to the instant case and that they were confined to the case in which judgment was rendered by the Supreme Court.

12. According to us, the stand taken by the first respondent is completely untenable. We have carefully examined the judgement of the Supreme Court. The observations of the Supreme Court clearly lay down that the clause (i)(b) of the

2008 G.O. was "exclusionary" and hence violative of Article 14 of the Constitution. As a matter of fact, the said judgement of the Supreme Court was rendered in an appeal which arose out of a decision of the Division Bench of this Court dated 29.04.2009, passed in H.C.P.No.1894 of 2008. The Division Bench of this Court had struck down clause No.(i)(b) of the 2008 G.O. The Supreme Court, though, vide its judgement dated 21.01.2014, passed in Criminal Appeal No.239 of 2014, while sustaining the conclusion reached by the Division Bench provided its own reason and rationale in coming to the very same conclusion. The reasoning furnished by the Supreme Court was as follows :

" From the abovementioned facts, it can be seen that this appeal has nothing to do with the subject matter of the Criminal Appeal No.973 of 2008. Though we do not agree with the reasoning adopted by the High Court for allowing the writ petition, we agree with the conclusion arrived at by the High Court. The exclusionary clause creates an artificial class of convicts which is unsustainable tested on the touchstone of Article 14 of the Constitution of India. Neither there is any rational basis for creation of such a class nor are we able to discern any legitimate purpose sought to be achieved by the State in creating such a class. Therefore, the appeal is dismissed." (emphasis is ours)

13. A mere perusal of the judgement of the Supreme Court, as indicated above, would demonstrate that clause (i)(b) contained in 2008 G.O. is no longer valid in the eyes of law.

14. Therefore, the rejection of the petitioner's request for premature release by invoking clause (i)(b) was clearly erroneous. Since, no other impediment is brought to our notice by the respondents, the impugned G.O. Dated 09.08.2016, is quashed, as prayed.

15. We direct to release the petitioner forthwith unless he is required to remain in custody in another case.

Sd/-

Assistant Registrar (CS-)

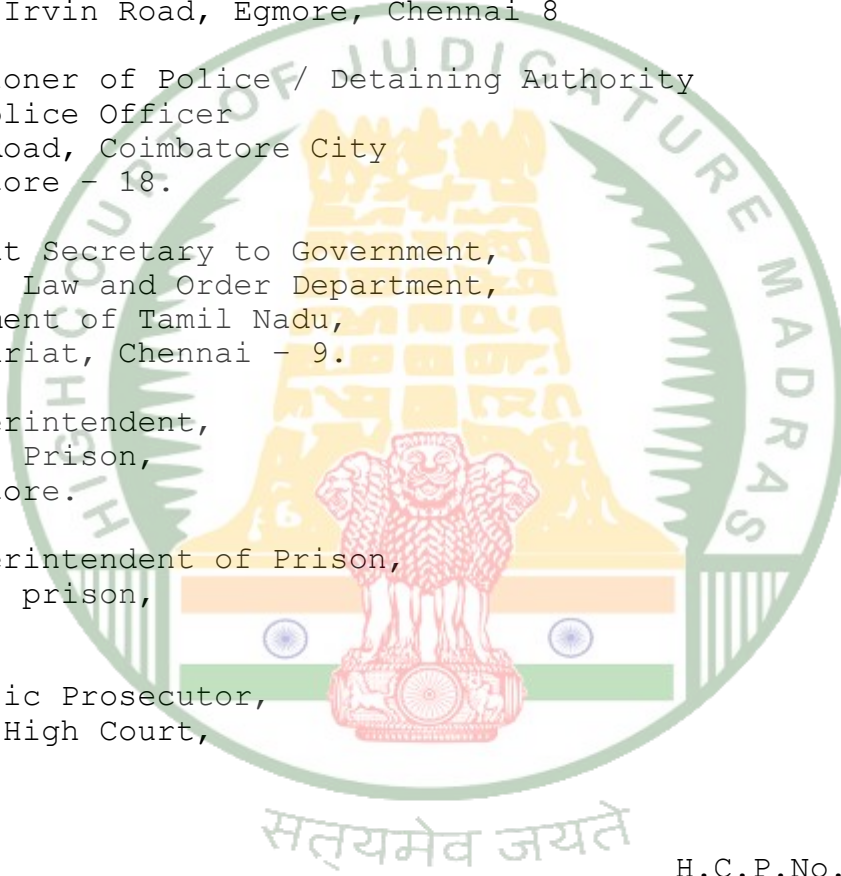
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Sub Assistant Registrar

ggs/vrc

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.
- 2.The ADDITIONAL Director General of Police &
Inspector General of Prisons,
Gandhi Irvin Road, Egmore, Chennai 8
- 3.Commissioner of Police/ Detaining Authority
City Police Officer
Huzur Road, Coimbatore City
Coimbatore - 18.
- 4.The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Superintendent of Prison,
Central prison,
Salem.
- 7.The Public Prosecutor,
Madras High Court,
Madras.



H.C.P.No.580 of 2017

TR(06/12/2017)

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