

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.1814 of 2016

A. Namalthilusan

... Petitioner

Vs

1. The State of Tamil Nadu,
rep by the Secretary to Government,
Home, Prohibition and Excise Department,
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,
Palayamkottai,
Tirunelveli District

.... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the petitioner's brother namely A. Sudarasan, S/o Albert, Life Convict, aged about 36 years, now confined in the Central Prison, Palayamkottai, Tirunelveli District before this Court and directing the respondents to consider him immediately under G.O.Ms.No.1155 Home (Prison-IV) Department datd 11.09.2008, for premature release and set him at liberty.

For Petitioner : Mr.P. Pugalenth

For respondents: Mr.V.M.R. Rajentren
Additional Public Prosecutor

ORDER

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

The petitioner's brother by name A. Sudarasan is a life convict. He is presently confined in Central Prison, Palayamkottai, Tirunelveli District. He has been convicted for the offence under Secs.449, 461, 394 and 302 IPC in S.C.No.13 of 1998 on the file of Principal Sessions Court, Chengalpattu. The conviction was also confirmed subsequently by this Court. The maximum sentence imposed on him is imprisonment for life for the offence under Sec.302 IPC and for the offence under Sec.394 IPC, he was sentenced to undergo rigorous imprisonment for ten years.

2. While so, the Government issue G.O.Ms.No.1155 Home (PRI.IV) Department dated 11.09.2008 granting premature release of life convicts on the Birth Centenary of the Former Chief Minister of Tamil Nadu, Perararnnar Annadurai. According to the said Government Order, 1336 life convicts are confined in various central prisons and Special Prisons for women, who have completed seven (7) years of actual imprisonment as on 15.09.2008, as mentioned in Annexure-I to the Government Order, were granted premature release. Similarly, 3 life convicts, who were undergoing their sentence in the prisons of Kerala State on reciprocal basis, who have completed 7 years of actual imprisonment as on 15.09.2008, as mentioned in Annexure-II, were also granted premature release. Lastly, 66 life convicts, who were confined in various prisons and special prisons for women, aged about 60 years and above, who have completed five years of actual imprisonment as on 15.09.2008, as mentioned in Annexure-III, were also granted the same benefit.

3. According to the petitioner, A. Sudarasan, had completed more than seven (7) years as on the crucial date i.e., 15.09.2008. Therefore, he should have been extended the benefit of G.O.Ms.No.155 Home (PRI.IV) Department dated 11.09.2008. Since it was not given, alleging that he has been discriminated, the petitioner has come up with this Habeas Corpus Petition.

4. In the counter filed by the Government, inter-alia it is stated that the detenu herein was convicted for the offence under Sec.397 IPC, as mentioned in the conviction warrant forwarded by the trial Court. As per the Government Order in G.O.Ms.No.155 Home (PRI.IV) Department dated 11.09.2008, those who had been convicted for the offence under Sec.397 IPC are not eligible for premature release and therefore, the petitioner's brother's case was not considered for premature release.

5. The learned counsel for the petitioner submitted that the petitioner was not convicted for the offence under Sec.397

IPC, but was convicted for the offence under Sec.394 IPC. He has produced the records to prove the same.

6. Now, there can be no controversy that the petitioner was convicted for the offence under Secs.449, 461, 394 and 302 IPC and there is no conviction for the offence under Sec.397 IPC. It is quite obvious that what is mentioned in the warrant, forwarded by the trial Court, is incorrect. In view of the above facts, in our considered view, the respondents have to consider the case of the detenu for extending the benefit of G.O. Ms.No.155 Home (PRI.IV) Department dated 11.09.2008 provided he satisfies all other requirements of the said Government Order.

7. In the result, the Habeas Corpus Petition is disposed of with a direction to the respondents to consider the case of the petitioner for pre-mature release in terms of the Government Order in G.O. Ms.No.155 Home (PRI.IV) Department dated 11.09.2008, provided the detenu satisfies all the other conditions enumerated in the above said Government Order. At any rate, such decision shall be taken within three months from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar(CSVIII)

True Copy

Sub-Assistant Registrar

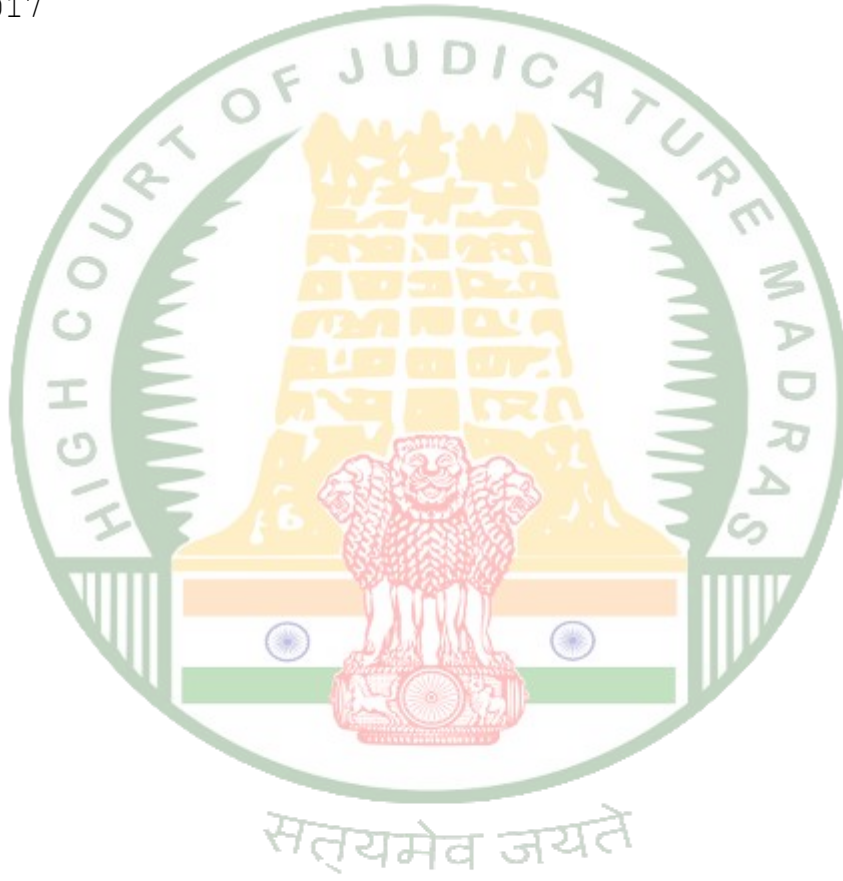
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To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
2. The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irwin Road, Egmore,
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3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
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4. The Public Prosecutor, High Court, Chennai.

HCP No.1814 of 2016

sj(co)
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