

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **23.08.2017**

CORAM:

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

H.C.P.No.2600 of 2016

J.Mumtaj

.... 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.
3. The Superintendent of Prison
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.746 and quash the same and direct 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, Aslam, aged about 41 years, S/o. Jainulabuthin, Convict No.18819 detained at Central Prison, Coimbatore 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 the Court was made by P.KALAIYARASAN, J)

The mother of the life convict prisoner No.18819, Aslam, S/o. Jainulabuthin has filed this petition under Article 226 of the Constitution of India praying to issue orders in the nature of writ of Habeas Corpus by calling for the records and quash the G.O.(D).No.746, dated 18.08.2016 and directing the respondents to release the detenu prematurely by considering the G.O.(Ms).No.1155, Home (PRI.IV) Department, dated 11.09.2008.

2. It is averred in the petition that the detenu Aslam is a life convict prisoner and he completed 10 years of actual imprisonment as on 15.09.2008. On the occasion of 100th Birth Centenary of Perarignar Anna on 15.09.2008, the Tamil Nadu State Government passed an order by invoking the powers under Article 161 of the Constitution of India to release the life convicts who have completed 7 years of actual imprisonment on 15.09.2008. The detenu Aslam is fully eligible under the said G.O. for premature release. The detenu was neither put on notice nor given opportunity and the respondents

exercised their power in a discriminatory and arbitrary manner. Without following the guidelines of the said G.O, denied premature release of the detenu.

3. The petitioner already filed a writ petition in H.C.P.No.14 of 2013 before this Court. This Court while disposing the said writ petition directed the detenu to submit a fresh representation. Accordingly, the detenu gave a representation. But the same was rejected by the first respondent in G.O.(D).No.746, dated 18.08.2016, stating that the premature release would endanger the life of the detenu and would create law and order problem as there is enmity against the prisoner. The respondents without considering the report of the Tahsildar, Coimbatore South passed the impugned order which is irrational and not based on any evidence. The respondents have detained the detenu based on religious grounds.

4. The respondents in their counter averred that the life convict prisoner No.18819, Aslam, S/o. Jainulabuthin was convicted and sentenced to undergo imprisonment for life and fine of Rs.1000/- in default to undergo RI for six months for the offence under Section 302 r/w 34 IPC; Rigorous Imprisonment for six months and a fine of Rs.1,000/-, in default to undergo RI for two months under Section

120(B) of IPC; RI for three years and a fine of Rs.1,000/-, in default to undergo RI for two months under Section 148 IPC and Simple Imprisonment for one month and a fine of Rs.500/-, in default to undergo SI for one month under Section 341 of IPC, 1860 in Sessions Case No.456 of 2000 on the file of the Fast Tract Court II, Madurai on 02.05.2003. All the sentences were ordered to run concurrently. The Crl.A.No.953 of 2003 filed before this Court and further appeal in Crl.A.No.26 of 2007 before the Supreme Court failed.

5. The life convict prisoner was also convicted and sentenced to undergo life imprisonment under Sections 120(B) (1) r/w Sections 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468 and 471 of IPC, 1860, Section 3, 4(b), 5 and 6 of the Explosive Substances Act, 1908, Section 3 r/w Section 25(1-B) (a) of the Arms Act, 1959 and under Section 3(i) and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992; RI for three years under Section 153 (a) (1) of IPC, 1860 and RI for seven years under Section 307 IPC. All the sentences were ordered to run concurrently in Sessions Case No.2 of 2000 on the file of the Special Court for Bomb Blast Cases, Coimbatore on 24.10.2007. On his appeal, the above conviction and sentences were set aside by this Court in Crl.A.No.1111 of 2007, dated 18.12.2009.

6. The prisoner had completed 18 years 5 months and 3 days of actual imprisonment as on 30.11.2006. On the occasion of birth centenary celebration of Perarignar Anna, the Government in G.O.(Ms).No.1155, Home (PRI.IV) Department, dated 11.09.2008 ordered to release the life convicts who had completed seven years of actual imprisonment as on 15.09.2008 and the life convicts who were aged sixty years and above and had completed five years of actual imprisonment as on 15.09.2008 subject to the satisfaction of certain conditions mentioned therein.

7. The detenu could not be considered for premature release on 15.09.2008 as he was awarded life imprisonment under Section 471 IPC, Sections 3, 4(b), 5 and 6 of Explosive Substances Act, 1908 and Section 25(1-B) (a) of the Arms Act in Sessions Case No.2 of 2000 on the file of the Special Court for Bomb Blast Cases, Coimbatore and the same was in force. It is the prerogative of the State Government to grant premature release. The detenu was orally informed of the reason for not considering him for premature release. There is no violation of Articles 14 and 21 of the Constitution of India in the case of the detenu and there is also no discriminatory or arbitrary exercise of power.

8. As per the direction of this Court in H.C.P.No.14 of 2013, the representation given by the detenu was examined by obtaining the report of the Probation Officer and the request was rejected in G.O.(D).No.746, Home (Prison-IV) Department, dated 18.08.2016 on the ground that the prisoner's life would not be safe if he is released, as reported by the Probation Officer which comes under ineligible category for premature release as per condition No.3 of G.O.(Ms).No.1155, Home (PRI.IV) Department, dated 11.09.2008. The report of the Probation Officer is vital as per the direction of this Court and the Tahsildar report is uncalled for. Further, the Tahsildar did not furnish any report for the premature release of the detenu to any one of the respondents. Necessary action is being taken by the third respondent to place the case of the detenu before the Advisory Board for consideration of premature release, as per rule 341 of the Tamil Nadu Prison Rules 1983. Therefore, this petition is to be dismissed.

9. On the date of G.O.(Ms).No.1155 of 2008, the detenu was undergoing life imprisonment in two cases. One in S.C.No.456 of 2000 on the file of the Fast Track Court-II, Madurai for the offence under Section 302 r/w 34 IPC and other offences, as per the Judgment, dated 02.05.2003. The detenu was convicted in another

case by the Sessions Court for Bomb Blast Cases, Coimbatore by Judgment dated 24.10.2007 in S.C.No.2 of 2000 and sentenced to life imprisonment for the offences under Sections 120-B(1) r/w 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468 and 471 of the Indian Penal Code, 1860, Sections 3, 4(b), 5 and 6 of the Explosive Substances Act, 1908, Section 3 r/w Section 25(1-B) (a) of the Arms Act, 1959 and Section 3 (i) and (4) of the Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992. In the first case, the detenu preferred appeal up to Supreme Court and failed. In the second case, the detenu preferred CrI.A.No.1111 of 2007. The conviction and sentences as against the detenu was set aside as per the Judgment in the Criminal Appeal, dated 18.12.2009. The G.O. is dated 11.09.2008. Therefore, on the date of G.O., the life sentences in both the cases were in force. There is no dispute that the person sentenced for the offence under Section 471 IPC is ineligible for the premature release, as per G.O.(Ms).No.1155, Home (PRI.IV) Department, dated 11.09.2008. Therefore, there is no arbitrariness or discrimination in exercising the power by the authorities.

10. The learned counsel appearing for the petitioner contends that pursuant to the orders of this Court in earlier H.C.P.No.14 of 2013, representation was made by the detenu and the

same has been disposed of irrationally without considering the report of the Tahsildar.

11. In the impugned G.O, rejecting the representation, it has been clearly stated that the Probation Officer has not recommended to release the detenu prematurely for the following reasons :

- "(a) If the above prisoner released prematurely, it is possible to create Law and Order problem.
- (b) The life of the convict would not be safe.
- (c) Since the murder involved in this case was related to the Religion, there is enmity against the Prisoner."

12. The Government rejected the request of the detenu for premature release on the ground that the life of the prisoner would not be safe if released which is one of the ineligible categories under G.O.(Ms).No.1155, Home (PRI.IV) Department, dated 11.09.2008. The Probation Officer is the competent authority to give a report as to the premature release of the prisoner. The authorities have considered the report of the Probation Officer and rejected the request. The report of the Tahsildar cannot be considered for premature release. As rightly pointed out by the learned Additional

Public Prosecutor that even if any prisoner is released prematurely he has to be under the supervision of the Probation Officer as per Prison Rules. Further it is specifically stated by the respondents that no such report from Tahsildar has been sent to any of the respondents. Therefore, there is no irrational or arbitrariness by the respondents in exercising their power.

13. 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.

...

...

...

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.

...

...

...

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."

WEB COPY

Therefore, as per the decision of the Constitutional Bench of the Hon'ble Supreme Court, the appropriate Government has to exercise its power for remission and premature release. Hence, this Habeas Corpus Petition is liable to be dismissed.

In fine, this Habeas Corpus Petition is dismissed.

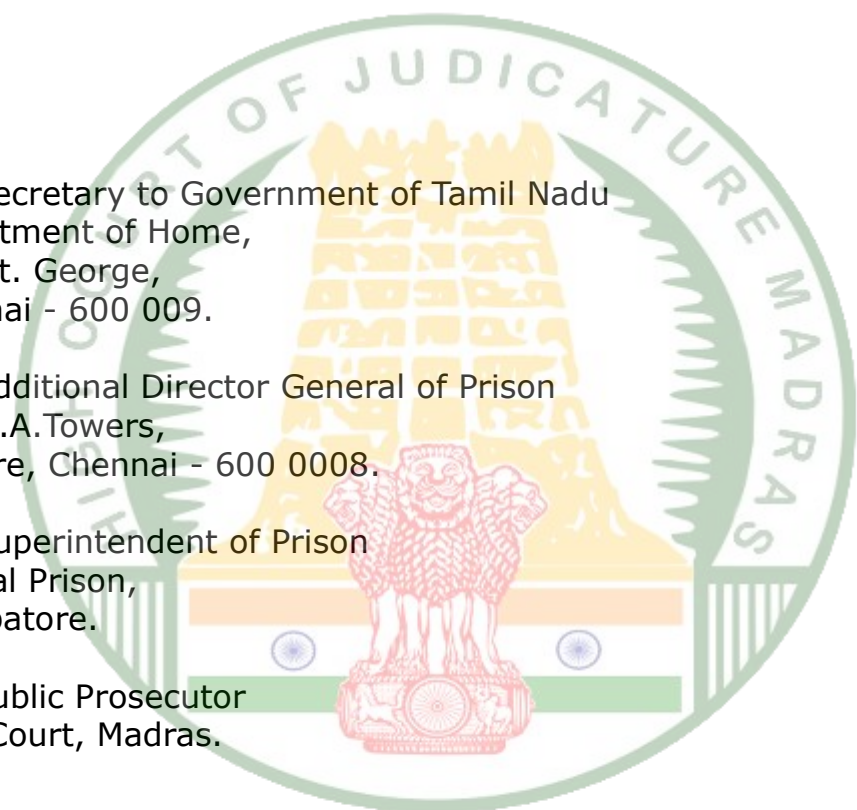
(A.S., J.) (P.K., J.)
23.08.2017

Index : Yes / No

tsvn

To

1. 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.
3. The Superintendent of Prison
Central Prison,
Coimbatore.
4. The Public Prosecutor
High Court, Madras.



सत्यमेव जयते

WEB COPY

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

tsvn



**Pre-Delivery Order in
H.C.P.No.2600 of 2016**

WEB COPY

23-08-2017