

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.04.2017

CORAM

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

H.C.P No.48 of 2016 and
Contempt Petition No.2615 of 2015

J. Janaki

.. Petitioner in both the HCP and Contempt Petition

Vs

- 1.State of Tamil Nadu rep by its
Principal Secretary to Government,
Home Department (IV),
Fort St. George,
Chennai
2. The Additional Director General of Police/
Inspector General of Prisons,
CMDA Tower-II, No.-1, Gandhi Irwin Road,
Egmore, Chennai – 8
3. The Superintendent of Central Prison,
Salem – 636 007
4. The Superintendent of Central Prison,
Puzhal, Chennai – 600 066
5. The Superintendent of Central Prison,
Central Prison, Vellore, Vellore District

.. Respondents in HCP No.48 of 2016

1. Apoorva Varma
The Secretary,
Department for Home,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009
2. George
Additional Director General of Police,
Inspector General of Prisons,
CMDA Tower-II,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 009
3. Mr. Shanmugasundaram
The Superintendent of Central Prison,
Salem – 636 007
4. V. Karupannan
The Superintendent of Central Prison,
Puzhal, Chennai – 600 066

... Respondents in Contempt Petition

Habeas Corpus Petition filed under Article 226 of the Constitution of India to quash the order passed by the Principal Secretary to Government in G.O.851 dated 23.11.2015 and issue a Writ of Habeas Corpus directing the Superintendent of Central Prison, Vellore to produce petitioner's father R. Jayapal, who is detenu, life convict No.1443, now confined at Central Prison, Vellore, before this Court and set him at liberty under G.O.No.1155 dated 11.9.2008 and pass appropriate orders.

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for contempt of deliberate violation of the order of the Hon'ble Court passed in HCP No.1558 of 2015 dated 27.07.2015 and to pass appropriate order.

For Petitioner in HCP & Cont. Petition	: Mr.A.V. Somasundaram for M/s Lakshimipriya Associates
For respondent in HCP	: Mr.V.M.R. Rajentren Additional Public Prosecutor

COMMON ORDER

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

The petitioner is the daughter of one R. Jayapal, S/o Ramasamy. R. Jayapal was convicted by the learned IX Additional Sessions Court, Chennai in S.C.No.99/1986 dated 01.07.1987 and was sentenced to undergo rigorous imprisonment for life for the offence under Sec.302 IPC. He was lodged at Central Prison, Chennai on 01.07.1987. The appeal, filed against the said conviction in CrI.A.No.441/1987, was dismissed by this Court on 12.01.1995. As against the same, an appeal was preferred before the Hon'ble

Supreme Court of India in Special Leave Petition No.2242/1995, which was also dismissed by the Hon'ble Supreme Court of India on 21.07.1995. Thus, R. Jayapal is a life convict and is undergoing life conviction for more than 21 years.

2. While so, the Government of Tamil Nadu issued G.O.Ms.No1155 Home (PRI.IV) Department dated 11.09.2008 granting premature release of life convicts, who have completed seven (7) years of actual imprisonment as on 15.09.2008 and who are aged about 60 years and above and have completed five (5) years of actual imprisonment as on 15.09.2008. This was done on the occasion of the Birth Centenary of Peraringnar Anna on 15.09.2008.

3. According to the detenu herein, though he had completed more than 21 years and he is eligible for grant of premature release, he was not granted the benefit. Therefore, the petitioner herein had filed a Habeas Corpus Petition in HCP No.1558 of 2015 before this Court, seeking set the detenu at liberty in terms of G.O.Ms.No.1155 Home (PRI.IV) Department dated 11.09.2008 . The Division Bench of this Court, by Order dated 27.07.2015, disposed of the Habeas Corpus

Petition. In the said Order, in paragraphs 2 to 4, the Division Bench of this Court observed as follows:

2. Learned counsel for the petitioner submitted that the detenu/convicted accused was in Central Prison, Puzhal, Chennai for more than 20 years and that now he has been shifted to Central Prison, Vellore. Learned Counsel for the petitioner drew the attention of this Court to page No.34 of the typed set of papers, whereby the District Collector (incharge), Chennai District has addressed a letter to the Superintendent of Central Prison, Puzhal, Chennai, recommending for the release of the detenu on the ground that the case in C.C.No.3760/1997 was dismissed on 27.07.2011 in favour of the detenu and the probation officer has also certified the conduct of the detenu in his favour.

3. Learned Additional Public Prosecutor would submit that the process of making representation for consideration of remission of the detenu's sentence is in progress, based on the report of the District

Collector and the concerned authorities and that it may take four weeks time to complete the process.

4.Having considered the submissions made on either side, we find it just and reasonable to direct the respondents to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. This petition is disposed of accordingly.”

4. The grievance of the petitioner is that besides the time limit prescribed by this Court in the said order, it has not been complied with. Therefore, the petitioner has filed a Contempt Petition No.2615 of 2015 before this Court. During the pendency of the Contempt Petition, the Government issued G.O.(D) No.851 dated 23.11.2015, thereby rejecting the request of the premature release of the petitioner in terms of G.O.1155 dated 11.9.2008. Challenging the said Government Order, the petitioner has come up with this Habeas Corpus Petition No.48 of 2016.

5. Since both the matters arose out of the same

proceedings, we have heard them together and they are disposed of by this Common Order.

6. Today, when the matter was taken up, the learned Additional Public Prosecutor filed an affidavit of the Deputy Secretary to Government, Home, P & E Department, Secretariat, Chennai-600 009, wherein, he has stated that after receipt of the order of this Court, an order was passed by the Hon'ble Supreme Court of India, staying all further proceedings in connection with the G.O.1155 dated 11.9.2008 and because of the same, no order could be passed. After the stay order, vacated by the Apex Court, the impugned Government Order came to be passed. Thus, according to the respondents, there is no violation of the order passed by this Court. It is also submitted that the detenu is not entitled for premature release on account of his prison offences committed and the conduct of the detenu in prison.

7. We have considered the above submissions. So far as the issue of premature release is concerned, this Court had earlier

directed the respondents to consider the case of the detenu and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the order. Thus, the direction was issued based on the submissions made by the learned Additional Public Prosecutor that the process of consideration of remission of the detenu's sentence was in progress based on the report of the District Collector and other authorities concerned. Thus, this Order came to be passed in the year 2015 and the impugned Government Order was passed only on 23.11.2015, which is based on the report of the Advisory Board, which was held on 03.01.2014.

8. In our considered view, since the proceedings of the Advisory Board meeting, held on 03.01.2014, was not brought to the notice of this Court, cannot be the basis. In our considered view, the Advisory Board should hold a fresh meeting and submit a report to the Government and it is for the Government to reconsider the whole issue afresh.

9. In view of the above, the Contempt Petition is closed. The Habeas Corpus Petition is disposed of with a direction to the

respondents to hold a fresh meeting of the Advisory Board within a period of three months from today and based on the recommendation of the Advisory Board, the Government may pass further orders within a period of three months thereafter.

(S.N.J.,) (A.S.M.J.,
17-04-2017

sr
Speaking Order/Non-speaking Order
Index:yes/no
website:yes/no

To

- 1.The Principal Secretary to Government,
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Home Department (IV),
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S.NAGAMUTHU,J.,
And
ANITA SUMANTH,J.,

sr

4. The Superintendent of Central Prison,
Puzhal, Chennai – 600 066
5. The Superintendent of Central Prison,
Central Prison, Vellore, Vellore District
6. The Public Prosecutor, High Court, Chennai

H.C.P No.48 of 2016 &
Cont. Petn No.2615 of 2015

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