

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.174 of 2016

Babu @ Oomai Babu

...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, Coimbatore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus direct the respondents to produced the petitioner namely Babu @ Oomai Babu, S/o. Yusuf, life convict No.17147, aged about 33 years, now confined in the Central Prison, Coimbatore before the Hon'ble Court and directing the respondent No.1 - State of Tamil Nadu to consider the petitioner for premature release on humanitarian grounds under 161 of the constitution of India and set him at liberty.

For Petitioner : Mr.Radhakrishnan for P.Pugalenth

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J]

This Court not having signed the order passed in this matter on 07.12.2018, this matter is again taken up for hearing today under caption 'for being mentioned' at the instance of the learned counsel for the petitioner and passes the following order:

2. Petitioner who is the detinue, namely, Babu @ Ommai Babu, S/o. Yusuf seeks a direction to 1st respondent/State of Tamil Nadu to consider the premature release on humanitarian grounds.

3. Petitioner is a life convict. Contending that he had undergone more than 21 years of imprisonment, he having been sentenced to life imprisonment for offences u/s. 120-B, 302 IPC under Judgment of the learned District and Sessions Judge, Coimbatore in S.C.No.239 of 2000 dated 29.07.2003, that appeal against his conviction was dismissed by this Court and he is eligible for release under scheme framed for pre-mature release of life convicts by the State Government by letter (FS) No.1358 dated 10.11.1994, others who had completed 20 years of actual imprisonment were released on humanitarian grounds in exercise of powers under Article 161 of the Constitution of India and claiming that his case is similar to that of life convict released under G.O.(MS)No.428 dated 29.07.2011, petitioner had made a representation dated 27.12.2015 seeking pre-mature release.

4. The Counter Affidavit filed by the respondents inter-alia informs that that the District Collector, Coimbatore has recommended premature release of the life convict in her report dated 18.02.2015. Contrary to such report, she has not recommended release of the convict, functioning as Chairman of the Advisory Board in the meeting held on 31.08.2015, quoting the Probation Officer's report that there may be threat to life of the prisoner if he is released.

5. In earlier decision of this Court in HCP.No. 470 of 2018 dated 30.10.2018, we had stated as follows;

'Even while we are conscious that G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018 is not under challenge before us, we consider it our duty to inform our views on two aspects. One of the considerations for grant of relief is stated to be the safety of the prisoner, if let at large. Refusing release of a prisoner on the ground that his safety is at risk would amount to denying him the same not owing to any fault of his but on an apprehension of possibility of wrong doing by others. This, we consider unreasonable.

In such cases, we would recommend that prisoners be released but in doing so be informed of the possibility of harm to them. Again, one other consideration is the possibility of harm to family members of deceased/injured at the hands of the prisoner. Though this ground of denial of relief might be justified in certain cases, the same should not be brought into play over prolonged periods. The report of Probation Officer, Thirupathur, which informs the possibility of harm to the family members of deceased although the prisoner has been in prison for over 16 years can only be seen as unreasonable. Extending such reasoning would lead to the prisoner spending his life time in jail.'

With the above observations, this Court disposes of the present petition directing the authorities to dispose of petitioner's representation within a period of 12 weeks from today.

Sd/-
Deputy Registrar

//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, Chennai - 600 008.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.P.Pugalthi, Advocate, S.R.No.84370 & 85367

H.C.P.No.174 of 2016

GSP(20/02/2019)