

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

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THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No. 1628 of 2018

Munni
W/o.Haroon Batcha

...Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its
Secretary,
Home Department,
Fort St.George,
Chennai - 600009.

2.The Superintendent
Central Prison,
Coimbatore

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to approve the case of the petitioner's husband Haroon Batcha, Son of Magbool Sahib undergoing imprisonment at Central Prison, Coimbatore as life convict with No. 10852 for premature release in the light of the G.O.(Ms).No. 1155 dated 11.09.2008 and based on the representation dated 23.07.2018 by the petitioner and produce the lift convict before this Court and set him at liberty.

For Petitioner : M/s.C.D.Sugumar

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]

Petitioner seeks a direction to the respondents to approve the case of the petitioner's husband Haroon Batcha, Son of Magbool Sahib undergoing imprisonment at Central Prison, Coimbatore as life convict with No. 10852 for premature release in the light of the G.O.(Ms).No. 1155 dated 11.09.2008 and based on the representation dated 23.07.2018 by the petitioner and produce the life convict before this Court and set him at liberty.

2. Petitioner's husband was implicated as a second accused in a murder case and faced trial in S.C.No.110 of 1999 on the file of learned I Additional Sessions Judge, Coimbatore, which ended in conviction. He was sentenced to life imprisonment under judgment dated 30.12.1999. The Criminal Appeal No. 238 of 2000 preferred by the petitioner's husband against the said judgment was dismissed. The Special Leave Petition filed before the Supreme Court against the judgment passed by this Court was also dismissed. Seeking premature release, petitioner submitted a representation dated 23.07.2018 to the respondents and the same is yet to be considered. Hence, the present petition.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents.

4. Learned counsel for petitioner submits that petitioner's husband whose release is sought under G.O.(Ms) No.1155 dated 11.09.2008 is eligible therefor as he satisfies all parameters drawn up in the said Government Order. Learned counsel adds that the petitioner's husband has a favourable reply under Right to Information Act, stating that he is qualified for consideration for premature release. Learned counsel also adds that the petitioner's husband is in prison for the past 19 years and he is eligible for

5. Learned Additional Public Prosecutor, relying upon the communication of the 2nd respondent in No.7798/R1/2014 dated 19.09.2018, submitted that as per the said G.O(MS) No.155 Home (Prison.IV) Department, dated 11.09.2008, life convicts who have completed 7 years of actual imprisonment are eligible for premature release on certain terms and conditions. Even though the petitioner's husband has completed 7 years of imprisonment as on 15.09.2008, he was not prematurely released as the Probation Officer has not recommended his case, since the life of the detainee would be in danger, if released. The position that detainee would be entitled to release under current G.O.(Ms)

No.64, Home (Prison IV) Department dated 01.02.2018 but for the ineligibility informed cannot be denied.

6. Considered the rival submissions.

7. 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, which informs the possibility of harm to the family members of deceased although the prisoner has been in prison for over 19 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, we direct the authorities to dispose of petitioner's representation within a period of 12 weeks from the date of the receipt of this order copy.

The Habeas Corpus Petition, accordingly, is disposed of.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Home Department,
Fort St.George, Chennai - 600009.

2.The Superintendent,
Central Prison,
Coimbatore

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.D.Sugumar, Advocate, S.R.No.84724

H.C.P.No.1628 of 2018

kak(25/02/2019)