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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1950 of 2018

Pechiammal,
W/o.Dhamodharan.

... Petitioner

Vs

1.State of Tamil Nadu,
Rep. by the Secretary,
Home (Prison IV) Department,
Fort St. George,
Chennai - 600 009.

2.Additional Director General of Prisons,
Thalamuthu Natarajan Maaligai,
2nd Floor, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3.Superintendent of Central Prison,
Cuddalore Central Prison,
Vandipalayam Post,
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the body of the detenu Dhamodaran, Life Convict **No.*14883** now confined in Central Prison, Cuddalore before this Court and set the detenu at liberty as having become eligible for premature release by virtue of G.O.Ms.No.64, Home (Prison IV) Department dated 01.02.2018.

For Petitioner : Mr.P.Kumaresan

For Respondents: Mr.M.Mohamed Riyaz,
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 produce



the detenu Dhamodaran, S/o.Chidambaram, Life Convict **No.*14883** now confined in Central Prison, Cuddalore, before this Court and to set him at liberty, as having become eligible for premature release by virtue of G.O.Ms.No.64, Home (Prison IV) Department dated 01.02.2018.

2. Petitioner's husband faced trial and was convicted for offences under Sections 148, 341. 341 and 302 r/w 149 of the Indian Penal Code in S.C.No.99 of 2006 on the file of the learned Additional Sessions Judge (Fast Track Court No.II), Tuticorin and also convicted for offences under Sections 148, 427, 324, 302 and 302 r/w 149 in S.C.No.170 of 2001 on the file of the learned Additional Sessions Judge cum Fast Track Court No.I, Tuticorin. Petitioner's husband was awarded life sentence in both cases. Aggrieved, petitioner's husband preferred appeals before this Court in Crl.A.Nos.510 and 313 of 2008 and both the appeals were dismissed.

3. Petitioner's husband had moved a Criminal Original Petition for the sentence imposed in S.C.No.99 of 2006 and S.C.No.170 of 2001 to run concurrently in Crl.O.P.No.15756 of 2013 and the same was allowed by this Court by order dated 10.10.2013. Seeking premature release, petitioner submitted a representation dated 07.02.2018 to the third respondent and the same is yet to be considered. Hence, the present petition.

4. Heard learned senior counsel for petitioner and learned Additional Public Prosecutor for respondents.

5. Learned counsel for petitioner submits that petitioner's husband whose release is sought under G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018 is eligible therefor as he satisfies all parameters drawn up in the said Government Order. Learned counsel adds that the petitioner's place of residence is Tuticorin while the family members of the deceased in the cases in which petitioner's husband was involved also reside at Tuticorin, (South Tamil Nadu). His wife has made a representation informing that she, an employed person, would obtain transfer and reside at North Tamil Nadu and the family would take care of his safety. Given such position, there is no bar to the petitioner's husband being granted relief under G.O. (Ms) No.64, Home (Prison IV) Department dated 01.02.2018.

6. Learned Additional Public Prosecutor submits that the petitioner's husband was sentenced to life imprisonment in respect of two cases. This Court under orders in Crl.O.P.No.15756 of 2013 dated 10.10.2013 held that both sentences run concurrently. Learned Additional Public Prosecutor submits that the detenu now is otherwise eligible for



release, save considerations of safety of family members of the victims, which is one of the considerations to be entered upon while passing an order of release pursuant to G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018. The report of the Probation Officer, Tuticorin, dated 05.02.2018 informs of danger to the life of the prisoner thereat. Government would now consider the report and take a decision regards release of petitioner's husband.

7. Considered the rival submissions.

8. 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. With the above observations, we direct the authorities to dispose of petitioner's representation within a period of twelve weeks.

The Habeas Corpus Petition, accordingly, is disposed of.

Sd/-

Assistant Registrar

**Corrected as per order
dated 22/01/2019 and
made herein**

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Home (Prison IV) Department,
Fort St. George,
Chennai - 600 009.



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2. Additional Director General of Prisons,
Thalamuthu Natarajan Maaligai,
2nd Floor, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3. Superintendent of Central Prison,
Cuddalore Central Prison,
Vandipalayam Post,
Cuddalore.

4. The Public Prosecutor,
High Court, Madras.

Corrected order to be
substituted to the order
order already despatched
on 21/01/2019

+1cc to Mr.P.Kumaresan, Advocate, ***S.R.No.4734**

H.C.P.No.1950 of 2018

AK(CO)
GSP(09/01/2019)
nr 30/01/2019