

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

H.C.P.No.2099 of 2018

C.Amutha

.. Petitioner

-vs-

1. The Home Secretary,
Home Department,
Secretariat, Fort St. George,
Chennai-600 009.
 2. The Additional Director General of Police and
Inspector General of Prisons,
Whannels Road,
Egmore,
Chennai-600 008.
 3. The Superintendent of Police,
Salem Central Prison,
Salem District.
- .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondents to produce the petitioner's son namely C.Senthi, S/o.Chinna Samy Gounder, Life convict No.4787, aged about 46 years detain in Central Prison, Salem and directing the respondents to consider him under G.O.Ms.No.64 dated 01.02.2018 for premature release.

WEB COPY

For Petitioner : Mr.M.Mohamed Saifulla

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

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The mother of a life convict, who is Mr.C.Senthi S/o.Chinna Samy is before this Court, seeking a Writ of Habeas Corpus, directing the respondents to produce the petitioner's son, who is lodged in Central prison, Salem District and to consider his release under G.O.Ms.No.64 dated 01.02.2018 for premature release.

2.The petitioner's son viz., Mr.C.Senthi was convicted by the Sessions Court in S.C.No.50 of 1998 on 25.08.1999 for having murdered one Mr.Periaraj on 15.04.1996 due to enmity under Section 302 IPC and under Section 25 (1) (B) (a) of Arms act. After conviction, he was lodged in Prison and he has been in judicial custody for the past 16 years.

3.The Government of Tamil Nadu passed an order in G.O.Ms.No.64 dated 01.02.2018, by which the prisoners, who were detained in prison for more than ten years could be considered for premature release and the cut off period for such consideration is completion of ten years on or before 25.02.2018. Since the petitioner's son had already completed ten years and in fact, he had been there for more than sixteen years. Thereafter, the petitioner gave a representation on 31.07.2018 to the respondent for premature release. Since the said representation was not considered and no order has been passed, the petitioner is come before this Court.

4.Heard both the parties. Mr.M.Mohamed Saifulla, learned Counsel appearing for the petitioner would submit that the petitioner's son has completed 16 years and his conduct is very good in the jail and there should not be any impediment. He would further submit that the convict is teaching Yoga to the co-prisoners for the past 8 years. In this regard, he would rely upon the communication of the Superintendent of Central Prison, Salem dated 05.10.2015, where it has been stated that the petitioner's son has been teaching yoga from the year 2010 onwards. He would also rely upon the G.O.Ms.No.64 dated 01.02.2018, by which the petitioner's son is entitled to be released prematurely as the petitioner's son had completed more than 10 years of imprisonment.

5.However, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that the convict was not only convicted under the Indian Penal Code but also under Section 25 (1) (B) (a) of Arms act, which is a Central Act, for which, the consent

of the Central Government is required as per Section 435 of Criminal Procedure Code. Hence, he would submit that the petitioner's son is not entitled for premature release under G.O.Ms.No.64.

6.By way of reply, Mr.Mohamed Saifulla, learned counsel appearing for the petitioner would submit that the Honourable Supreme Court in Rajiv Gandhi's Assassination case in "Union of India Vs.V.Sriharan @ Murugan and others" in W.P.(Crl).No.48 of 2014 with Crl.M.P.Nos.6280-6281 of 2017 by order dated 06.09.2018 has held as follows:-

"From the documents filed on 01.09.2018 by the learned counsel, it appears that an application under Article 161 of the Constitution has been filed before the Governor of Tamil Nadu by the respondent-A.G.Perarivalan @ Arivu. Naturally, the authority concerned will be at liberty to decide the said application as deemed fit."

Therefore, it is clear that the State Government is at liberty to take a decision on this aspect, which can be forwarded to His Excellency The Governor for taking a decision in this regard. Therefore, it is clear that there is no prohibition for the State Government to make recommendation if it deems fit. It is clear from the records that as on date the petitioner's son has been in jail for the past 14 years 8 months and 4 days. Hence, G.O.Ms.No.64, dated 01.02.2018 is squarely applicable to the facts of the case.

7.Even as per the Judgment of the Honourable Supreme Court, the State Government has got power to decide about the matters, where the offences under Central Government's Act is involved. Therefore, the petitioner's representation for release of her son dated 31.07.2018 has to be considered. It is also seen from the records that the 3rd respondent had already rejected the representation of the petitioner, who is the mother of the convict dated 31.07.2018 as the petitioner's son was involved in the offence under Arms Act.

8.In view of the Judgment of the Honourable Supreme Court in Rajiv Gandhi's Assassination case, the rejection of the petitioner's representation is not sustainable. Therefore, the communication of the 3rd respondent in Letter No.4787/jF.1/2018, dated 25.09.2018 is set aside and the 3rd respondent is directed to reconsider the issue afresh, within a period of six weeks from the date of receipt of a copy of this order as there is no

prohibition for the 3rd respondent for making recommendation in view of the offence involved in this case under the Arms Act. To put it in other words, the convict is eligible to get the benefit under G.O.Ms.No.64 as there is no prohibition for the convict to be considered for premature release.

9.Hence, the recommendation/proposal of the 3rd respondent shall be made and the same has to be sent to the Committee/Board within a period of six weeks from the date of receipt of a copy of this order. On such receipt of the proposal or recommendation, the Committee/Board shall take a decision, as per law, at the earliest.

With the above direction, this Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ay/sai
To

1. The Home Secretary,
Home Department,
Secretariat,
Fort St.George,
Chennai-600 009.
2. The Additional Director General of Police,
Inspector General of Prisons,
Whannels Road,
Egmore,
Chennai-600 008.
3. The Superintendent of Police,
Salem Central Prison,
Salem District.

+lcc to Mr.M.Mohamed Saifulla, Advocate Sr.66734

srg 8/10/2018

H.C.P.No.2099 of 2018