

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.470 of 2018

S.Danalakshmi
W/o.Selvanathan ... Petitioner

vs.

- 1.The Government of Tamil Nadu,
represented by its
Secretary,
Home Department,
Fort St.George,
Chennai - 600009.
- 2.The Superintendent of Central Prison,
Salem. Respondents

This Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing respondents to produce the detenu Manikandan S/o.Elangovan, aged 29 years, Convict Prisoner No.7485, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.S.Shanmugavelayutham,
Senior counsel for
Mr.T.Vijayaraghavan

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

WEB COPY
O R D E R
[Order of the Court was made by C.T.SELVAM, J]

Petitioner seeks a direction to respondents to produce the detenu Manikandan S/o.Elangovan, aged 29 years, Convict Prisoner No.7485, now confined at Central Prison, Vellore, before this Court and to set him at liberty.

2. Petitioner's brother faced trial in S.C.Nos.206 of 2003 and 597 of 2005 on the file of learned Additional Sessions

Judge, Vellore, in respect of two cases of murder and in both cases, he was convicted and sentenced to life imprisonment. Under judgment in H.C.P.No.901 of 2010 dated 19.08.2010, this Court was pleased to direct that sentences in both cases run concurrently. Seeking premature release, petitioner submitted a representation dated 27.02.2018 to respondents and the same is yet to be considered. Hence, the present petition.

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

4. Learned senior counsel for petitioner submits that petitioner's brother 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 senior counsel adds that the petitioner's place of residence is Salem while the family members of the deceased in the cases in which petitioner's brother was involved reside at Chennai. His sister has made a representation to Government informing that her brother would reside at Salem and the family would take care of his safety. Given such position, there is no bar to the petitioner's brother being granted relief under G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018.

5. Learned Additional Public Prosecutor submits that the petitioner's brother was sentenced to life imprisonment in respect of two cases of offence u/s.302 IPC. This Court under orders in H.C.P.No.901 of 2010 dated 19.08.2010 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, Salem, dated 13.02.2018 informs no danger to the life of the prisoner thereat. However, the report of Probation Officer, Thirupathur, dated 13.02.2018, informs of danger to the life of family members of the deceased. Government would now consider both reports and take a decision regards release of petitioner's brother.

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, 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, we direct the authorities to dispose of petitioner's representation within a period of 12 weeks from today.

The Habeas Corpus Petition, accordingly, is disposed of.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

gm
To

1. The Secretary,
Home Department,
Fort St. George,
Chennai - 600009.

2. The Superintendent of Central Prison,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr. T. Vijayaraghavan, Advocate sr 74259

H.C.P.No.470 of 2018

SRG (01/11/2018)