



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA  
AND  
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 502 OF 2017

Kairunnisa

.. Petitioner

- Vs -

1. The Government of Tamil Nadu  
rep. By the Secretary to Govt.  
Home (Prison IV) Department  
Fort St. George, Chennai 600 009.
2. The Addl. Director General of Prisons  
Thalamuthu Natarajan Maaligai  
2<sup>nd</sup> Floor, Gandhi Irwin Road  
Egmore, Chennai 600 008.
3. The Superintendent of Central Prisons  
Madurai 625 016.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus directing the respondents herein to consider the representation of the petitioner dated 21.02.2016 and treat her son Abu Thahir @ Abu, Life Convict No.5256, confined in Central Prison, Madurai, as having become eligible for premature release pursuant to G.O. Ms. No.618, Home (Prison IV) Department, dated 22.08.2015 issued in the case of Lazer, S/o Ponnaiah Nadar, Life Convict No.1319, a similarly placed life convict and set the petitioner's son Abu Thahir @ Abu, Life Convict No.5256, confined in Central Prison, Madurai, at liberty.

For Petitioner : Mr. B.Nambiselvan

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The present petition has been filed by the petitioner for a direction to the respondents to prematurely release the detenu, Abu Thahir @ Abu, Life Convict No.5256, now confined in Central Prison, Madurai, on par with similarly placed convict, Lazer, who has been released pursuant to G.O. Ms. No.618, Home (Prison IV) Department, dated 22.08.2015.



2. The facts of the case reveal that the detenu, Abu Thahir @ abu was convicted for the offence u/s 302 r/w 34 IPC in S.C. No.8 of 1999, vide order dated 29.12.1999 by the learned I Addl. Sessions Judge, Coimbatore and sentenced to life. The appeal preferred by the detenu against the said order was dismissed and since then the detenu is in confinement in Central Prison for the past more than 20 years.

3. Vide G.O. Ms. No.873, Home Department dated 14.9.06, G.O. Ms. No.1326, Home Department dated 13.09.2007 and G.O. Ms. No.1155, Home Department dated 11.09.2008, life convict prisoners were released during the year 2006, 2007 and 2008, subject to certain conditions and on fulfilling certain criteria.

4. It is the case of the petitioner that the detenu was also eligible to be considered for premature release by virtue of G.O. Ms. No.1155 dated 11.09.2008 on par with similarly situated convicts. However, the detenu, was not considered for release, and has been discriminated from other persons, which is violative of Article 14 of the Constitution, though the detenu has been under confinement for more than 20 years.

5. Against non-consideration of the detenu for premature release, HCP (MD) No.179 of 2014 was filed by the petitioner before the Madurai Bench of the Madras High Court and by order dated 5.6.2014, the Madurai Bench allowed the petition. Against the said order, the respondents therein preferred Criminal Appeal No.687 of 2015 before the Hon'ble Supreme Court and by judgment dated 21.04.2015, the Supreme Court set aside the order and directed that the case of the detenu shall be examined by the Advisory Board and appropriate decision taken for the release based on the order passed by the Advisory Board.

6. Pursuant to the judgment of the Supreme Court, the case of the detenu was placed before the Advisory Board on 16.06.2015 for considering his premature release. The Advisory Board, after consideration of the case of the detenu, did not recommend the case of the detenu for premature release and accepting the said recommendations of the Advisory Board, the Government issued G.O. (D) No.707 dated 21.9.2015 rejecting the case of the petitioner for the premature release of the detenu.

7. The present habeas corpus petition has been filed by the petitioner for premature release of the detenu, once over, on par with the case of Lazer, Convict No.1319, who has been released vide G.O. Ms. No.618, Home (Prison IV) Dept., dated 22.8.2015.

8. It is the contention of the learned counsel for the petitioner that though the Apex Court had directed the respondents to place the matter before the Advisory Board and,



thereafter, to pass orders, the orders of the Advisory Board is a non-speaking order, based on which the case of the detenu has been rejected by the Government, which is against the principles of natural justice. No reason whatsoever has been assigned by the Advisory Board for rejecting the case of the detenu, which has been accepted by the Government. It is the further case of the petitioner that the case of the detenu is not being considered on par with similarly placed convicts, one of whom is Lazer, Life convict No.1319, who has been released pursuant to G.O. Ms. No.618, Home (Prison IV) Dept., dated 22.8.2015 and, therefore, it is submitted that similar treatment ought to be meted out to the detenu as well.

9. This court heard the learned Addl. Public Prosecutor on the above contentions, who submitted that the Advisory Board had rejected the case of the detenu, as he did not fall within the zone of consideration for premature release at that point of time. However, it is submitted by the learned Addl. Public Prosecutor that the case of the detenu has been recommended by the jail authorities for premature release and his case is pending consideration of the Government.

10. This Court bestowed its best attention to the materials available on record as also the submissions advanced by the learned counsel on either side. This Court also took note of the decision of the Apex Court and the orders passed in pursuance of thereof.

11. Though very many contentions have been advanced, however, considering scope and nature of order which this Court proposes to pass, it would not be necessary to dwell into the merits of the issue. Suffice to direct the respondents to consider the case of the detenu, whose case has already been recommended to the Government for premature release, within a specified period.

12. In such view of the matter, this Court directs the respondents to consider the recommendation made for the premature release of the detenu and pass orders on the said recommendation within a period of four weeks from the date of receipt/production of a copy of this order. The respondents shall keep in mind the long drawn legal tussle for the premature release of the detenu and the respondents shall pass orders on the recommendation within the time frame prescribed by this Court above.

13. This habeas corpus petition is disposed of with the aforesaid observation and direction.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar



To

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

2. The Addl. Director General of Prisons  
Thalamuthu Natarajan Maaligai  
2<sup>nd</sup> Floor, Gandhi Irwin Road  
Egmore, Chennai 600 008.

3. The Superintendent of Central Prisons  
Madurai 625 016.

+1cc to Mr.B.Nambiselvan, Advocate SR.No.52302

H.C.P. NO. 502 OF 2017

KS (CO)  
SMI/31.08.2018