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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.189 of 2018

Malliga

: Petitioner

Vs.

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

2.The Additional Director General of Police/
Inspector General of Prisons,
C.M.D.A. Towers II, No.1, Gandhi Irvin Road,
Elumbur, Chennai 8.

3.The Deputy Inspector General of Prison,
Office of the Deputy Inspector of Police,
C.M.D.A. Towers II, No.1, Gandhi Irvin Road,
Elumbur, Chennai 8.

4.The Superintendent of Prison,
Office of the Superintendent of Prison,
Cuddalore.

5.The Regional Probation Officer,
Office of the Regional Probation Officer,
Vellore District 632 009.

: Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus directing the Respondents to produce the petitioner's husband namely Rajesh Kanna @ Rajeshkumar (CP No.15981) aged about 48 years, S/o Jeyaraman now confined at Cuddalore Central Prison under premature release on the basis of the G.O.Ms.64, Home (Pri IV) Department, dated 01.02.2018 and by considering the representation submitted by the petitioner, dated 13.02.2018 within the time stipulated by this Court.

For Petitioner
For Respondents

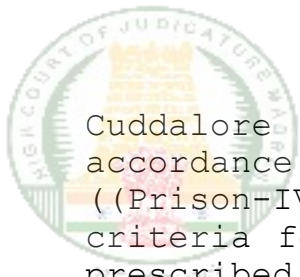
: Mr.R.Alagumani
: Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.C.Ramesh
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.VIMALA, J]

<https://hcservices.ecourts.gov.in/hcservices/>

this petition has been filed by the wife of prisoner, who is aged about 48 years, contending that he has been incarcerated in



Cuddalore Central Prison and he is eligible for remission in accordance with the Government Order in G.O.(Ms)No.64, Home ((Prison-IV) Department, dated 01.02.2018, by which, the eligible criteria for those persons to be considered for remission has been prescribed.

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2.The prisoners, who are eligible for consideration for premature release has been enlisted in G.O.(Ms)No.64, Home ((Prison-IV) Department, dated 01.02.2018, and the Sections reads as under:-

“(II) The life convicts who have completed 10 years of actual imprisonment as on 25.02.2018 and the life convicts who are aged 60 years and above and who have completed 5 years of actual imprisonment on 25.02.2018 including those who were originally sentenced to death by the Trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to satisfaction of the following conditions:-

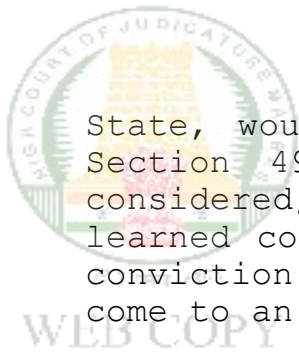
1)The prisoner's behaviour should be satisfactory.

2)Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence namely:-

(A)Prisoners convicted for the following offences, namely:-

- (i)Rape (Section 376 of IPC)
- (ii) Forgery (Section 467, 471 of IPC)
- (iii)Robbery (Section 397, 398 of IPC)
- (iv)Dacoity (Section 396, 397, 398, 399, 400, 402 of IPC)
- (v)Terrorist crimes
- (vi)Offences against the State
- (vii)Offences under Sections 153-A, 153-AA and 153B of IPC.
- (viii)Escape or attempting to escape from lawful custody (except overstaying of parole leave only)
- (ix)Forgery/counterfeit of currency notes or bank notes/making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes (section 472, 474, 489A, 489B and 489D of IPC)
- (x)Cruelty against women or dowry death (section 498A and 304B IPC)
- (xi)Economic offences, black-marketing, smuggling or misuse of power and authority.
- (xii)Selling illicit arrack mixed with poisonous substance.
- (xiii)Habitual Forest offenders who are responsible for disturbing the ecological balance.”

3.The learned Additional Advocate General appearing for the



State, would state that the petitioner has got a conviction under Section 498A of IPC and therefore, he is not eligible to be considered, as per clause 2A(x) of the above Guidelines. But the learned counsel for the petitioner would submit that the period of conviction has been already suffered by the petitioner and it has come to an end and therefore, it is a fit case for consideration.

4. In any event, it is stated in the other similar cases that it is the prerogative of the Government to consider the remission under the provisions of the Constitution as well as under the Provisions of Criminal Procedure Code. Under such circumstances, despite the contentions raised by both sides, if there are any other grounds for consideration in any perspective, it is open to the Government to consider the case of the petitioner. Accordingly, we direct the Government to consider the representation of the petitioner, dated 13.02.2018 and to pass appropriate orders in law and on facts, within a period of four weeks from the date of receipt of a copy of this order.

5. The Habeas Corpus Petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar.

To

1. The Principal Secretary to Government,
Home (Prison) Department, Fort St. George, Chennai 600 009.
2. The Additional Director General of Police/
Inspector General of Prisons, C.M.D.A. Towers II, No.1,
Gandhi Irvin Road, Elumbur, Chennai 8.
3. The Deputy Inspector General of Prison,
Office of the Deputy Inspector of Police, C.M.D.A. Towers II,
No.1, Gandhi Irvin Road, Elumbur, Chennai 8.
4. The Superintendent of Prison,
Office of the Superintendent of Prison, Cuddalore.
5. The Regional Probation Officer,
Office of the Regional Probation Officer, Vellore District 632 009.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+2CC to Mr. R. Alagumani, Advocate, SR.No. 49514 & 49280

ORDER MADE IN
HCP [MD].No.189 of 2018
16.02.2018