



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD]No.347 of 2017

Udayali

: Petitioner

Vs.

1.The State of Tamil Nadu, Rep. By,
The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu
Secretariat, St.George Fort, Chennai-9.

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

3.The Superintendent of Prison,
Madurai Central Prsion, Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, directing the respondents to produce the petitioner by name Udayali, son of Subramani, aged about 48 years now lodged and confined at Central Prison, Madurai before the Hon'ble Court and set the petitioner at liberty under Tamil Nadu Prison Rules, 1993, within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Chellapandian

assistant by

Mr.K.Dinesh Babu,

Additional Public Prosecutor

ORDER

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

" I know not whether the laws be right, or whether laws be wrong;
All that we know who lie in gaol is that the wall is strong; and that each day is like a year,
a year whose days are long." - Oscar Wilde.

2. The imprisonment encompassing prison and the prison depriving freedom for the human-beings are the nightmare for any convict and sometimes for the family members of the convict also. Nobody would like to go to prison, however good it may be. Some of



the leaders had claimed that it is only in prison, they are able to write books, understand liberty and have time to enhance their knowledge. The prison has the important role of protecting the community against the most dangerous offenders.

3. Whether the prison system promotes reformatory theory of punishment, is the issue to be considered, in the light of the prayer made by the petitioner and other convict prisoners. The darker shades of prison depicting problems on account of overcrowding, sexual abuse, corruption, drug abuse, mental illness, health problems, etc., would also be a factor while considering the question of remission of sentence.

4. The world is talking about the alternatives to imprisonment which may be helpful: (a) to repair the harms suffered by the victims, (b) treatment to drug addict, (c) treatment to mentally challenged and (d) rehabilitation of offenders, in addition to reducing prison cost. Even though the Hon'ble Supreme Court placed its appreciation for open prisons as an effective institution for rehabilitation of offenders in the case of Dharamveer v. State of Uttar Pradesh, still, open prison is rarely seen in India.

5. With this background in mind, the Court has to consider the claim made by the prisoners.

6. Furnishing the following particulars and relying upon Rules 335, 339 and 341 of the Tamil Nadu Prison Rule, 1993, the convict petitioner prays for issuance of a Habeas Corpus directing the authorities concerned to set him at liberty. The particulars furnished are as follows:-

S.N o.	Relevant parameter	Required Details
1.	Name of the Detenu	Udayali (M ,48/17), S/o. Esakkimuthu
2.	Period of detention	16 years and 8 months
3.	Date of Representation	10.01.2017
4.	Punishment	Under Section 376 of Indian Penal Code - sentences to undergo imprisonment for life. Under Sections 302 of Indian Penal Code- sentences to undergo imprisonment for life, the learned trial judge directed to undergo both sentences to run concurrently.



7. It is submitted that the petitioner submitted a representation, dated 10.01.2017, placing the relevant facts and sought for pre-mature release. The response by the respondent has not been placed before this Court.

7.1. However, it is submitted that the petitioner is entitled to be considered in the light of the decision of this Court reported in P.Veera Bhaarithi v. State of Tamil Nadu and two others reported in (2016) 6 CTC 522.

8. The main contention raised by the learned counsel appearing for the petitioner is that the claim for premature release has been rejected, by the authorities by erroneously placing reliance on proviso to Sub-Rule 3 of Rule 341 of Prison Rules and that if the clarification issued by the Director General of Prisons, by the proceedings No.1418, dated 04.11.1999 is followed, the claim of the petitioner, including many other claims, would have been accepted and would not have been rejected.

8.1. Hence, the petitioner seeks the relief that the claim of the petitioner should be considered in the light of the directions issued by the Division Bench of this Court, in the case of P.Veera Bhaarithi, cited supra.

9. The learned Additional Public Prosecutor representing the respondents/State submitted that it is the prerogative right of the Government to consider the remission under Sections 433 and 433A of the Cr.P.C., and the Government would consider the case of the petitioner, in the light of G.O.64, dated 01.02.2018 and other relevant rules.

10. It is appropriate to point out the decisions referred to in G.O.64, dated 01.02.2018:-

(i) Epuru Sudhakar and another v. Government of Andhra Pradesh and ors, dated 11.10.2006.

(ii) Maru Ram and others v. Union of India and Another, dated 11.11.1980.

(iii) Union of India v. Sriharan @ Murugan and others.

10.1. Out of these three decisions, in the case of Epuru Sudhakar, cited supra, it has been clearly pointed out that even though exercise of Executive clemency is a matter of discretion, it is subject to certain standards and therefore, the discretion has to be exercised on public considerations alone and the relevant observations reads as under :-

"33. Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion,



therefore, has to be exercised on public consideration alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriating of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of Exclusive Cognizance would not apply when and if the decision impugned is in derogation of a Constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutation.

34.... Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future."

11. We hope and trust that the representation of the petitioner would be considered, in the light of the legal position indicated above and we direct the authorities to pass orders on the claim of the petitioner, treating this writ petition and the representation already submitted and to pass appropriate orders, within a period of three months from the date of receipt of a copy of this order.

12. With the above directions, this Habeas Corpus Petition is disposed of.

Sd/-

Assistant Registrar(CS-I)

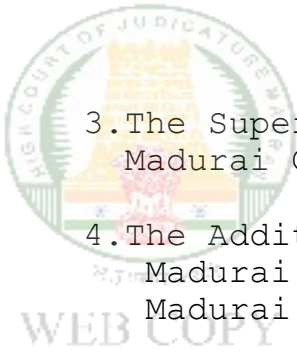
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Sub Assistant Registrar(CS-I)

To

1. The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu
Secretariat, St.George Fort,
Chennai-9.

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



3.The Superintendent of Prison,
Madurai Central Prsion, Madurai

4.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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DAS/RMI
ES/RP/SAR 1/10.10.2018/5P/5C