

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. No.1320 of 2018

Kaliammal Petitioner / Mother of
the detenu

.. Vs ..

State rep. by:

1. The Secretary,
Department of Home (Prison),
Secretariat, Fort St. George,
Chennai - 9.
 2. The Additional Director General of Prisons,
Wanels Road, Egmore,
Chennai - 8.
 3. The Superintendent of Prison,
Central Prison,
Coimbatore.
- ... Respondents / Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to release the detenu Sakthivel S/o.Palanisamy (O.J. C.T.18316) aged about 37 years for the premature release in considering the G.O.(Ms) No.64/Home Prison (IV) Department/2018 dated 01.02.2018 on the file of first respondent herein, now confined at Central Prison, Coimbatore and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor
- - - - -

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

This Habeas Corpus Petition has been filed by petitioner, who is the mother of detenu seeking a direction to the respondents to release the detenu Sakthivel S/o.Palanisamy (O.J.C.T.18316) aged about 37 years for the premature release in considering the G.O.(Ms) No.64/Home Prison (IV) Department/2018 dated 01.02.2018 on the file of first respondent herein, now confined at Central Prison, Coimbatore and set him at liberty.

2. Heard learned counsel for petitioner as also learned Additional Public Prosecutor for respondents.

3. Learned Additional Public Prosecutor submits that the authorities are not able to consider the premature release, since G.O.(Ms)No.64/Home Prison (IV) Department/2018, dated 01.02.2018 informs the ineligibility thereof when the prisoner has been convicted for offence under Section 3 of the Explosive Substance Act.

4. It is seen that the prisoner was convicted for offence under Section 302 r/w. 149 IPC and sentenced to undergo life imprisonment and also convicted for the offence under Section 3 of the Explosive Substance Act and sentenced to undergo ten years rigorous imprisonment and the prisoner has already undergone the sentence.

5. Petitioner has made representations on 14.02.2018 and 02.07.2018 to the respondents informing the application of G.O. (Ms).No.64, Home (Prison-IV) Department, dated 01.02.2018 in the case of her son/convict prisoner and seeking relief thereunder. The said representations have not been considered so far and hence, she has come to this Court with this Habeas Corpus Petition.

6. The petitioner already has undergone to sentence for offence u/s. 3 of the Explosive Substances Act. It is understandable if authorities were to deny relief to the prisoner on the ground that he is undergoing the sentence for an offence, commission of which disentitles him to relief under a Government Order for premature release. Visiting a prisoner with denial of relief on the ground that he stands convicted for an offence the sentence for which already he has undergone, in effect amounts to imposing a dual punishment in respect of one and the same offence. Such is impermissible in law.

7. Since the convict prisoner has already undergone the sentence, this Habeas Corpus Petition shall stand disposed of. The detenu viz., Sakthivel (Convict No.O.J.C.T.18316 housed in Central Prison, Coimbatore), S/o.Palanisamy, aged 37 years is directed to be released forthwith in terms of G.O.Ms.No.64 Home [Prison-IV] Department, dated 01.02.2018 unless his presence is required in any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jrl/kkn

To:

1. The Secretary,
Department of Home (Prison),
Secretariat, Fort St. George,
Chennai - 9.
2. The Additional Director General of Prisons,
Wanels Road, Egmore,
Chennai - 8.
3. The Superintendent of Prison,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai - 9.

+1 cc to Mr.R.Sankarasubbu, Advocate, S.R.No.5928

KAN(CO)
SSM(30/01/2019)

H.C.P.No.1320 of 2018