

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.08.2019

Pronounced on : 29-08-2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No. 14261 of 2019

S. Nalini
W/o Sriharan @ Murugan
Convict No.810
Special Prison for Women
Vellore

.. Petitioner

Versus

1. The State of Tamil Nadu
Rep. by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.

2. The Superintendent of Prison
Special Prison for Women
Vellore-2

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent No.1 - State of Tamil Nadu to consider the petitioner's representation dated 13.02.2019 and implement its decision to release the petitioner from prison immediately.

For petitioner : Mr. M. Radhakrishnan

For respondents : Mr.A. Natarajan, State Public Prosecutor
assisted by Mr. M.M. Mohammed Muzammil
Government Advocate (Crl.side)

ORDER

R. Subbiah, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent No.1 - State of Tamil Nadu to consider her representation dated

13.02.2019 and implement its decision to release her from prison immediately.

2. The petitioner was one of the accused in the case pertaining to assassination of former Prime Minister of India Shri. Rajiv Gandhi. After trial, by judgment dated 28.01.1998 passed by the Presiding Judge, Designated Court No.1, Poonamallee (Additional City Civil and Sessions Court, Chennai - 600 104), the petitioner along with other co-accused were convicted and awarded sentence of death. Such conviction and sentence imposed on the petitioner and others was confirmed by the Honourable Supreme Court of India on 08.10.1999. The Mercy Petition submitted by the petitioner and others to the Governor of Tamil Nadu was also rejected on 17.10.1999. Aggrieved by the same, the petitioner, along with others, filed Writ Petition Nos. 17655 to 17658 of 1999 before this Court. This Court, by order dated 25.11.1999, directed the respondents to consider the mercy petition filed by the petitioner and others afresh. Pursuant to such direction, the Governor of Tamil Nadu commuted the death sentence imposed on the petitioner and others into that of imprisonment of life and it was communicated by the Government on 24.04.2000.

3. According to the petitioner, she had so far undergone twenty seven years of imprisonment as on 09.05.2019. Further, those who were awarded imprisonment for life have been released prematurely by the Governor of Tamil Nadu in exercise of the powers conferred under Article 161 of The Constitution of India. However, the petitioner's case for considering her release on the occasion of birth anniversary of Perarinar Anna on 15.09.2016 was not considered purportedly on the ground that her case was coming under the purview of Section 435 of Code of Criminal Procedure. Aggrieved by the inaction on the part of the Government, the petitioner earlier filed Writ Petition No. 4120 of 2006 before this Court, which was dismissed. The Writ Appeal No. 1207 of 2008 filed by the petitioner was also dismissed on 06.04.2010 by holding that the classification of life convicts falling within the scope of Section 435 of The Code of Criminal Procedure and those outside the scope of Section 435 of The Code of Criminal Procedure is a reasonable classification and it is for the Government to consider the premature release of the convicts by exercising the remission powers. According to the petitioner, she has submitted a representation dated 13.02.2019 to the Government of Tamil Nadu seeking her release by exercising the power under Article 161 of The Constitution of India, but it was not considered. The petitioner also submitted another representation dated 23.02.2019 to the Chief Minister of the State of Tamil Nadu, but it was also not considered, therefore, she has filed the present writ petition.

4. Mr. Radhakrishnan, learned counsel for the Petitioner would contend that the Government of Tamil Nadu has framed a scheme for premature release of life convicts vide letter (FS) No. 1358, Home Department dated 10.11.1994 particularly to those who have completed 20 years of actual imprisonment on humanitarian grounds under Article 161 of The Constitution of India. As per the said Scheme, some of the life convicts who have completed 20 years of actual imprisonment were released but the benefit of the said scheme has not been extended to the petitioner. The petitioner had completed 27 years of actual imprisonment and therefore, she is entitled to the benefits conferred under the scheme framed by the Government on 10.11.1994. Further, the Council of Ministers have also advised the Governor of the State on 09.09.2018 to release the petitioner and six other life convicts involved in the assassination of former Prime Minister of the Country Shri. Rajiv Gandhi, pre-maturely. Such advise given by Council of Ministers binds the Governor of Tamil Nadu. In spite of such advise, for more than ten months, the Governor of Tamil Nadu did not consider the advice given to release the petitioner and others. In fact, the petitioner has earlier filed Writ Petition SR No. 67881 of 2019 in which she had arrayed the Governor of Tamil Nadu as party to the writ petition, however, the writ petition SR No. 67881 of 2019 was rejected by holding that a Writ Petition against Governor of the State is not maintainable as the Governor is insulated by Article 361 of The Constitution of India. Thereafter, the petitioner has filed this writ petition to issue a direction to the respondents to consider her representation dated 13.02.2019 seeking premature release. Even though the representation dated 13.02.2019 has been received by the first respondent, till date, no order has been passed thereof and the delay in passing an order on the representation dated 13.02.2019 of the petitioner warrants issuance of a Mandamus by this Court.

5. Mr. A. Natarajan, the learned Public Prosecutor appearing for the respondents-State would vehemently oppose the prayer sought for in this writ petition. According to the learned Public Prosecutor, the petitioner cannot, as a matter of right, seek for a direction to the respondents to release her prematurely. The learned Public Prosecutor would further contend that it is the policy of the Government not to release prisoners who are involved in heinous crime in tune with the recommendation made by the All India Prison Reform Commission in Para 17.2 under Chapter XX. The Government of Tamil Nadu, accepting the recommendations of the Commission, had taken a policy decision not to exercise the power under Article 161 of The Constitution of India as against those prisoners who are involved in grave offences. Even otherwise the exercise of

power conferred under Article 161 of The Constitution of India by the Government cannot be called in question by filing the present writ petition as it is a decision to be taken by the Government by bearing in mind various factors.

6. The learned Public Prosecutor would further contend that as per Rule 341 (2) of the Tamil Nadu Prison Rules read with Section 433-A of The Code of Criminal Procedure, the case of those prisoner, whose sentence of death is commuted to life, shall be placed before the Advisory Board, only if they have served fourteen years of imprisonment. The case of the petitioner was also placed before the Board on 28.12.2006. On the basis of the recommendation of the Advisory Board, the Government passed an order in G.O. Ms. No. 873, Home (Prison-IV) Department dated 14.09.2016 rejecting the claim of the petitioner for premature release. Further, the Government in letter No. 87791/Prison 4/2006-1, Home dated 31.01.2006 issued clarification to the effect that those prisoners whose premature release was rejected by the Government may be re-submitted after completion of twenty years of actual imprisonment provided their case fall within the guidelines issued by the Government in G.O. (Ms) No.1762, Home Department dated 20.07.1987. In other words, those prisoners who are convicted under specified Sections mentioned in G.O. Ms. No.1762 dated 20.07.1987 alone are entitled for the benefit of premature release. As far as the petitioner is concerned, even though she had completed twenty years of actual imprisonment, the provisions under which she was convicted is not coming within the purview of G.O. Ms. No.1762 dated 20.07.1987 and therefore also the petitioner is not entitled for premature release. In any event, the petitioner along with other co-accused have filed WP (Criminal) No. 48 of 2014 before the Honourable Supreme Court and in the order dated 06.09.2018 it was observed that the authorities concerned are at liberty to decide the application seeking premature release as deemed fit. On the basis of such direction, invoking the powers vested in the Government under Article 161 of The Constitution of India, a proposal for premature release of the petitioner and others was sent to the Governor of Tamil Nadu and the same is under consideration. Therefore, the learned Public Prosecutor would only contend that a Mandamus, as sought for by the petitioner need not be issued and prayed for dismissal of the writ petition.

7. We have heard the counsel for both sides and perused the material records placed. The petitioner seeks for issuing a Mandamus to the respondent No.1 - Principal Secretary to the Government, Home, Prohibition and Excise Department, Government of Tamil Nadu to consider her representation dated 13.02.2019. In the said representation, the petitioner herself has made reference to the decision taken by the Government of Tamil Nadu

on 09.09.2018 recommending to the Governor of the State to release her and other co-accused prematurely. It was also stated in the said representation dated 13.02.2019 that some of the prisoners who have completed 10 years of actual imprisonment have been released prematurely but her case has not been considered so far. However, the petitioner herself admits that the Government had taken a decision to release her and other co-accused and a recommendation has also been sent to the Governor of the State on 09.09.2018. When such a decision was taken by the Council of Ministers in exercise of the powers conferred under Article 161 of The Constitution of India, we do not find any reason to issue any further direction to the State.

8. Admittedly, the recommendation sent by the Council of Ministers representing the Government of Tamil Nadu on 09.09.2018 to prematurely release the petitioner and others is pending consideration of the Governor of the State. Therefore, it is not as if the respondents herein have failed to exercise the powers conferred under Article 161 of The Constitution of India. The fact that the claim of the petitioner and others for premature release has been considered by the Council of Ministers by taking a decision on 09.09.2018 and a recommendation has been forwarded to the Governor of the State would only dis-entitle the petitioner to seek a Mandamus to the respondent No.1. It is trite that a writ of Mandamus can be issued only if the authorities failed to discharge their duties. In the present case, as the Council of Ministers had already recommended for the premature release of the petitioner and other co-accused even as early as on 09.09.2018, which was also referred to by the petitioner in her representation dated 13.02.2019, we are not inclined to issue any direction to the respondents in this case.

9. In the result, the writ petition fails and it is dismissed. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The State of Tamil Nadu

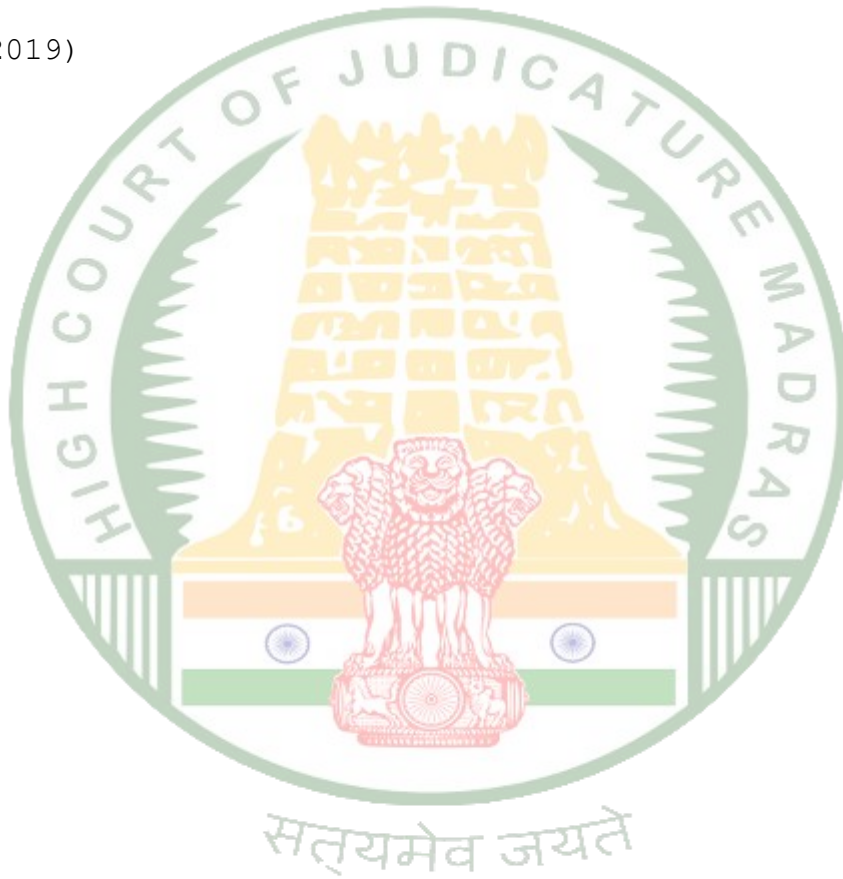
Rep. by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.

2. The Superintendent of Prison
Special Prison for Women
Vellore-2

+1 CC to Mr.M. Radhakrishnan, Advocate sr 75737.
+1 CC to The Public Prosecutor, sr 75687

WP No. 14261 of 2019

GJII (CO)
SP(06/09/2019)



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