

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.23103 of 2018

1.Dhanasekari
2.Thulasi @ Iyyappan
3.Manikandan

... Petitioners

Vs.

1.Union Territory of Puducherry,
Rep. by its Secretary,
Office of the Lieutenant Governor,
Pondicherry.

2.Union Territory of Puducherry,
Rep. by its Secretary,
Office of the Chief Secretary,
Pondicherry.

3.Union Territory of Puducherry,
Rep. by its Secretary,
Office of the Home Department,
Pondicherry.

4.The Station House Officer,
Mudaliarpet Police Station,
Puducherry.

5.Venkatesh @ Dhanasekar
6.Sathish
7.Narayanan
8.Madhan

(R5 to R8 impleaded vide Court order dated 11.12.2018, made in W.M.P.No.37604 of 2018 in W.P.No.23103 of 2018.)

9.Sankar @ Jai Sankar

...Respondents

(R9 impleaded vide Court order dated 19.12.2018, made in W.M.P.No.37385 of 2018 in W.P.No.23103 of 2018.)

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus and forbearing the respondents herein from proceeding further with Remission/Pre-mature release process for the life convicts in criminal case pertaining to Crime No.101 of 2004 on the file of the fourth respondent police, without hearing the petitioners.

For Petitioners : Mr.P.Dinesh Kumar

For Respondents : Mr.Bharatha Chakaravarthy
1 to 4 Public Prosecutor Puducherry

For Respondents : Mr.Gandhi kumar
5 to 8

For Respondent 9 : Mr.S.Karthikeyan

O R D E R

This writ petition has been filed seeking for the relief of mandamus forbearing the respondents 1 to 4 not to proceed further with the process of Pre-mature release of the life convicts pertaining to Crime No.101 of 2004.

2. The respondents 5 to 9, who are the accused persons and whose representation for Pre-mature release is being considered by the official respondents have been impleaded as R5 to R9 in this writ petition.

3. The learned counsel for the petitioners submitted that the accused persons murdered the son and the elder brother of the petitioners in broad day light and it sent shock waves through out Puducherry, with regard to the manner in which the murder was committed. Subsequently, the accused persons underwent trial and all of them were convicted for an offence under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment. The learned counsel would further submit that the respondents 5 to 9 have made a representation before the official respondents to consider their Pre-mature release . This representation was made in line with G.O.M.S.No.44, dated 02.08.2007. The learned counsel would further submit that the main apprehension of the petitioners is that the accused persons after coming out on Pre-mature release will do away with the entire family and there is a grave threat to the life of the petitioners. Therefore, the present petition has been filed seeking for an opportunity to the petitioners to be heard before considering the Pre-mature release application filed by the accused persons.

4. The learned Public Prosecutor representing the respondents 1 to 4 submitted that the Pre-mature release application made by the accused persons will be considered strictly in accordance with G.O.M.S.No.44, dated 02.08.2007. The learned Public Prosecutor further submitted that the Pre-mature release will be considered only after obtaining various reports as stipulated in the Government Order and it will be

placed for consideration before a Committee, which is chaired by the Hon'ble Chief Minister of Puducherry. The learned Public Prosecutor would further submit that the petitioners have already made their objection for the Pre-mature release of the accused persons and the same will also be considered at the time of taking a decision. The learned Public Prosecutor further submitted that there is no scope for hearing any party in this regard and the procedure as provided in G.O.M.S.No.44, dated 02.08.2007 will be followed in letter and spirit.

5. Mr.Gandhi kumar, learned counsel appearing for the respondents 5 to 8 and Mr.S.Karthikeyan, learned counsel appearing for the ninth respondent submitted that the petitioners have absolutely no locus standi to interfere with the power exercised by the Government, while considering the Pre-mature release of the accused persons. The learned counsel would further submit that even the accused persons are not being heard at the time of considering the Pre-mature release and therefore, there is absolutely no scope to hear the victim/de-facto complainant at the time of considering the Pre-mature release. The learned counsel would further submit that in view of the pendency of this writ petition, the petition filed by the accused persons for Pre-mature release is kept pending and all the accused persons have already served more than 15 years inside the prison.

6. This Court has carefully considered the submissions made on either side.

7. Admittedly, the accused persons have all been convicted for an offence under Section 302 of Indian Penal Code and were sentenced to undergo life imprisonment. All the accused persons have served imprisonment for more than 15 years. As per G.O.M.S.No44, dated 02.08.2007, life convict inmates, who have completed 14 years of imprisonment can apply for Pre-mature release. The Government Order contemplates the formation of advisory board and collection of various reports from the concerned authorities. Ultimately, all these reports are placed before this Committee headed by the Hon'ble Chief Minister of Puducherry, which consists of other members namely, Chief Secretary to Government, Secretary to Government (Law), Principal District and Sessions Judge, Chief Probation Officer, a Senior Police Officer not below the rank of Senior Superintend of Police nominated by the Inspector General of Police and the Inspector General of Prisons.

8. The Government Order nowhere contemplates hearing of any parties at the time of considering the Pre-mature release of life convicts. In this case, the official respondents have taken a definite stand that the petitioners have already given

their objections for the Pre-mature release and the same will also be considered by the Committee at the time of considering the Pre-mature release of the accused persons. The proceedings that are conducted by the Committee is neither judicial proceedings nor quasi-judicial proceedings and it is purely an Executive act, wherein the Committee purely goes by the records and various reports collected during the process. Neither the accused persons nor the de-facto complainant/victim will have any opportunity to be heard.

9. The petitioners have approached this Court on the apprehension that the accused persons will be let out Pre-maturely and thereafter, there will be a life threat to the petitioners. This Court cannot decide the writ petition merely based on apprehension. In the considered view of this Court, the entire writ petition itself is Pre-mature. The request made by the petitioners for a personal hearing is also not sustainable. The petitioners have already put-forth their objections and the State has taken a definite stand that the objections will also be considered by the Committee at the time of considering the petition for Pre-mature release of the accused persons. If inspite of the objections, the Committee deems it fit to consider the Pre-mature release of the accused persons, at that stage, the petitioners will have a cause of action to challenge the order of Pre-mature release. Till then, the petitioners do not have the right to be heard at the time of considering the Pre-mature release by the Committee.

10. The relief as sought for by the petitioners cannot be granted by this Court. The Committee, while considering the Pre-mature release shall also take into consideration the objections and apprehensions raised by the petitioners and take an appropriate decision strictly in accordance with the G.O.M.S.No.44, dated 02.08.2007 and also taking into consideration the facts and circumstance of the case.

11. Accordingly, this writ petition stands disposed of.
No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

nmm/dss

To

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Rep. by its Secretary,
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Pondicherry.

4.The Station House Officer,
Mudaliarpet Police Station,
Puducherry.

5.Public Prosecutor, (Puducheery)
Madras High Court, Chennai.

+1 CC to The Public Prosecutor(Pondy) sr 256.

+1 CC to Mr.P.Dinesh Kumar, Advocate sr 297.

+1 CC to Mr.K. Gandhi Kumar, Advocate sr 622.

W.P.No.23103 of 2018

SP(10/01/2019)

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