

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M. NIRMAL KUMAR

H.C.P. No. 1486 of 2019
and
Crl.M.P.No.9722 of 2019

A.Abdulmannan ...Petitioner/Son of Detenue

-vs-

- 1.State of Tamil Nadu
Rep. by its Secretary,
Home (Prison) Department,
St. George Fort, Secretariat,
Chennai - 600 009.
 - 2.The Additional Director General of Police and
Inspector General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 08.
 - 3.The District Collector,
Coimbatore District,
Coimbatore - 641 018.
 - 4.The Superintendent of Prison,
Central Prison,
Coimbatore - 640 018.
- सत्यमेव जयते ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the order in G.O.(D) No.596 dated 13.06.2019 passed by the 1st respondent and quash the same and consequently direct the respondents to bring and produce the body of the petitioner's father Bilal Haijiar @ A.Abdul Hameed, aged 86 years, a life convict No.3242 (Central Prison, Coimbatore) now taking treatment at Royal Care Medical Centre Hospital, Coimbatore before this Court and release him prematurely on medical grounds.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the son of the life convict. The life convict is stated to have involved in a case punishable for the offence under Section 302 IPC. The conviction rendered by the trial Court has been confirmed by this Court in CrI.A.No.1305 of 2018, dated 10.10.2018. The life convict filed Special Leave Petition, which was also dismissed.

2. Thereafter, a representation was made on 03.01.2019 citing the health condition of the life convict. As it was not disposed of, a direction was issued to the respondents to consider the same in accordance with law. Pursuant to the order of this Court in H.C.P.Nos.2556 of 2018 and 176 of 2019 dated 31.01.2019 and 27.02.2019, the impugned order has been passed, rejecting the request made by the petitioner on behalf of the life convict.

3. A perusal of the impugned order would show that the Medical Board has opined that the life convict may be released prematurely on medical grounds. He is suffering from multiple system and multiple organ diseases which are progressive in nature and some of them are dangerous. The Director General of Police/Inspector General of Prisons has also stated that the Probation Officer and the District Collector have recommended for premature release of the life convict. However, the impugned order was passed holding that the offence committed by the life convict is serious and there is a likelihood of communal violence which would create law and order problem. Incidentally, it has been stated that the Director General of Police/Inspector General of Prisons also not recommended the premature release of the life convict.

4. Learned counsel appearing for the petitioner submitted that the Director General of Police/Inspector General of Prisons has got no role to play in considering the request for premature release on medical grounds. Therefore, Rules 632 and 633 of the Tamil Nadu Prison Rules, 1983 do not contemplate such an exercise to be undertaken. The Probation Officer and the District Collector have accordingly recommended. The Medical Board has also given an opinion stating the serious condition of the life convict. There is absolutely no material to substantiate the likelihood of law and order problem. Thus, this

petition will have to be allowed.

5.Learned Additional Public Prosecutor appearing for the State would submit that there is nothing wrong in taking the opinion of the Director General of Police/Inspector General of Prisons. The opinion given by the Medical Board and the recommendation of the Probation Officer and the District Collector are not binding on the respondents. The impugned order was also passed by taking note of the seriousness of the offences in which the life convict is involved. Thus, this petition will have to be dismissed.

6.We find force in the submissions made by the learned counsel appearing for the petitioner. Under Rule 632 of the Tamil Nadu Prison Rules, 1983, there is a specific role assigned to the Medical Officer. This exercise has been done by the Medical Board in favour of the life convict. The Medical Board has clearly opined that the life convict is suffering from multi system and multi organ diseases which are progressive in nature and some of them are dangerous. Therefore, there is due compliance of Rules 632 and 633 of the Tamil Nadu Prison Rules, 1983.

7.Insofar as the likelihood of the law and problem is concerned, both the Probation Officer and the District Collector have recommended for the premature release. Merely because there was an objection from the Director General of Police/Inspector General of Prisons, the same cannot be a basis for declining the case of the life convict especially when the authorities who have specific roles to play under Rules 632 and 633 of the Tamil Nadu Prison Rules, 1983 for giving their opinion and recommendation for premature release. We also do not find any material to hold that there is a likelihood of law and order problem. The opinion of the Medical Officer being an expert in this field is binding on the respondents. Thus, we hold that there is no dispute with respect to the precarious condition of the life convict. He is also stated to be at the advanced age of 86 years.

8.We also note that the offence took place way back in the year 1990. After all, the object enshrined in the Rules is to facilitate the convict/detenu languishing in jail to come out of the same and die in harness apart from the existence of reasonable age and recovery on release.

9.Considering the above, we have no hesitation in setting aside the order impugned. Accordingly, G.O.(D) No.596 dated 13.06.2019 passed by the first respondent stands set aside. Consequently, the respondents are directed to release the life convict within a period of four weeks from the date of receipt

of a copy of this order. The life convict is also taking treatment in the private hospital as it was felt that there is inadequacy in the treatment given in the Government Hospital. Till such time, the treatment given in the private hospital shall continue.

10. In the result, the Habeas Corpus Petition stands allowed. Consequently, connected miscellaneous petition is closed.

mmi/ssm

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George, Chennai - 600 009.
2. The Additional Director General of Police and
Inspector General of Prisons,
Gandhi Irwin Road, Egmore, Chennai - 08.
3. The District Collector,
Coimbatore District,
Coimbatore - 641 018.
4. The Superintendent of Prison,
Central Prison,
Coimbatore - 640 018.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. N. Ponraj, Advocate, SR.No.70190/19

H.C.P. No.1486 of 2019

Kak(18/09/2019)