

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

H.C.P.No.2431 of 2018

Paramasivam

... Petitioner

-Vs-

- 1.The Home Secretary (Prison),
Home Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.Additional Director General of Police and
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai-600 008.
- 3.The Superintendent of Prison,
Salem Central Prison,
Salem District.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the petitioner/detenu namely Paramasivam, son of Varadhan, Life Convict No.6955, aged 47 years detained in Central Prison, Salem, before this Hon'ble Court and directing the respondents to consider him under G.O.Ms.No.64 dated 01.02.2018 for premature release.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

Petitioner, who is the Convict Prisoner viz., Paramasivam (Convict No.6955 housed in Central Prison, Salem), S/o.Varadhan, has moved the present petition seeking relief under G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.

2. Convict prisoner faced trial in S.C.No.221 of 2005 on the file of learned First Additional District Sessions Judge, Salem. After trial, Trial Court convicted him u/s 302 IPC and 25(1)(b) (a) of Arms Act and sentenced to undergo Life Imprisonment for offence u/s 302 IPC and one year R.I for offence u/s 25(1)(b)(a) of Arms Act.

3. We have heard learned counsel for petitioner as also learned Additional Public Prosecutor for respondents.

4. Learned counsel for petitioner submits that petitioner's husband whose release is sought under G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018 is eligible therefor as he satisfies all parameters drawn up in the said Government Order. Petitioner has made a representation on 05.10.2018 to the respondents informing the application of G.O.(Ms).No.64, Home (Prison-IV) Department dated 01.02.2018 and seeking relief thereunder.

5. There is no dispute over the fact that the convict prisoner would be entitled to release under G.O.(Ms).No.64, Home [Prison-IV] Department dated 01.02.2018. However, he has been denied the benefit thereof, since he had been convicted under the Arms Act.

6. Though there are decisions of this Court, which inform that even in respect of offences committed against the Central Enactments, it will be open to the State to consider premature release, we need not wax elaborate since in the instance case the convict prisoner has been convicted for a period of one year for offence u/s 25(1)(b)(a) of Arms Act and he has long since undergone such sentence. Denial of relief on the ground informed, despite his having undergone sentence therefor would amount to dual punishment which is impermissible in law.

7. Accordingly, this Habeas Corpus Petition shall stand allowed. The detenu viz., Paramasivam (Convict No.6955 housed in Central Prison, Salem), S/o.Varadhan, aged 47 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.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

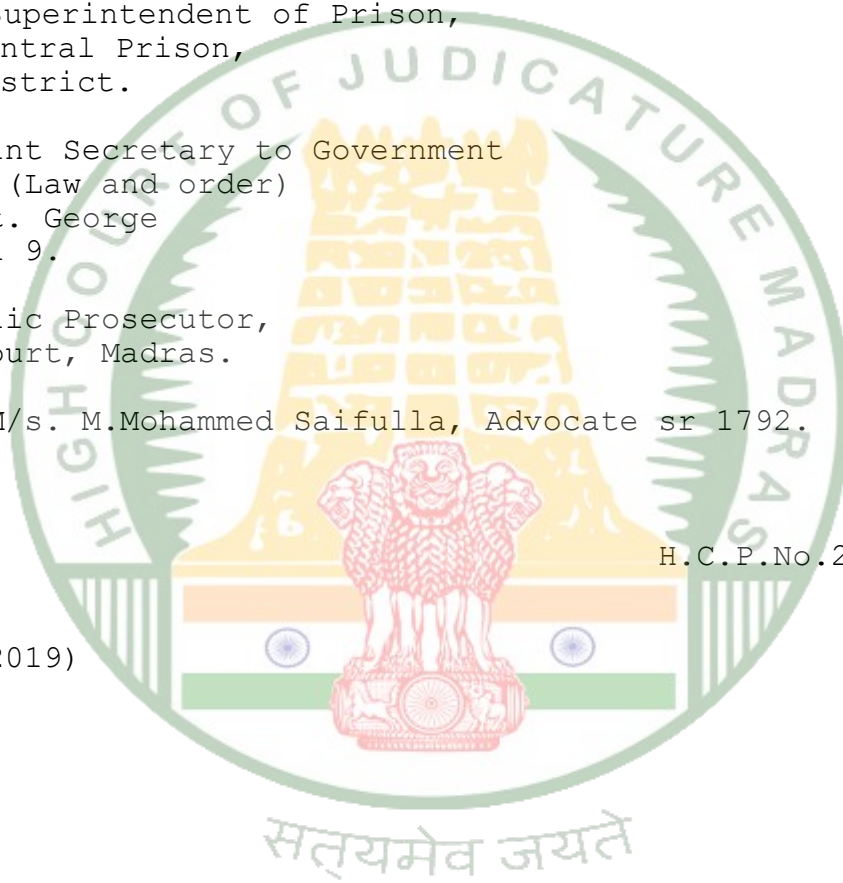
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To

1. The Home Secretary (Prison),
Home Department,
Secretariat, Fort St. George,
Chennai - 600 009.
 2. Additional Director General of Police and
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai-600 008.
 3. The Superintendent of Prison,
Salem Central Prison,
Salem District.
 4. The Joint Secretary to Government
Public (Law and order)
Fort.St. George
Chennai 9.
 - 5.The Public Prosecutor,
High Court, Madras.
- +1 CC to M/s. M.Mohammed Saifulla, Advocate sr 1792.

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RSI (CO)
SP(11/03/2019)



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