

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

H.C.P.No.2968 of 2018

M.Kamila
W/o.Muhammed

...

Petitioner/Mother of Detenue

-Vs-

1. The Home Secretary (Prison),
Home Department, Secretariat,
Fort St. George, Chennai - 600 009.
2. Additional Director General of Prison 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 release the petitioner's son/the detenu Shahjahan, son of Muhammed, aged 38 years, confined at Central Prison Salem (Life Convict No.8375) from the prison and directing the respondents to treat the petitioner as an eligible life convict prisoner for premature release by G.O.(Ms).No.64, Home (Prison IV) Department, dated 01.02.2018.

For Petitioner : Mr.A.Raja Mohamed
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 mother of Convict Prisoner viz., Shahjahan (Convict No.8375 housed in Central Prison, Salem), S/o.Muhammed, 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.114 of 2003 on the file of learned First Additional Sessions Judge, Coimbatore. After trial, Trial Court convicted him u/s 302, 120B, 148, 341 IPC and sentenced to undergo Life Imprisonment and later this Court modified the offence to one u/s 302 IPC under judgment dated 18.12.2006 in CrI.A.No.338 of 2004 and sentenced to undergo life imprisonment.

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

4. Learned counsel for petitioner submits that petitioner's son 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 10.10.2018 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.

6. 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 the Probation Officer's report informs danger to the life of the Convict Prisoner, if he be let at large. Refusing release of a prisoner on the ground that his safety is at risk would amount to denying him the same not owing to any fault of his but on an apprehension of possibility of wrong doing by others. This, we consider unreasonable. In such cases, we would recommend that prisoners be released but in doing so be informed of the possibility of harm to them.

7. Accordingly, this Habeas Corpus Petition shall stand allowed. The detenu viz., Shahjahan (Convict No.8375 housed in Central Prison, Salem), aged 38 years S/o.Muhammed, 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 (CS-IV)

//True Copy//

Sub Assistant Registrar

kmi

To:

1. The Home Secretary (Prison),
Home Department, Secretariat,
Fort St. George, Chennai - 600 009.
 2. Additional Director General of Prison and
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai-600 008.
 3. The Superintendent of Prison,
Salem Central Prison,
Salem District.
 4. The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.A.Raja Mohamed, Advocate, S.R.No. 3559

HCP No.2968 of 2018

VBA (CO)
GN (01/02/2019)