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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

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THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

Habeas Corpus Petition No. 335 of 2020

M. Meenakshi Muniyappan .. Petitioner /Mother of the detenue
Versus

1. The State of Tamil Nadu
rep. by the Secretary to Government
Home (Prison-IV) Department
Secretariat, Chennai - 600 009
2. The Inspector General of Prisons
Office of the Inspector General of Prisons
Chennai - 600 008
3. The Superintendent
Central Prison
Cuddalore - 607 401 ..Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the first respondent in connection with G.O. (D) No.1374 dated 14.11.2019 and quash the same and produce the petitioner's son M. Ravi, Son of Muniyappan, aged about 45 years, who is now detained in Central Prison, Cuddalore before this Court and directing the respondent to consider him under G.O. (Ms) No.64, Home (Prison-IV) Department dated 01.02.2018 for premature release and set him at liberty.

For Petitioner :Mr. P. Saravanan

For Respondents :Mr. C. Emalias, Additionl Advocate General
assisted by
Mr. R. Prathap Kumar
Additional Public Prosecutor



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a Writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention, whether a person is detained by the State or is in a private detention. As Justice Hidayatullah (as he then was) held: "The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention. At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought for is in accordance with the decision rendered by a court of law or by an authority in accordance with law.

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29. Learned Senior counsel for the detenus while referring to Rules 11, 12 and 13 submitted that unless the petitioners in terms of Rule 12 mentions the detention order, name of the prison where the detenu is detained, prison number and does not challenge the order of detention, the writ would not be entertained. What description has to be given to a writ is for the High Court to decide. But the Rules cannot confer jurisdiction which is not conferred by the constitution. We are even otherwise unable to accept the argument of the learned Senior counsel for the detenus because the Rules obviously deal with cases of detention/preventive detention where the detenu is under custody. If that custody is legal then obviously no writ of habeas corpus can be issued for release of the detenu. We are also of the view that merely because the Rules provide that in the petition details of the detention order, prison etc., have to be given does not mean that the writ of habeas corpus cannot be issued where the Rules are silent. The Rules cannot override the Constitution.

30. As already mentioned above, it is well settled law that even if the detenu is in private detention then also a writ of habeas corpus petition would lie. If the Rules are to be the masters and not the constitution, then, probably in the Madras High Court no writ of habeas corpus would be entertained in the case of private detention. This would be against the spirit of the constitution of India. Therefore, we are clearly of the view that reference to the Rules is of no aid



whatsoever.

31. The issue before us in the present case is whether the High Court can direct the release of a petitioner under G.O. (Ms) No.64 dated 01.02.2018. We do not think so. In all these cases, representations made by the detenus had not been decided. In our view, the proper course for the Court was to direct that the representations of the detenus be decided within a short period. Keeping in view the fact that the Scheme envisages a report of the Probation Officer, a reference by the District Level Committee and thereafter the matter has to be placed before the concerned Range Deputy Inspector General and before Regional Probation Officer and thereafter before the State Level Committee, we feel that it would be reasonable to grant 2 - 3 months depending on the time when the representation was filed for the State to deal with them. When the petition is filed just a few days before filing the representation then the Court may be justified in granting up to 3 months' time to consider the same. However, if the representation is filed a couple of months earlier and the report of the Probation Officer is already available then lesser time can be granted. No hard and fast timelines can be laid down but the Court must give reasonable time to the State to decide the representation. We are clearly of the view that the Court itself cannot examine the eligibility of the detenu to be granted release under the Scheme at this stage. There are various factors, enumerated above, which have to be considered by the committees. The report of the Probation Officer is only one of them. After that, the District Committee has to make a recommendation and finally it is the State Level Committee which takes a final call on the matter. We are clearly of the view that the High Court erred in directing the release of the detenu forthwith without first directing the competent authority to take a decision in the matter. Merely because a practice has been followed in the Madras High Court of issuing such type of writs for a long time cannot clothe these orders with legality if the orders are without jurisdiction. Past practice or the fact that the State has not challenged some of the orders is not sufficient to hold that these orders are legal."

5. Thus, it is evident from the above decision of the



Honourable Supreme Court that this Court cannot decide the eligibility of the detenu for his pre-mature release by issuing a Writ of Habeas Corpus. We are also of the opinion that it is a matter for the Government to take a final call for pre-mature release of the detenu by considering various factors. In this case, the Government has also rejected the claim of the petitioner by passing an order dated 14.11.2019, which is challenged in this Habeas Corpus Petition. Therefore, the prayer sought for in this Habeas Corpus Petition to produce the detenu before this Court and to set him at liberty by extending him the benefit of the order of the State Government for grant of pre-mature release cannot be countenanced. As observed by the Honourable Supreme Court, unless the fundamental right or personal liberty of a detenu is deprived, a Writ of Habeas Corpus cannot be issued especially when the detention of the detenu in this case is on the basis of a Judgment of conviction passed by the competent Court having jurisdiction.

6. In the result, the Habeas Corpus Petitions is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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TO

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4. The Public Prosecutor,
High Court, Madras.

HCP No. 335 of 2020

MR(CO)
GN(15/07/2020)