

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.7559 of 2020

A. Palanisamy @ Palaniappan M/A 46
S/o Andiyappan

.. Petitioner

.Vs.

1. The Home Secretary (Prison IV)
Home Department, Secretariat,
Fort St. George,
Chennai 600009.

2. Additional Director General of Police and
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai 600008.

3. The Superintendent of Prison,
Salem Central Prison,
Hasthampatty
Salem District 636007.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, 1950, issue a writ of Certiorarified Mandamus or direction to set aside the impugned order in G.O.(D) No.658 dated 26.06.2019 passed by the 1st Respondent and direct to release the detenu A. Palanisamy @ Palaniappan S/o Andiyappan (Convict Prisoner No.6961) now confined in Central Prison, Salem

For Petitioner : Mr. M. Mohammed Saifulla

For Respondent : Mrs. Kruthika Kamal,
Government Advocate

O R D E R

This Writ Petition has been filed to set aside the impugned order in G.O.(D) No.658 dated 26.06.2019 passed by the 1st Respondent and direct to release the detenu A. Palanisamy @ Palaniappan S/o Andiyappan (Convict Prisoner No.6961) now confined in Central Prison, Salem.

2. The main grievance of the Petitioner is that though the State Government has passed the Government Order (MS) No.64 Home (Prison-IV) Department dated 1.2.2018, regarding the premature release of life convicts who have completed 10 years of actual imprisonment as on 25.02.2018, in commemoration of the birth centenary celebration of former Chief Minister of Tamil Nadu Dr.M.G. Ramachandran, the release has been rejected to the Petitioner on the ground that as on 25.02.2018 the Petitioner has completed only 9 years and 24 days.

3. It is the contention of the learned counsel for the Petitioner that the detention of 359 days has not given set off at the relevant point of time. If the said period is taken into consideration, he was well within the ambit of G.O.(MS) No.64 Home (Prison-IV) Department dated 1.2.2018 and entitled to the benefit.

4. Heard the learned Government Advocate.

5. It is not in dispute by both side that the G.O.(MS) No.64 Home (Prison-IV) Department dated 1.2.2018 passed by the Government of Tamil Nadu, regarding the premature release of life convict who have completed 10 years of actual imprisonment as on 25.02.2018. As the Petitioner was not considered as per G.O.(MS) No.64 Home (Prison-IV) Department dated 1.2.2018, he gave a representation which was also rejected by the Government. As against which W.P.No.3672 of 2018 was filed and this court by order dated 07.01.2019 directed the respondents 2 and 3 to consider the representation of the Petitioner in this regard. Based on the above direction, the 1st Respondent passed order in G.O.(D) No.658 dated 26.06.2019, wherein rejected the representation by holding that the Petitioner has completed only 9 years and 24 days as on 25.02.2018. As he has not completed 10 years of actual imprisonment on the crucial date, he is not entitled to be released as per G.O.(Ms) No.64 Home (Prison-IV) Department dated 1.2.2018.

6. The Petitioner has challenged above rejection order and filed the present Writ Petition. In the meanwhile, Petitioner wife filed H.C.P.No.2214 of 2019 before the Division Bench of this Court seeking direction to set off the pre-trial incarceration period under Section 428 Cr.P.C. From 27.11.2007 to 09.11.2008 (348 days). This Court by order dated 15.11.2019 held that the convict is entitled for set off of 349 days pre-trial detention. Though the rejection order passed by the 1st Respondent in G.O.(D) No.658 dated 26.06.2019 has not been brought to the notice of this Court on 15.11.2019, the fact remains that the Petitioner was in custody for 349 days during the trial till the date of judgment passed by the Sessions

Court. Such period shall be set off as per Section 428 of Cr.P.C., which has not taken note by the authorities. As there was no dispute with regard to the period of detention already undergone by the Petitioner, the order rejecting the release of Petitioner on the only ground that since he has not completed 10 years of actual imprisonment per se invalid. If the authorities have properly calculated the period already undergone by the Petitioner at the relevant point of time, the Petitioner would have been released as per G.O.(Ms) No.64 Home (Prison-IV) Department dated 1.2.2018.

7. In such a view of the matter, this Court is of the view that the impugned order dated 26.06.2019 in G.O.(D) No.658 dated 26.06.2019 in rejecting the premature release of the Petitioner is hereby set aside. The Petitioner is certainly eligible for consideration for premature release as per G.O.(Ms) No.64 Home (Prison-IV) Department dated 1.2.2018. Accordingly, the 1st Respondent is directed to issue Government Order to release the Petitioner, within two weeks from the date of receipt of copy of this Order.

8. In view of the above, the writ petition is allowed. No cost.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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Copy to:

1. The Home Secretary (Prison IV) Home Department, Secretariat, Fort St. George, Chennai 600009.
2. Additional Director General of Police and Inspector General of Prisons, Whannels Road, Egmore, Chennai 600008.
3. The Superintendent of Prison, Salem Central Prison, Hasthampatty, Salem District 636007.

W.P.No.7559 of 2020

BR(CO)

RMP(23/07/2020)