

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.05.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7698 of 2020

1.Muthumani Gunaraj

S/o. Swamyadian

(Convict No.8057)

.. Petitioner

/versus/

1.State rep. by

The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation

Anticorruption Branch,
3rd Floor, Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai-600 006.
(RC MA1 1998 A 0030)

2.The Superintendent of Prisons,
Central Prison-I,
Puzhal,
Chennai-600 066.

.. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to direct the 2nd respondent herein to classify the petitioner/convict No.8057 who was convicted and sentenced in C.C.No.59 of 200 on the file of the IX Additional Judge, (CBI Cases), City Civil Court, Chennai to "A" class in Central Prison, Puzhal-I Chennai.

For petitioner : Mr.V.Balu

For Respondents : Mr.K.Srinivasan,
Spl.Public Prosecutor for CBI
Cases for R1
: Mr.K.Prabhakar,
Addl Public Prosecutor for R2

O R D E R

(The case has been heard through video conference)

This petition has been filed seeking to direct the 2nd respondent herein to classify the petitioner/convict No.8057, who was convicted and sentenced in C.C.No.59 of 200 on the file of the IX Additional Judge, (CBI Cases), City Civil Court, Chennai to "A" class in Central Prison, Puzhal-I Chennai.

2. The learned counsel for the petitioner would submit that the petitioner is a senior citizen, aged 73 years. He was employed as a Superintendent Engineer in BSNL. During his employment, a case was filed by the 1st respondent against the petitioner and two others for the offences under Sections 120(B) r/w 419, 420, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Thereafter charges were framed and trial was conducted in C.C.No59 of 2000 on the file of the IX Additional Judge, (CBI Cases), City Civil Court, Chennai by an order dated 24.06.2010. The petitioner was found guilty, convicted and sentenced to undergo Rigorous Imprisonment for a period of 1 year for each count and to pay a fine of Rs.1000/- for each count and in default to undergo Rigorous Imprisonment for a period of 2 months for each count for the offences under Sections 120(B) r/w 419, 420, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Against the judgment of conviction and sentence, the petitioner has preferred an appeal before this Court in CrI.A.No.456 of 2010 and same was dismissed by an order dated 10.02.2020. However, the sentence of Rigorous Imprisonment was modified to Simple Imprisonment. Consequent to the confirmation of conviction, the petitioner has surrendered before the trial Court and he has been committed to jail.

3. The learned counsel for the petitioner would further submit that the petitioner being a senior citizen has lot of health complications and he is suffering with diabetes macularoedema and kidney stone. The petitioner had filed an application before the trial Court to provide first class prison facility as per Rules 226(1) of the Tamil Nadu Prison Rules 1983 and the trial Court by an order dated 18.03.2020 was pleased to make recommendation to the 2nd respondent to treat the petitioner as "A" class prisoner.

4. The learned counsel for the petitioner would further submit that the order was passed on 18.03.2020, however due to Covid-19 Pandemic lock down, he is unable to get the copies from the Court and communicate it to the 2nd respondent. The learned counsel would further submit that being unable to communicate

the order to the 2nd respondent, the petitioner's son has also made a representation to the 2nd respondent on 31.03.2020 seeking to treat the petitioner as "A" class prisoner and to provide first class facility. However, till date, neither the recommendation of the Court nor the representation of the petitioner's son has been considered and that the petitioner being a senior citizen and suffering serious ailments as stated supra is not treated as a "A" class prisoner.

5. The learned counsel for the petitioner would further submit that as per Rule 226 of the Tamil Nadu Prison Rules, 1983 till such time the recommendation for class "A" is considered, by the Government, the petitioner can be tentatively treated as a prisoner belonging to the "A" class. The learned counsel would further submit that this Court had earlier in similar circumstances in Crl.O.P.No.16070 of 2019 and Crl.O.P.No.18577 of 2019 and in HCP.No.245 of 2019 had directed the prison authorities to tentatively treat such persons similarly placed as that of the persons as class "A" prisoners and directed to provide first class facility to them.

6. The learned Special Public Prosecutor appearing for the 1st respondent would submit that he has not received any information with regard to the recommendation made by the trial Court. However, he would admit that the petitioner was working as a Superintendent Engineer Class- I officer in BSNL.

7. The learned Additional Public Prosecutor appearing for the second respondent would submit that the 2nd respondent has not received the copy of the order from the trial Court and that the petitioner's son representation has also not been received by them. However, even if the order of the initial recommendation is received by the second respondent from the Court, as per Rules 226 and 227 of Tamil Nadu Prison Rules 1983, the second respondent has got power only to forward such petition to the Government requesting "A" class through DGP/Inspector General of Prisons for suitable consideration. He would fairly submit that this Court, in similar circumstances in Crl.OP.No.16070 of 2019, Crl.OP.No.18577 of 2019 and HCP.No.245 of 2019 had directed the second respondent to tentatively treat the petitioners as "A" class prisoner by invoking Rules 226 of the Tamil Nadu Prison Rules, 1983, till such time the recommendation is accepted by the Government and would submit that suitable orders may be passed.

8. Heard both sides and perused the materials.

9. The petitioner is a senior citizen aged 73 years . He was employed as a Superintendent Engineer in BSNL. He is also suffering from ailments like diabetes, macularoedema and kidney stone It is submitted by the learned counsel for the petitioner that after confirmation of the conviction of the appellate Court, the petitioner surrendered before the trial Court and he has been committed to prison. A petition has also been filed by the petitioner seeking for a direction to afford him "A" class facility and the trial Court by order dated 18.03.2020 has also made recommendation for the same. Further, it is not disputed that the petitioner is entitled "A" class facility. It is stated by the learned Additional Public Prosecutor that the order passed by the trial Court has not been communicated and the representation of the petitioner's son has also not been received by the 2nd respondent.

10. It is reiterated by the learned counsel appearing for the petitioner that the trial Court by an order dated 18.03.2020 has made a recommendation to the 2nd respondent and the representation has also been given by the petitioner's son to treat the petitioner as a "A" class prisoner.

11. It is opposite to refer to Rule 226(1) of the Tamil Nadu Prison Rules, 1983 which is extracted hereunder:

226. Classification by Courts. (1) The High Court, Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Chief Metropolitan Magistrates, Metropolitan Magistrates, Sub-Divisional Judicial Magistrates, Judicial First-Class Magistrates (the last two through the Chief Judicial Magistrate) in cases tried by them originally, or in any other case, the District Magistrate, shall make the initial recommendation for classification of prisoners in Class ?A? to the Government by whom these recommendations shall be confirmed or reviewed.

Prisoners recommended by Courts for classification in Class ?A? shall be tentatively treated as belonging to the class recommended till the orders of Government confirming or reviewing the recommendations are received."

12. As per Rule 226 of Tamil Nadu Prisons Rules, 1983, a person recommended by Court for classification in class "A", shall be tentatively treated as belonging to the class recommended till the orders of the Government confirming or reviewing the recommendations are received.

13. Since it is stated by the learned Additional Public Prosecutor that the order of the trial Court dated 18.03.2020 and the representation of the petitioner's son dated 31.03.2020 has not communicated. The petitioner or his son shall give a representation to the 2nd respondent. On receipt of such representation, the 2nd respondent is directed to forward the same to the appropriate authority. Till such time, the 2nd respondent shall treat the petitioner as belonging to the "A" class till the orders are passed by the appropriate authority.

14. In view of the above, the 2nd respondent is directed to tentatively treat the petitioner as belonging to class "A" prisoner and afford him the facilities entitled to "A" class prisoner.

15. With the above directions, this Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation
Anticorruption Branch,
3rd Floor, Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai-600 006.

2.The Superintendent of Prisons,
Central Prison-I,
Puzhal,
Chennai-600 066.

3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.7698 of 2020

RPI (CO)
KKV/20/05/2020

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