

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2020

Order pronounced on : 04-06-2020

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

Habeas Corpus Petition No. 2309 of 2019

M. Sujatha .. Petitioner

Versus

1. State represented by
The Secretary to Government
Department of Home
Fort St. George
Chennai - 600 009
2. The Superintendent of Central Prison
Vellore, Vellore District .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Habeas Corpus to call for the records in G.O. (D) No. 1084, Home (Prison-IV) Department dated 18.09.2019 on the file of the first respondent and quash the same as illegal and direct the respondents to release the detenu Dasaraj, Son of Sindariyappa, life Convict No. 16712, now confined in Central Prison, Vellore on premature release to secure the ends of justice.

For Petitioner : Mr. R. Sankara Subbu
For respondents : Mr. C. Emaliyas, Additional
Advocate General
assisted by Mr. R. Prathap Kumar
Additional Public Prosecutor

ORDER

R. SUBBIAH, J

The petitioner has come up with this Habeas Corpus Petition seeking to quash the order passed in G.O. (D) No. 1084, Home (Prison-IV) Department dated 18.09.2019 on the file of the first respondent and to issue a consequential direction to the

respondents to release the detenu Dasaran, Son of Sindariyappa, life Convict No. 16712, now confined in Central Prison, Vellore on premature release.

2. The petitioner is the grand daughter of the detenu by name Dasaraj, who is a life convict and is now confined in the Central Prison, Vellore. According to the petitioner, her grand father is 95 years old and is suffering from age old ailments. By citing the age of the detenu and the ailment he suffers, the petitioner submitted a representation to the respondents seeking his premature release, but it was not considered. The petitioner therefore filed HCP No. 719 of 2019 before this Court seeking to direct the first respondent to consider the premature release of the detenu on medical grounds. However, the first respondent, without considering the bonafide request made by the petitioner, has passed an order dated 18.09.2019 rejecting the request of the petitioner. Challenging the order dated 18.09.2019 of the first respondent, the present Habeas Corpus Petition is filed.

3. The learned counsel for the petitioner would contend that the Probation Officer and Jail authorities have recommended for premature release of the detenu on health grounds. In spite of the same, the first respondent passed an order dated 18.09.2019 refusing to extend the benefit of premature release in favour of the detenu. The detenu is 95 years old and he is in the evening of his life. The first respondent, by adopting technicalities failed to consider the claim of the petitioner on humanitarian grounds. The learned counsel for the petitioner also invited the attention of this Court to para No.5 of the order, which is impugned in this Habeas Corpus Petition, wherein, the first respondent has referred to the report of the Additional Director General of Police/Inspector General of Prisons submitted on 25.07.2019 to the effect that in the event of premature release of the detenu, no problem will arise to the family of the victim and therefore, the Additional Director General of Police/ Inspector of Prisons has recommended for premature release of the detenu considering his age. Notwithstanding the above recommendation, the first respondent passed the order of rejection and refused to confer the benefit of premature release of the detenu, hence, the learned counsel prayed for allowing the Habeas Corpus Petition as prayed for.

4. Opposing the Habeas Corpus Petition, the learned Additional Advocate General would contend that the detenu was convicted and sentenced by the learned Additional Sessions Judge, Krishnagiri in S.C. No. 193 of 2001 dated 7.03.2002. Challenging the same, the detenu has filed Criminal Appeal No. 909 of 2002 before this Court. Pending appeal, the substantial sentence of imprisonment was suspended by this Court on

30.12.2002 in CrI.M.P. No. 12774 of 2002 in C.A. No. 909 of 2002. The Criminal Appeal filed by the detenu was ultimately dismissed by this Court on 16.02.2006. Thereafter, the detenu filed SLP (CrI.) No. 7263 of 2017 before the Honourable Supreme Court of India and it was also dismissed on 04.08.2017. In the meantime, after getting the substantial sentence of imprisonment suspended by this Court on 30.12.2002, the detenu absconded and he could not be traced and only after the dismissal of the Special Leave Petition by the Honourable Supreme Court of India, he surrendered on 20.08.2016. In effect, the detenu has undergone incarceration only for a period of about four years so far. In this context, the learned Additional Advocate General relied on the Order dated 23.01.2020 passed by the Honourable Supreme Court in Criminal Appeal No. 144 of 2020 in the case of (The Home Secretary (Prison) and others Vs. H. Nilofer Nisha) wherein it was held that a Habeas Corpus Petition for pre-mature release of a life convict is not maintainable when his or her conviction is on the basis of the Judgment passed by a Competent Court of Jurisdiction after due trial. The learned Additional Advocate General also contended that the first respondent has considered the claim of premature release of the detenu in the light of the Tamil Nadu Prison Rules and concluded that the recommendation made by the District Collector concerned and the Probation Officer does not confirm to the parameters laid down under the Prison Rules. Such an order passed by the first respondent, according to the learned Additional Advocate General, need not be interfered with by this Court and he prayed for dismissal of the Habeas Corpus Petition.

5. We have heard the counsel for both sides and perused the materials placed on record. The detenu is a life convict and his conviction and sentence passed by the trial court was affirmed by the Honourable Supreme Court. According to the respondents, even though the detenu was awarded life sentence, he had so far undergone only four years of incarceration and during the pendency of the appeal before this Court and the Honourable Supreme Court, he was at large. The first respondent, by citing the above reason and the Tamil Nadu Prison Rules, refused to release the detenu prematurely on health grounds. The order of the first respondent, refusing to consider the premature release of the detenu is questioned in this Habeas Corpus Petition.

6. It is well settled that the issue with respect to premature release of a life convict has to be considered only by the Government by considering various factors such as the nature of the crime committed by the prisoner, his good conduct during his incarceration and other attendant facts and circumstances. In this case, the petitioner seeks for premature release of the detenu on health grounds. Even this has to be considered only

by the respondents by taking note of various parameters that are precedent for premature release. In any event, when the detainee was convicted by a competent Court of jurisdiction after due trial, a Habeas Corpus Petition is not maintainable, as has been held by the Honourable Supreme Court in Nilofer's case cited supra. As per the said decision, only when it is shown that the fundamental right or personal liberty of a person is infringed and the constitutional guarantees conferred on an individual is violated, a Habeas Corpus Petition could be entertained by this Court in exercise of the powers under Article 226 of The Constitution of India. In the present case, as mentioned above, the detainee was convicted by a competent Court of jurisdiction after due trial. Therefore, the Habeas Corpus Petition itself is not maintainable. Even otherwise, the first respondent has taken note of Rule 633 of the Tamil Nadu Prison Rules, 1983 wherein it was stated that if any prisoner is in danger of death from sickness not due to infectious disease and that there is no hope of recovery within or without the prison, then such a prisoner shall be considered for premature release. In the present case, according to the first respondent, Rule 633 cannot be made applicable in the case of the detainee inasmuch as he did not suffer from any contagious or infectious disease. Such a conclusion arrived at by the first respondent, in our opinion, is well merited warranting no interference by this Court.

7. In the result, the Order passed in G.O. (D) No. 1084, Home (Prison-IV) Department dated 18.09.2019 on the file of the first respondent is confirmed. The Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Department of Home
Fort St. George
Chennai - 600 009
- 2.The Superintendent of Central Prison
Vellore, Vellore District.
- 3.The Public Prosecutor,
High Court Madras -104.

HCP No. 2309 of 2019

KK (CO)

RMP (04/06/2020)