

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

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

Habeas Corpus Petition Nos. 2986 of 2018

Habeas Corpus Petition Nos. 78, 151, 552, 619, 727, 783, 839,
840, 853, 867, 883, 884, 1013, 1326, 1420, 1427, 1438, 1651,
1680, 1730, 2058
and 2399 of 2019

1 KOZHUKATTAI CHINNASAMY ... PETITIONER in HCP No.2986 of 2018
1 PARVATHY ... PETITIONER in HCP No.78 of 2019
1 V.KUPPAMMAL ... PETITIONER in HCP No.151 of 2019
1 K.DEVARAJ ... PETITIONER in HCP No.552 of 2019
1 MAHESWARI ... PETITIONER in HCP No.619 of 2019
1 SELVA @ SELVARAJ ... PETITIONER in HCP No.727 of 2019
1 SAREENBOSE ... PETITIONER in HCP No.783 of 2019
1 PALANISAMY ... PETITIONER in HCP No.839 of 2019
1 P.MAHESWARI ... PETITIONER in HCP No.840 of 2019
1 V.DHARMALINGAM ... PETITIONER in HCP No.853 of 2019
1 M.GEETHA ... PETITIONER in HCP No.867 of 2019
1 D.VALARMATHY ... PETITIONER in HCP No.883 of 2019
1 D.VALARMATHY ... PETITIONER in HCP No.884 of 2019
1 KAIRUNNISA ... PETITIONER in HCP No.1013 of 2019
1 FATHIMA ... PETITIONER in HCP No.1326 of 2019
1 SAMU @ CHINNAPORIYAN ... PETITIONER in HCP No.1420 of 2019

1 NAGARAJ ... PETITIONER in HCP No.1427 of 2019
1 SUNDARAJAN ... PETITIONER in HCP No.1438 of 2019
1 P.JAITHOON ... PETITIONER in HCP No.1651 of 2019
1 A.SHEERIN BANU ... PETITIONER in HCP No.1680 of 2019
1 S.KARPAGAM ... PETITIONER in HCP No.1730 of 2019
1 S.MUTHULAKSHMI ... PETITIONER in HCP No.2058 of 2019
1 RABIYA ... PETITIONER in HCP No.2399 of 2019

vs

1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI - 9
2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE
AND INSPECTOR GENERAL OF
PRISONS GANDHI IRWIN ROAD
EGMORE CHENNAI - 8
3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON COIMBATORE
... RESPONDENT in HCP No.2986 of 2018
1 THE STATE REPRESENTED BY
THE HOME SECRETARY ST. GEORGE FORT
CHENNAI-600 009.
2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE
(HEAD OF THE PRISONS) C.M.D.A. TOWERS
EGMORE CHENNAI-600 008.
3 THE SUPERINTENDENT
CENTRAL PRISON-I PUZHAL
CHENNAI. ... RESPONDENT in HCP No.78 of 2019
1 THE STATE OF TAMIL NADU REP.
BY THE PRINCIPAL SECRETARY TO GOVERNMENT
HOME (PRISON) DEPARTMENT TAMIL NADU
GOVERNMENT CHIEF SECRETARIAT FORT SAINT
GEORGE CHENNAI-600 009.

- 2 THE ADDITIONAL DIRECTOR
GENERAL OF PRISONS/IG OF PRISONS CMDA
TOWERS II NO.I GANDHI IRVIN ROAD EGMORE
CHENNAI-600 008.
- 3 THE SUPERINTENDENT OF CENTRAL
PRISONS CENTRAL PRISON
VELLORE ... RESPONDENT in HCP No.151 of 2019
- 1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI - 9
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE AND I.G.OF PRISONS GANDHI
IRWIN ROAD EGMORE CHENNAI - 8
- 3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON COIMBATORE
... RESPONDENT in HCP No.552 of 2019
- 1 THE SECRETARY
DEPARTMENT OF HOME FORT ST.GEORGE
CHENNAI - 9
- 2 THE SUPERINTENDENT OF CENTRAL PRISON
CENTRAL PRISON CUDDALORE
CUDDALORE DISTRICT ... RESPONDENT in HCP No.619 of 2019
- 1 THE STATE OF TAMIL NADU REP
BY THE SECRETARY TO GOVERNMENT HOME
PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT
CHENNAI-600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE AND I.G. OF PRISON,
GANDHI IRWIN ROAD,
EGMORE, CHENNAI 600 008 ... RESPONDENT in HCP No.727 of 2019
- 1 THE STATE REPRESENTED BY ITS
THE SECRETARY TO GOVERNMENT OF TAMIL NADU
DEPARTMENT OF HOME FORT ST.GEORGE
CHENNAI - 600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
CMDA TOWERS
EGMORE CHENNAI- 600 008.

- 3 THE SUPERINTENDENT
CENTRAL PRISON CUDDALORE.
... RESPONDENT in HCP No.783 of 2019
- 1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI-600 009
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE
AND INSPECTOR GENERAL OF PRISONS
GANDHI IRWIN ROAD EGMORE
CHENNAI- 600 008
- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON COIMBATORE
... RESPONDENT in HCP No.839 of 2019
- 1 THE SECRETARY TO GOVERNMENT
OF TAMIL NADU DEPARTMENT OF HOME FORT ST.
GEORGE CHENNAI-600 009
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
CMDA TOWER II GANDHI IRWIN
ROAD EGMORE CHENNAI-600 008
- 3 SUPERINTENDENT OF PRISON
CENTRAL PRISON PALAYAMKOTTAI
... RESPONDENT in HCP No.840 of 2019
- 1 THE STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVERNMENT HOME
PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI-9.
- 2 THE ADDL. DIRECTOR GENERAL OF
POLICE AND INSPECTOR GENERAL OF PRISONS
GANDHI IRWIN ROAD EGMORE CHENNAI-8.
- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON COIMBATORE.
... RESPONDENT in HCP No.853 of 2019
- 1 THE STATE OF TAMIL NADU
REPRESENTED BY ITS SECRETARY DEPARTMENT OF
HOME FORT ST. GEORGE CHENNAI-9.
- 2 THE SUPERINTENDENT OF CENTRAL
PRISON VELLORE CENTRAL PRISON VELLORE-2
VELLORE DISTRICT.
... RESPONDENT in HCP No.867 of 2019

- 1 THE STATE OF TAMIL NADU
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HOME DEPARTMENT FORT ST. GEORGE
CHENNAI- 600 009.
- 2 THE SUPERINTENDENT OF CENTRAL
PRISON COIMBATORE COIMBATORE DISTRICT.
... RESPONDENT in HCP No.883 of 2019
- 1 THE STATE OF TAMILNADU ... RESPONDENT in HCP No.884 of 2019
REP. BY THIS SECRETARY TO GOVERNMENT
HOME DEPARTMENT FORT ST.GEORGE
CHENNAI-600 009.
- 2 THE SUPERINTENDENT OF CENTRA
L PRISON COIMBATORE COIMBATORE DISTRICT.
- 1 GOVERNMENT OF TAMILNADU
REP BY ITS SECRETARY TO GOVERNMENT HOME
(PRISON IV) DEPARTMENT FORT ST.GEORGE
CHENNAI-600 009.
- 2 THE ADDITIONAL DIRECTOR GENE
RAL OF PRISONS THALAMUTHU NATARAJAN
MAALIGAI 2ND FLOOR GANDHI IRWIN ROAD
EGMORE CHENNAI-600 008.
- 3 THE SUPERINTENDENT OF CENTRAL
PRISONS MADURAI-625 016.
... RESPONDENT in HCP No.1013 of 2019
- 1 THE SECRETARY TO THE GOVERNMENT OF TAMILNADU
DEPARTMENT OF HOME
(PRISON IV) FORT ST.GEORGE
CHENNAI-600 009.
- 2 THE SUPERINTENDENT OF CENTRAL
PRISON CENTRAL PRISON PALAYAMKOTTAI
TIRUNELVELI DISTRICT.
... RESPONDENT in HCP No.1326 of 2019
- 1 THE STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI-9.
- 2 THE DIRECTOR GENERAL OF POLICE
AND INSPECTOR GENERAL OF PRISONS
GANDHI IRWIN ROAD EGMORE CHENNAI-8.

- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON VELLORE-2.
... RESPONDENT in HCP No.1420 of 2019
- 1 THE STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVERNMENT HOME
PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI-600 009.
- 2 THE DIRECTOR GENERAL OF POLICE
AND INSPECTOR GENERAL OF PRISONS
GANDHI IRWIN ROAD EGMORE CHENNAI-600 008.
- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON VELLORE-2
... RESPONDENT in HCP No.1427 of 2019
- 1 THE STATE OF TAMILNADU
REP. BY THE SECRETARY TO GOVERNMENT HOME
PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI-600 009.
- 2 THE DIRECTOR GENERAL OF POLICE
AND INSPECTOR GENERAL OF PRISONS
GANDHI IRWIN ROAD EGMORE CHENNAI-600 008.
- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON
VELLORE-2 ... RESPONDENT in HCP No.1438 of 2019
- 1 THE STATE REP. BY ITS
THE SECRETARY TO GOVERNMENT OF TAMILNADU
DEPARTMENT OF HOME FORT ST.GEORGE
CHENNAI- 600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
C.M.D.A.TOWERS EGMORE
CHENNAI-600 008
- 3 THE SUPERINTENDENT
CENTRAL PRISON COIMBATORE
... RESPONDENT in HCP No.1651 of 2019
- 1 THE STATE REPRESENTED BY
THE SECRETARY TO GOVERNMENT OF TAMIL NADU
HOME DEPARTMENT FORT ST. GEORGE CHENNAI-9.
- 2 THE ADDITIONAL DIRECTOR GENE
RAL OF PRISON C.M.D.A. TOWERS EGMORE
CHENNAI-8.

- 3 THE SUPERINTENDENT
CENTRAL PRISON
KOVAI. ... RESPONDENT in HCP No.1680 of 2019
- 1 THE SECRETARY TO GOVERNMENT
OF TAMILNADU DEPARTMENT OF HOME FORT ST.
GEORGE CHENNAI-009
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON C.M.D.A.TOWERS EGMORE
CHENNAI-008
- 3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON SALEM. ... RESPONDENT in HCP No.1730 of 2019
- 1 THE STATE OF TAMIL NADU
REP BY THE SECRETARY TO GOVERNMENT OF HOME
GOVERNMENT OF TAMIL NADU FORT ST.GEORGE
CHENNAI-9.
- 2 THE INSPECTOR OF PRISONS
WHANNELS ROAD EGMORE CHENNAI-600 008.
- 3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON-I PUZHAI
CHENNAI-600 066. ... RESPONDENT in HCP No.2058 of 2019
- 1 THE STATE REPRESENTED BY ITS
THE SECRETARY TO GOVERNMENT OF TAMILNADU
DEPARTMENT OF HOME FORT ST.GEORGE
CHENNAI- 600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
CMDA TOWERS EGMORE
CHENNAI- 600 008.
- 3 THE SUPERINTENDENT
CENTRAL PRISON COIMBATORE.

... RESPONDENT in HCP No.2399 of 2019

HCP No. 2986 of 2018:- Habeas Corpus Petition filed under Article 226 of The Constitution of India praying to direct the respondents to produce the petitioner namely Kozhukattai Chinnasamy, aged 53 years, Son of Palani, Life Convict Ct.No.2302, now confined in the Central Prison, Coimbatore before this Court and directing the respondents to consider the petitioner immediately under G.O. Ms. No.64, Home (Prison-IV)

Department dated 01.02.2018 for premature release and set him at liberty.

HCP No.78 of 2019: To release the petitioners son Francis@Kullan aged 40 years, Convict No.409, a Life Convict confined in Central Prison-I, Puzhal, Chennai, prematurely on the basis of the Government Order passed in G.O. (M.S.) No.64 dt.1.2.2018 to secure the ends of justice.

HCP No.151 of 2019: To issue a WRIT OF HABEAS CORPUS or any other Writ or order in the nature of writ, calling for the records in connection with order in G.O. in MS.No.64 dated 01.02.2018 dated 01.02.2018 passed by the first respondent and consequently direct the respondent to produce the body of the petitioner son V.Mohanaragam and V.Gopi (Detenue's) before this court and them at liberty from this illegal custody forthwith

HCP No.552 of 2019
To directing respondents to consider the petitioner namely K.Devaraj, S/o.Kuppusamy, aged about 43 years, Life Convict No.3823, confined in the Central Prison, Coimbatore for premature release and set him at liberty

HCP No.619 of 2019
To directing the respondents to produce the detenue for premature release to consider the representation dated 08.02.2019 and release R.Anbarasan, S/o.Raman, C.No.15133 now confined at Central Prison, Cuddalore, before this Honourable Court and set him at liberty.

HCP No.727 of 2019
To issue a Writ of Habeas Corpus directing the respondents to treat the petitioner namely Selva@Selvaraj, S/o.Karuppaiya, aged 52 years, Life Convict, Ct No.22743, Now Confined in the Central Prison, Trichy as having become eligible for premature release under G.O.Ms.64 Home (Prison-IV) Department dated 01.02.2018 and release immediately.

HCP No.783 of 2019
To issue a Writ of Habeas Corpus or order or any direction in the nature of the Writ of Habeas Corpus or any other appropriate order or direction directing the respondents to release the life convict prisoner the detenue, Abdul Azeez, S/o.Mohammed Gouth, life convict No.16497 prematurely as per the G.O.(MS).No. 64, dated 01.02.2018, confined at central Prison, Cuddalore.

HCP No.839 of 2019
To issue a WRIT OF HABEAS CORPUS directing the respondents to produced the petitioner namely Palanisamy S/o.Shankar Goundar,

Life Convict, Ct.No.10612, now confined in the Central Prison, Coimbatore before the Honourable Court and directing the respondents to consider the Petitioner immediately under G.O.Ms.No. 64 Home (Prison-IV) Department Dated 01.02.2018, for premature release and set him at liberty.

HCP No.840 of 2019

To issue a WRIT OF HABEAS CORPUS or any other appropriate writ or order in the nature of Habeas Corpus, directing the respondents to produce person the detenu Pavun alias Pavunraj, S/o.Pudiyamuthu, aged about 50 years, Convict No.LCT 9583 detained in Central Prison Palayamkottai, for premature release by on before this Honourable Court on the basis of G.O.(Ms) No. 64 dated 01.02.2018 and set him at liberty.

HCP No.853 of 2019

Directing the respondents to produce the petitioner namely V.Dharmalingam, S/o.Vaithiyalingam, Life Convict, Ct.No.9223, now confined in the Central Prison, Coimbatore before the Honourable Court and directing the respondents to consider the petitioner

HCP No.867 of 2019

Directing the Respondents to produce the detenu for premature release, considering the representation of the detenu dated 21.2.2019 to release the detenu MOHAN, son of G.Kannan, aged 70 years, now confirmed at Central Prison, Vellore, before this Honourable Court and set him at liberty.

HCP No.883 of 2019

To Directing the 2nd respondent to produce the detenu petitioners husband DEVARAJ aged 48 years, Son of Sengodan life convict C.No.7086 now confined at Central Prison, Coimbatore, before this Honourable court and Directing the Respondent to consider him under G.O.Ms.No. 64/18 dated 01.02.2018 for premature release and set him at liberty.

HCP No.884 of 2019

To directing the 2nd respondent to produce the detenu petitioners brother namely Duraisamy S/o.Karuppannan life convict C.No.7085 now confined at Central Prison, Coimbatore before this Honble Court and directing the respondent to consider him

HCP No.1013 of 2019

To issue a Writ of Habeas Corpus Petition or any other appropriate writ, order or direction in nature of writ and call for the records in G.O.(D) 220 dated 27.02.2019 and set aside the same and treat petitioner son Abu Thahir @ Abu, Life Convict No.5256, now confined in Central Prison, Madurai as having

become eliglble for premature release as per G.O.Ms.No.1155 dated 11.09.2008 and G.O.Ms.No. 64 dated 01.02.2018 now confined in Central Prison Madurai and set hime at liberty.

HCP No.1326 of 2019

To issue a writ or order or orders or direction, particularly in the nature of Writ of Habeas Corpus, Directing the respondents to consider the representation dated 04.06.2019 by granting Premature Release of the detainee M.Moosa @ Tada Moosa @ Syed Bai @ Mohammed Moosa, son of Mohamed Hanifa, CT.No.9400, now confined in Central Prison, Palayamkottai as per G.O.No.Ms. 64/2018 dated 01.02.2018 passed by the First respondent herein and set him at liberty.

HCP No.1420 of 2019

Directing the respondents to produce the petitioner namely Samu @ Chinnaporiyan, S/o.Rajamanthiri, Life Convict, Ct.No.19977, now confined in the Central Prison, Vellore, before the Honourable Court and directing the respondents to consider the petitioner

HCP No.1427 of 2019

To directing the respondents to produced the petitioner namely Nagaraj, S/o.Govindan, Life Convict Ct.No.19780 , now confined in the Central Prison, Vellore, before the Honble Court and directing the respondents to consider the petitioner immediately

HCP No.1438 of 2019

To directing the respondents to produced the petitioner namely Sundarajan A/45 Years S/o.Vadivelu, Life Convict , Ct.No.19712, now confined in the Central Prison, Vellore before this Honble Court and directing the respondents to consider the petitioner immediately under G.O.Ms.No.64 Home (Prison-IV) Department Dated 01.02.2018 for premature release and se him at liberty.

HCP No.1651 of 2019

To call for the records pertaining to the impugned order G.O.(D) No.727, issued by the 1st respondent dt 04.07.2019 and to quash th same and consequentily direct the respondents to release the detainee, Yasudeen@Kabali, Convict No.3287 S/o.Bathrudeen, prematurely, confined at central prison, Coimbatore as per the G.O.(Ms)No. 1155 dated 11.09.2008, and G.O(Ms).No. 64 dated 01.02.2018.

HCP No.1680 of 2019

Directing the 1st respondent to call for the records pertaining to the Impugned Order G.O.(D) No.717, issued by the 1st respondent dated 03.07.2019 and to quash the same and consequently direct the respondents to release the detainee, Abdul Razaak, S/o.S.R.Basheer Ahamed life convict prisoner

Convict No.10710 detained at Central Prison, Kovai-18 as per the G.O.(Ms)No. 1155 dated 11.09.2008, and G.O.(Ms).N. 64 dated 01.02.2018.

HCP No.1730 of 2019

To directing 1st respondent to call for the records pertaining to the impugned order G.O(D)No.659, issued by the 1st respondent dated 26.06.2019 and to quash the same and consequently direct the respondents to release the detainee, Saravanan, S/o.Munusamy Prematurely confined at Central Prison Coimbatore as per G.O (Ms).No. 64 dated 01.02.2018.

HCP No.2058 of 2019

To issue a WRIT OF HABEAS CORPUS, order or Direction, in the nature of the writ of Habeas Corpus, directing the respondents to release the detainee prematurely under the G.O.(MS) NO.64 dated 01.02.2018 issued by the 1st respondent and produce the detenu Mr.J.Saravanan, S/o.Jayapal aged 34 years life convict Prisoner No. 82 detained at Central Prison I Puzhal, before this Court and set him at liberty.

HCP No.2399 of 2019

To issue a writ or order or orders or direction particularly in the nature of Writ of Habeas Corpus to direction directing 1st respondent to call for the records pertaining to the impugned order G.O.(D) NO.864, issued by the 1st respondent dated 07.08.19. and quash the same and consecutively direct the respondent to release the detainee, Nettai Ibrahim @ Ibrahim, Convict No. 10900, S/o.Mohamed Hussain, aged about 54 years, prematurely, confined at Central Prsion, Coimbatore as per the G.O (Ms) No. 1155 dated 11.09.2008, G.O.(Ms)No. 64 dated 01.02.2018.

HCP No. 2986 of 2018

For Petitioner : Mr. P. Pugalenth

D.Maria Johnson	78 of 2019
R.Vivekananthan	151 of 2019
P.Pugalendhi	552 of 2019
R.Sankarasubbu	619 of 2019
P.Pugalendhi	727 of 2019
S.Manoharan	783 of 2019
P.Pugalendhi	853 of 2019

J.Priscilla Pandian	840 of 2019
P.Pugalendhi	853 of 2019
R.Sankarasubbu	867 of 2019
R.Sankarasubbu	883 & 884 of 2019
B.Nambiselvan	1013 of 2019
R.Sankarasubbu	1326 of 2019
P.Pugalenth	1420 of 2019
P.Pugalenth	1427 of 2019
P.Pugalenth	1438 of 2019
S.Manoharan	1651 of 2019
S.Manoharan	1680 of 2019
S.Manoharan	1730 of 2019
S.Saravanan	2058 of 2019
S.Manoharan	2399 of 2019

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

COMMON ORDER

(Order of the Court was made by R. Subbiah, J)

These Habeas Corpus Petitions are filed by the petitioners, seeking to release the respective detenu, who is undergoing sentence of imprisonment imposed by a Court of competent jurisdiction in various prisons across the State, by extending the benefit of G.O. Ms. No.64, Home (Prison-IV) Department dated 01.12.2018 and similar other Government Orders issued by the State for pre-mature release of the convicts.

2. The Governor of Tamil Nadu, in exercise of power conferred under Article 161 of the Constitution of India, issued various Government Orders, from time to time, to remit the unexpired portion of sentence imposed on the life convicts undergoing incarceration across various Prisons in the State for their pre-mature release. In these batch of cases, the petitioners would contend that the respective detenu, undergoing incarceration in various prisons across the State, is entitled to be considered for pre-mature release on the basis of the order passed by the Government. However, the claim of the

petitioners for such pre-mature release has not been considered by the Government and therefore, the petitioners have come up with the present Habeas Corpus Petitions.

3. The core question involved in these Habeas Corpus Petition for determination is whether the Habeas Corpus Petitions are maintainable and a direction can be issued to the respective respondents for pre-mature release of a detenu, by declaring the detention of the detenu as illegal, when he/she has been convicted by a competent Court, after due trial.

4. In this context, the learned Additional Public Prosecutor appearing for the respondents brought to the notice of the latest decision rendered by the Honourable Supreme Court on 23.01.2020 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. In Para Nos. 14, 29, 30 and 31, it was held by the Honourable Supreme Court as follows:-

"14. It is a settled principle of law that 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.

.....

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 a detenu for his or her 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 a detenu by considering various factors. Therefore, the prayer sought for in these Habeas Corpus Petition to produce the respective detenu before this Court and to set him or her at liberty by extending them 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 not deprived, a Writ of Habeas Corpus cannot be issued especially when the detention of the detenus in these cases is on the basis of a Judgment of conviction passed by the competent Court having jurisdiction.

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

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The State of Tamil Nadu
rep. by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009
2. The Additional Director General of Police &
Inspector General of Prisons
Gandhi Irwin Road, Egmore
Chennai - 600 008
3. The Superintendent of Prisons
Central Prison
Coimbatore
4. The Superintendent of Central Prison I,
Puzhal, Chennai.
5. The Superintendent of Central Prison,
Vellore.
6. The Superintendent of Central Prison,
Cuddalore.
7. The Superintendent of Central Prison,
Palayamkottai.
8. The Superintendent of Central Prison,
Salem.
9. The Superintendent of Central Prison,
Madurai.

+1cc to Mr.D.Maria Johnson, Advocate, S.R.No. 14737

+4cc to Mr.R.Sankara Subbu, Advocate, S.R.No. 15745, 15748,
15746, 15747

HCP No. 2986/2018 etc., batch

KS(CO)
GN(22/06/2020)

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