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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	07.09.2021
DELIVERED ON:	15.09.2021

THE HON'BLE MR. JUSTICE P.N. PRAKASH
AND
THE HON'BLE MS. JUSTICE R.N. MANJULA

W.P. No.13786 of 2021
and
W.M.P. No.14635 of 2021

B. Radha

...Petitioner

vs.

1. The State of Tamil Nadu
represented by the Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009
2. The Director General of Police & I.G. of Prisons
Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Superintendent of Prisons
Central Prison
Puzhal, Chennai 600 066

...Respondents

Writ Petition preferred under Article 226 of the Constitution of India seeking a writ of mandamus directing the first respondent to consider the petitioner's representation dated 26.06.2021 and release the petitioner's husband Balasubramaniyan, S/o Duraisamy, aged 65 years, now confined in the Central Prison-1, Puzhal on medical grounds.

For petitioner : Mr. P. Pugalenthir

For respondents : Mr. Hasan Mohamed Jinnah
State Public Prosecutor
assisted by Mr.R. Muniyapparaj
Government Advocate (Crl. Side)



ORDER

P.N. PRAKASH, J.

The petitioner's husband Balasubramaniyan, S/o Duraisamy, is a convict prisoner (OJCT 1873), who was convicted and sentenced in Special C.C. No.1 of 2004 by the Chief Judicial Magistrate (Special Court for Vigilance and Anti-Corruption Cases), Pudukkottai on 16.07.2008 as under:

Provisions under which convicted	Sentence
Section 7 of the Vigilance and Anti-Corruption Act	2 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months
Section 13(2) r/w S.13(1) of the Prevention of Corruption Act	2 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months

The aforesaid sentences were ordered to run consecutively.

2. Challenging the judgment and order of conviction and sentence dated 16.07.2008, Balasubramaniyan preferred Crl.A.(MD) No.364 of 2008 in this Court and after its dismissal vide judgment dated 04.12.2018, he was admitted in the Central Prison, Trichy, on 03.06.2019, for undergoing the sentences. Thereafter, he was transferred from the Central Prison, Trichy, to the Central Prison, Puzhal, Chennai on 22.06.2021 and he has been undergoing the sentences there since then.

3. While that being so, alleging that her husband Balasubramaniyan is dangerously ill and deserves to be released under Rule 632 of the Tamil Nadu Prison Rules, 1983, the petitioner addressed a representation dated 26.06.2021 to the respondents seeking his release on medical grounds and finding no response, has preferred the instant writ petition seeking a writ of mandamus directing the first respondent to consider her representation dated 26.06.2021 and release her husband Balasubramaniyan on medical grounds.

4. The Superintendent, Central Prison, Puzhal, has filed a counter affidavit dated 24.07.2021, wherein, it is stated that the convict prisoner Balasubramaniyan was examined by the Regional Medical Board, Government Stanley Hospital, Chennai-1 and the Board comprising three specialists have submitted a report dated 23.08.2021, wherein, they have not stated that the convict prisoner is dangerously ill and that his illness will be



5. At this juncture, it may be apposite to extract Rule 632, *ibid.*

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"I. A.B. hereby certify that convict No..... Name is, in my opinion, dangerously ill, suffering from (name of disease). His illness has not been caused or aggravated by any acts committed by him in order to procure release, and I sincerely declare that, in my opinion ,he is likely to die if he remains in confinement, but that he will have a reasonable chance of recovery if he is released."

(2) The Superintendent shall at once consult the Collector of the district to which the prisoner belongs, about the desirability of releasing the prisoner and then forward the papers to the Inspector-General for submission to Government together with a nominal roll of the prisoner showing the amount of remission earned and any remarks relevant to the case, the Superintendent may desire to add. A certificate to the effect that the Superintendent has satisfied himself that the convict will, if released, be suitably cared for, shall accompany the other documents."



6. The report dated 23.08.2021 issued by the Regional Medical Board, Government Stanley Hospital, Chennai, reads as under:

"Convict is not suffering from any life-threatening illness. Patient is bed-ridden. He needs assistance for his routine activity. Patient is not self-sufficient to take care of himself. Patient needs bladder care, bowel care, nutritional care and supportive care."

7. A reading of the above extracted portion from the report of the Regional Medical Board, Government Stanley Hospital, Chennai, shows that the convict prisoner is not suffering from any life-threatening illness, though he is bed-ridden and requires assistance for his routine activities and supportive care which are, at present, being given to him in the Prison Hospital.

8. As per Rule 632, *ibid.*, for releasing a prisoner under the said Rule, the Medical Officer should say that, in his opinion, the prisoner is likely to die if he remains in confinement and that he will have a reasonable chance of recovery if he is released. Unless this condition obtains, the prisoner cannot be released under Rule 632, *ibid.*

9. Mr. Pugalenthil, learned counsel for the petitioner submitted that even according to the report of the Regional Medical Board dated 23.08.2021, the convict prisoner appears to be suffering from rheumatoid arthritis, hypertension, coronary artery disease, etc. and therefore, he deserves to be released under Rule 632, *ibid.*

10. Mr. Hasan Mohamed Jinnah, learned State Public Prosecutor, assisted by Mr. R. Muniyapparaj, learned Government Advocate (Crl. Side), refuted the aforesaid contention.

11. We gave our anxious consideration to the rival submissions.

12. At the outset, we have to confess that we are not medical experts and we have to go only by the report of the Regional Medical Board. As stated above, the Regional Medical Board comprising three experts, has gone into all the medical parameters of the convict prisoner and has clearly opined that though he has the aforesaid ailments, yet, he does not suffer from any life-threatening illness. Therefore, we cannot substitute our opinion over that of the experts.

13. In such perspective of the matter, this writ petition is liable to be dismissed as being devoid of merits and is accordingly dismissed. Costs made easy. Connected W.M.P. is



closed. However, the prison authorities shall provide medical treatment to the prisoner in the best possible way.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

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4. The Public Prosecutor
High Court of Madras
Chennai 600 104

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PA(CO)
RGA(06/10/2021)