

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P. No.	Orders reserved on	Orders pronounced on
2097 of 2020	05.01.2021	
2136 of 2020		
2358 of 2020		
2382 of 2020		
2384 of 2020		
2396 of 2020		
2401 of 2020		
2404 of 2020		
2411 of 2020		
2558 of 2020		
2600 of 2020	21.01.2021	
2309 of 2020		
2 of 2021		
5 of 2021	06.01.2021	
1614 of 2020	07.01.2021	
2583 of 2020		
176 of 2020		
2476 of 2020	08.01.2021	
2260 of 2020		
2551 of 2020		
18 of 2021		
31 of 2021	11.01.2021	
2502 of 2020	18.01.2021	
2576 of 2020		
43 of 2021	19.01.2021	

1 SALEEMA ... PETITIONER in HCP No.2097 of 2020
1 G.GAYATHRI ... PETITIONER in HCP No.2136 of 2020
1 S.DHANALASHMI ... PETITIONER in HCP No.2358 of 2020
1 SAKTHIVEL ... PETITIONER in HCP No.2382 of 2020
1 S.GOWTHAM ... PETITIONER in HCP No.2384 of 2020
1 FATHIMA ... PETITIONER in HCP No.2396 of 2020
1 N.VEMBU ... PETITIONER in HCP No.2401 of 2020
1 S.PARIJAN ... PETITIONER in HCP No.2404 of 2020
1 GANGA ... PETITIONER in HCP No.2411 of 2020
1 M.POORNIMA ... PETITIONER in HCP No.2558 of 2020
1 T.SAMUNDISWARI ... PETITIONER in HCP No.2600 of 2020
1 KATHEEJA ... PETITIONER in HCP No.2309 of 2020
1 B.MUBEENA ... PETITIONER in HCP No.2 of 2021
1 S.RAJAN ... PETITIONER in HCP No.5 of 2021
1 KOTHANDABANI ... PETITIONER in HCP No.1614 of 2020
1 MANJULA ... PETITIONER in HCP No.2583 of 2020
1 POOVARASI ... PETITIONER in HCP No.176 of 2020
1 R.CHINNAKANNAL ... PETITIONER in HCP No.2476 of 2020
1 S.MALATHI ... PETITIONER in HCP No.2260 of 2020
1 SELVARAJ ... PETITIONER in HCP No.2551 of 2020
1 AMSAVALLI ... PETITIONER in HCP No.18 of 2021
1 T.RAJAMANI ... PETITIONER in HCP No.31 of 2021
1 S.MUTHURAMAN ... PETITIONER in HCP No.2502 of 2020
1 JASMINE ... PETITIONER in HCP No.2576 of 2020
1 CHANDRA ... PETITIONER in HCP No.43 of 2021

..VS..

1 THE STATE REP. BY ITS
THE SECRETARY TO GOVERNMENT OF TAMIL NADU
DEPARTMENT OF HOME
FORT ST.GEORGE, CHENNAI 600 009

2 THE DEPUTY INSPECTOR GENERAL OF PRISON
COIMBATORE ZONE (CENTRAL PRISON)
COIMBATORE

3 THE SUPERINTENDENT
CENTRAL PRISON
COIMBATORE

... RESPONDENTS in HCP No.2097 of 2020

1 THE STATE OF TAMIL NADU
REP.BY THE SECRETARY TO GOVERNMENT HOME
(PRISON) DEPARTMENT, SECRETARIAT,
CHENNAI-600 009.

2 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, VELLORE.

... RESPONDENTS in HCP No.2136 of 2020

1 THE STATE REP.BY ITS,
HOME SECRETARY (PRISON), SECRETARIAT,
CHENNAI-09.

2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
INSPECTOR GENERAL OF PRISONS,
WHANNELS ROAD, EGMORE, CHENNAI-08.

3 THE DEPUTY INSPECTOR OF GENERAL OF PRISON
(KOVAI RANGE) OFFICE OF THE RANGE DIG
GANDHIPURAM COIMBATORE.

4 THE SUPERINTENDENT OF PRISON COIMBATORE
CENTRAL PRISON COIMBATORE DIST.

5 THE INSPECTOR OF POLICE
THIRUPATHUR POLICE STATION
THRITUPATHUR DIST.

... RESPONDENTS in HCP No.2358 of 2020

1 THE STATE REP.BY ITS
THE SECRETARY TO GOVERNMENT OF TAMILNADU
DEPARTMENT OF HOME FORT ST.GEORGE,
CHENNAI - 600 009.

2 THE ADDITIONAL DIRECTO GENERAL OF PRISON
EGMORE, CHENNAI - 600 008.

3 THE SUPERINTENDENT
CENTRAL PRISON, KOVAI - 641 018.

4 THE INSPECTOR OF POLICE
ATTUR, POLICE STATION, SALEM.

... RESPONDENT in HCP No.2382 of 2020

1 THE STATE REP BY ITS
HOME SECRETARY (PRISON) SECRETARIAT
FORT ST.GEORGE, CHENNAI- 600 009.

2 THE DIRECTOR GENERAL OF PRISON
WHANNELS ROAD EGMORE
CHENNAI- 600 008.

3 THE SUPERINTENDENT OF PRISON
PUZHAL CENTRAL PRISON-I
PUZHAL - 600 066.

4 THE INSPECTOR OF POLICE
KARUNGALPALAYAM POLICE STATION
ERODE.

... RESPONDENTS in HCP No.2384 of 2020

1 THE GOVT OF TAMIL NADU
SECRETARY TO GOVT HOME (PRISON IV) DEPT
FORT ST.GEORGE, CHENNAI-9.

2 THE ADDITIONAL DIRECTOR
GENERAL OF PRISONS THALAMUTHU NATARAJAN MAALIGAI
2ND FLOOR GANDHI IRWIN ROAD EGMORE
CHENNAI-8.

3 THE SUPERINTENDENT OF GENERAL PRISON
COIMBATORE DIST.

4 THE INSPECTOR OF POLICE,
UKKADAM POLICE STATION,
COIMBATORE DIST.

... RESPONDENTS in HCP No.2396 of 2020

1 THE STATE REP.BY ITS
THE SECRETARY TO GOVERNMENT OF TAMILNADU
HOME DEPARTMENT FORT.ST.GEORGE
CHENNAI-600 009.

2 THE DEPUTY INSPECTOR GENERAL OF PRISON
COIMBATORE ZONE (CENTRAL PRISON)
COIMBATORE.

3 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE.

4 THE INSPECTOR OF POLICE,
SULUR POLICE STATION,
COIMBATORE DISTRICT.

... RESPONDENTS in HCP No.2401 of 2020

1 THE STATE REP.BY ITS
THE SECRETARY TO GOVERNMENT OF TAMILNADU
DEPARTMENT OF HOME, FORT ST.GEORGE,
CHENNAI - 600 009.

2 THE DEPUTY INSPECTOR GENERAL,
CENTRAL PRISON, KOVAI,
KOVAI - 641 018.

3 THE SUPERINTENDENT,
CENTRAL PRISON, KOVAI.

4 THE INSPECTOR OF POLICE,
B1 BAZAR POLICE STATION,
KOVAI.

... RESPONDENTS in HCP No.2404 of 2020

1 STATE BY
THE SECRETARY TO GOVERNMENT,
HOME PROHIBITION AND EXCISE DEPARTMENT,
SECRETARIAT, CHENNAI - 600 009.

2 THE DIRECTOR GENERAL OF POLICE
AND I.G. OF PRISONS,
GANDHI IRWIN ROAD,
EGMORE, CHENNAI - 600 008.

3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, VELLORE -2.

- 4 THE INSPECTOR OF POLICE,
DHANIPPADI POLICE STATION,
VELLORE DISTRICT.

... RESPONDENTS in HCP No.2411 of 2020

- 1 THE SECRETARY TO GOVERNMENT OF TAMILNADU,
HOME DEPARTMENT, FORT ST.GEORGE,
CHENNAI - 600 009.

- 2 THE DEPUTY INSPECTOR GENERAL OF PRISON,
COIMBATORE ZONE (CENTRAL PRISON),
COIMBATORE - 18.

- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
COIMBATORE - 18.

- 4 THE INSPECTOR OF POLICE,
KOTAGIRI POLICE STATION,
KOTAGIRI.

... RESPONDENTS in HCP No.2558 of 2020

- 1 THE ADDITIONAL DIRECTOR GENERAL OF PRISON,
THAALAMUTHU NATRAJAN MAALIGAI,
GANDHI ERWIN SALAI, EGMORE,
CHENNAI.

- 2 THE SUPERINTENDENT OF PRISON,
THE CENTRAL PRISON, VELLORE.

- 3 THE INSPECTOR OF POLICE,
AWPS AMBUR POLICE STATION,
NOW THIRUPATHUR DISTRICT
(CRIME NO.5 OF 2015).

... RESPONDENTS in HCP No.2600 of 2020

- 1 THE STATE REPRESENTED BY ITS
THE SECRETARY TO GOVERNMENT OF TAMIL NADU
DEPARTMENT OF HOME,
FORT ST.GEORGE, CHENNAI - 09

- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON,
C.M.D.A TOWERS, EGMORE,
CHENNAI 08.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL - I,
CHENNAI.

... RESPONDENTS in HCP No.2309 of 2020

1 THE STATE REP.BY
THE HOME SECRETARY(PRISON) HOME DEPT
SECRETARIAT FORT ST.GEORGE CHENNAI.

2 THE DIRECTOR GENERAL OF PRISON,
AND INSPECTOR GENERAL OF PRISON,
WHANNELS ROAD, EGMORE,
CHENNAI-08.

3 THE DEPUTY INSPECTOR GENERAL OF RANGE,
COIMBATORE RANGE, COIMBATORE.

4 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, COIMBATORE.

5 THE INSPECTOR OF POLICE
COIMBATORE POLICE STATION,
COIMBATORE.

... RESPONDENTS in HCP No.2 of 2021

1 THE STATE REP BY ITS
HOME SECRETARY (PRISON)
FORT ST.GEORGE, CHENNAI 09

2 THE DIRECTOR GENERAL OF PRISON
AND INSPECTOR GENERAL OF PRISON
WHANNELS ROAD EGMORE CHENNAI 08

3 THE DEPUTY INSPECTOR GENERAL OF PRISONS
OFFICE OF THE COIMBATORE D.I.G. (RANGE)
GANDHIPURAM COIMBATORE

4 THE SUPERINTENDENT OF PRISON
COIMBATORE CENTRAL PRISON
COIMBATORE.

5 THE INSPECTOR OF POLICE
THIRUPATTUR TALUK POLICE STATION
THIRUPATTUR

... RESPONDENTS in HCP No.5 of 2021

1 STATE REP.BY
THE SECRETARY,
HOME DEPARTMENT SECRETARIAT
FORT ST.GEORGE, CHENNAI.

2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE (PRISON)
WHANNELS ROAD, EGMORE,
CHENNAI - 600 008.

3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, CUDDALORE.

... RESPONDENTS in HCP No.1614 of 2020

1 STATE BY
THE SECRETARY TO THE GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT CHENNAI - 600 009.

2 THE DIG OF PRISON
VELLORE RANGE
VELLORE-2.

3 THE SUPERINTENDENT OF PRISONS
CENTRAL PRISON CUDDALORE.

4 THE INSPECTOR OF POLICE
SIVAGANGAI, TOWN POLICE STATION
SIVAGANGAI.

... RESPONDENTS in HCP No.2583 of 2020

1 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
(WHANNELS ROAD)
NO.2 GANDHI, IRWIN ROAD, EGMORE,
CHENNAI.

2 THE SUPERINTENDENT OF PRISON,
SPECIAL PRISON FOR WOMEN,
PUZHAL, CHENNAI- 600 066.

... RESPONDENTS in HCP No.176 of 2020

1 THE STATE OF TAMILNADU,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME,
FORT ST.GEORGE, CHENNAI-9.

2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON
THALAMUTHTHU NADARAJAR
MALIKAI EGMORE CHENNAI-8

3 THE SUPERINTENDENT OF CENTRAL PRISON
COIMBATORE CENTRAL PRISON
COIMBATORE DISTRICT-641 018.

4 THE INSPECTOR OF POLICE
METTUPALAYAM POLICE STATION
COIMBATORE DISTRICT.
CRIME NO.554 OF 2012

... RESPONDENTS in HCP No.2476 of 2020

1 STATE BY
THE DEPUTY INSPECTOR OF GENERAL OF PRISONS
VELLORE-2.

2 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON CUDDALORE-4.

3 THE INSPECTOR OF POLICE
B4 VILLUPURAM TALUK POLICE STATION
VILLUPURAM.

... RESPONDENTS in HCP No.2260 of 2020

1 THE STATE REP.BY ITS
HOME SECRETARY (PRISON) HOME DEPARTMENT
SECRETARIAT FORT ST.GEORGE CHENNAI.

2 THE DIRECTOR GENERAL OF PRISON
NO.2 GANDHI IRWIN ROAD CMDA BUILDING
EGMORE CHENNAI-600 008.

3 THE DEPUTY INSPECTOR GENERAL
OF PRISON (COIMBATORE RANGE)
OFFICE OF THE RANGE DIG
GANDHIPURAM COIMBATORE-641 012.

4 THE SUPERINTENDENT OF PRISON
COIMBATORE CENTRAL PRISON GANDHIPURAM
COIMBATORE.

- 5 THE INSPECTOR OF POLICE
KOLATHUR POLICE STATION
SOUTH RAJA STREET
SALEM DISTRICT.

... RESPONDENTS in HCP No.2551 of 2020

- 1 THE STATE OF TAMILNADU REP.BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT
HOME (PRISON) DEPARTMENT TAMILNADU
GOVERNMENT CHIEF SECRETARIAT
FORT SAINT GEORGE
CHENNAI-600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE/
IG OF PRISONS, CMDA, TOWERS II,
NO.1, GANDHI IRWIN ROAD, EGMORE,
CHENNAI- 600 008.
- 3 THE SUPERINTENDENT
CENTRAL PRISON THIRUCHIRAPALLI TAMILNADU.
- 4 THE INSPECTOR OF POLICE
PALAIYUR POLICE STATION NAGAPATTINAM
DISTRICT.

... RESPONDENTS in HCP No.18 of 2021

- 1 STATE REB.BY
THE SECRETARY TO GOVERNMENT HOME
PROHIBITION AND EXCISE DEPARTMENT
SECRETARIAT, CHENNAI - 600 009.
- 2 THE DIRECTOR GENERAL OF POLICE AND
I.G. OF PRISONS, GANDHI IRWIN ROAD,
EGMORE, CHENNAI - 600 008.
- 3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, SALEM - 7.
- 4 THE INSPECTOR OF POLICE,
NAATRAMPALLI POLICE STATION,
VELLORE DISTRICT.

... RESPONDENTS in HCP No.31 of 2021

- 1 STATE REP.BY
THE HOME SECRETARY
HOME DEPARTMENT SECRETARIAT
FORT ST.GEORGE, CHENNAI - 600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE (PRISON)
CMDA TOWERS, EGMORE,
CHENNAI - 600 008.
- 3 THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON - TRICHY,
TRICHY DISTRICT.
- 4 STATE REP BY,
INSPECTOR OF POLICE,
KARUNGALPALAYAM POLICE STATION,
ERODE DISTRICT.
CR.NO.553 OF 2014.

... RESPONDENTS in HCP No.2502 of 2020

- 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.
- 4 THE INSPECTOR OF POLICE
B1 POLICE STATION
COIMBATORE.

... RESPONDENTS in HCP No.2576 of 2020

- 1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT,
SECRETARIAT, CHENNAI - 600 009.
- 2 THE DIG OF PRISONS,
VELLORE RANGE, VELLORE - 2.
- 3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, VELLORE - 2.

4 THE INSPECTOR OF POLICE,
KANDILI POLICE STATION
VELLORE DISTRICT.

... RESPONDENTS in HCP No.43 of 2021

Prayer:-

H.C.P.No.2097 OF 2020:-

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the respondents to grant ordinary leave for one month to the detenu, Shabeer, S/o.Anwar Basha, aged about 36 years, convict No.10125 at Central Prison, Coimbatore.

HCP No.2136 of 2020:-

Habeas Corpus directing the Respondents to grant ordinary leave by considering the representation dated 26.06.2020 for a period of 30 days of petitioners husband Mr.Sekar @ Gunasekar S/o.Sachidanandham, Life Convict Ct.No.21210, now confined in Central Prison, Vellore.

HCP No.2358 of 2020:-

To issue a writ of habeas corpus directing to the respondents to grant one month leave without escort to the detenu Mr.Manikandan, S/o.Late Elango Prisoner.No.22330, now confined in Coimbatore Central Prison.

HCP No.2382 of 2020:-

Writ of Habeas corpus directing the Respondents to grant leave for 30 days without escort to the detenu, Arjunan aged about 55 years, S/o.Duraisamy life convict Prisoner, convict No.11251, detained at Central Prison, Kovai.

HCP No.2384 of 2020:-

Writ of habeas Corpus directing the respondents to grant one month leave without escort to the convict namely M.Saravanan @ Erode saravanan, S/O.Munusamy now confined in Central Prison, Puzhal-I.

HCP No.2396 of 2020:-

Directing the respondents to grant leave without Police escort for 30 days to the detainee S.Sandhu Mohammed, S/o.Mohammed Sherif, life convict No.10708 detained at Central Prison, Coimbatore on the basis of the petitioner representation dated 03.11.2020.

HCP No.2401 of 2020

To issue a Writ of Habeas Corpus directing the respondents to grant ordinary leave of one month without escort from 20.12.2020 to the detainee, Ganesan, S/o.Palani, Convict No.14013, detained at Central Prison, Coimbatore.

HCP No.2404 of 2020:-

Writ of Habeas Corpus directing the Respondents to grant leave for 1 Month to my husband, the detainee, Sahul Hammed, aged about 48 yrs, Convict No.18818 detained at Central Prison, Kovai

HCP No.2411 of 2020:-

To issue a Writ of Habeas Corpus directing the respondents to grant 30 days ordinary leave by considering the representation dated 06.11.2020 for petitioners husband namely Selvam S/o. Dhanakotti, aged about 60 yrs Convict prisoner, Ct.No.3, now confined in the Central Prison, Vellore.

HCP No.2558 of 2020:-

To issue a Writ of Habeas Corpus directing the 3rd Respondents to grant ordinary leave for 1 months without escort to the detainee R.Murali, aged about 38 years, S/o.Raman life convict prisoner, Convict No.18568 detained at Central Prison, Coimbatore.

HCP No.2600 of 2020:-

To issue a Writ of Habeas Corpus Directing the 2nd Respondent herein to grant leave to my son viz., Dhinakaran, son of Thilagan, aged about 21 years presently confined in Central Prison, Vellore for a period of 15 days without Police escort to arrange medical treatment for his Father and for such other reliefs.

HCP No.2309 of 2020:-

Directing the respondents to grant ordinary leave for two months to the detainee, Jakir Hussain, S/o.Salaudeen life convict No.1770 detained at Central Prison, Puzhal, Chennai.

HCP No.2 of 2021:-

Directing to the respondents to grant one month ordinary leave to the petitioner's father namely S.A.Basha S/O Abdul Rahman (C.T.No.3244) life convict prisoner now confined in Coimbatore, Central Prison, Coimbatore.

HCP No.5 of 2021:-

Directing the respondents to grant one month leave without escort to the convict namely Mr.Rajan, S/o.Shanmugam, aged about 30 years now confined in Coimbatore Central Prison.

HCP No.1614 of 2020:-

To issue a writ of Habeas Corpus directing the 3rd respondent to grant Ordinary leave for Thirty days to the petitioner's son named Thirugnanam son of Kothandabani (Convict Prisoner No.16289) aged 35 years, now confined in Central Prison, Cuddalore.

HCP No.2583 of 2020:-

To issue a Writ of habeas Corpus directing the respondents to grant 15days ordinary leave by considering the representation dated 26.12.2020 to Petitioner's husband namely G.Shankar, S/o. Gandhidoss , aged 46 years, CT.No.14824, Convict Prisoner, Central Prison, Cuddalore.

HCP No.176 of 2020:-

To direct the respondent to grant a parole for 30 days to the petitioner (detenue) now confined in Spcial Prison for Women, Puzhal, Chennai-66 and further direct the respondent to consider herein the petitioners representation dated 22.11.2019.

HCP No.2476 of 2020:-

Directing the respondent to grant one month leave to the detinue Kumar @ Rajkumar S/o.Palanisamy C.T.NO.18847 aged about 55 yrs life convict now confined at central prison, coimbatore to arrange the medical expenses.

HCP No.2260 of 2020:-

To issue a Writ of Habeas Corpus directing the respondents to grant ordinary leave for a period of 30 days by considering the representation dated 23.10.2020 to Petitioner's husband Mr.Sundarajan S/o.Sundaramoorthy, aged 37 years, Ct.No.16232, now confined in Central Prison, Cuddalore.

HCP No.2551 of 2020:-

To issue a writ of Habeas Corpus directing to the respondents to grant one month ordinary leave without escort to the petitioner namely Selvaraj, Life Convict Prisoner CT.No.16183 aged 47 years, confined at Central Prison, Coimbatore.

HCP No.18 of 2021:-

Writ of Habeas Corpus, directing the respondents to grant ordinary leave for one month to the detinue Murugan, son of Kannan, aged about 46 years, C.T.No.17351, now confined at Central Prison, Tiruchirapalli, based on the Petitioner representation, dated 24.12.2020.

HCP No.31 of 2021:-

To issue a Writ of Habeas Corpus directing the respondents to grant 30 day ordinary leave by considering the representation dated 10.12.2020 to petitioners husband Thangavel S/o. Gopal, aged 64 yrs Convict Prisoner, Ct.No.8199, now confined in Central Prison, Salem.

HCP No.2502 of 2020:-

To directing the respondents to grant leave period of 30 days to the petitioners father Saravanan, S/o.Muthu, aged about 46 years, who is confined in Central Prison, Trichy by

considering petitioner's representation letter dated 05/11/2020
pass such

HCP No.2576 of 2020:-

To issue a writ of Habeas Corpus directing the respondents to grant leave for 30 days without escort to the detinue, Babu alis Majjid, S/o.Yusuf convict No.17147, detained at Central Prison, Coimbatore.

HCP No.43 of 2021:-

Writ of Habeas Corpus directing the respondents to grant ordinary leave for a period of 30 days (without escort) by considering the representation dated 30.12.2020, to the Petitioner's husband Sampath, S/o.Govindasamy aged 60 yrs, Convict Prison, Convict No.3053 now confined in Central Prison, Vellore.

For petitioner : Dr.S.Manoharan
P.Sathyamoorthy for
in WP.No.2396 of 2020

M.Ezhilarasu
in WP.No.2411 of 2020

S.Manoharan
in WP.Nos.2558, 2404, 2401, 2382,
2097 of 2020

M.R.Thangavel
in WP.No.2600 of 2020

V.Parthiban
in WP.No.2 of 2020

K.Amirthalingami
in WP.No.2614 of 2020

P.G.Perumal Pandian
in WP.No.176 of 2020

S.Rajanikanth
in WP.No.2476 of 2020

M.Mohamed Saifulla
in WP.Nos.2551 of 2020,
2358, 2384 of 2020, 5 of 2021

Ilayaraja Kandasamy
in WP.No.18 of 2021

R.Sasikumar
in WP.No.2502 of 2020

S.Lakshmi
in WP.Nos.2576, 2309 of 2020

S.Nadhiya
in WP.Nos.2260, 2583, 2136 of 2020,
43 of 2021, 31 of 2021

For respondents: Mr.R.Prathap Kumar
in All WPs Additional Public Prosecutor

C O M M O N O R D E R

P.N.PRAKASH, J.

The petitioners in these cases are the relatives of convict prisoners/convict prisoners themselves undergoing various terms of imprisonment in the prisons that fall within the territorial jurisdiction of the Principal Seat of this Court at Madras. The petitioners seek writs of habeas corpus for the grant of ordinary leave to such convict prisoners. In view of the commonality of the issues involved and the reliefs sought, these petitions are decided by this common order.

2 At the outset, it is not in dispute that none of these cases relates to any complaint of unlawful detention which is the sine qua non for maintaining a petition for habeas corpus under Article 226 of the Constitution of India. The celebrated writ of habeas corpus, alluded to as the "great constitutional privilege" and "the first security of civil liberty", is a swift and effective remedy against illegal detention. Equally, where the detention is pursuant to an order passed by a court of competent jurisdiction, a petition for habeas corpus cannot lie. In Col.B.Ramachandra Rao (Dr.) v. State of Orissa and others¹, the Supreme Court observed as under:

"5. Most of those grievances merely suggest that the cases against him are not true and they have been engineered by some high placed individuals for mala fide reasons. This Court does not, as a general rule,

1 (1972) 3 SCC 256

go into such controversies in proceedings for a writ of habeas corpus. Such a writ is not granted where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal and we are not satisfied that the present is not such a case."

(emphasis supplied)

This position has been recently reiterated by the Supreme Court in Home Secretary (Prisons) v. H.Nilofer Nisha², wherein, it was observed thus :

"15.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 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 is in accordance with the decision rendered by a court of law or by an authority in accordance with law."

In view of the aforesaid decisions, there cannot be an iota of doubt that the prayers sought in these habeas corpus petitions are not maintainable.

3 When this Court posed a question to the learned counsel for the petitioners as to how a habeas corpus petition would lie for the grant of parole/ordinary leave when the detention, per se, is not illegal as the convict prisoners are undergoing their respective sentences that have been passed by Courts of competent jurisdiction, they stated in unison that earlier Division Benches have been entertaining such petitions and granting reliefs of ordinary/emergency leave to convict prisoners in exercise of powers under Article 226 of the Constitution of India. The learned counsel also placed strong reliance on the judgment of the Supreme Court in Sunil Batra II vs. Delhi Administration³ and submitted that the prisoners are

2 2020-1-L.W. (Cri.) 612

3 (1980) 3 SCC 488

not denuded of their fundamental right guaranteed under Article 21 of the Constitution of India and therefore, this Court has the power under Article 226 of the Constitution of India to grant the relief prayed in the petitions. The learned counsel further submitted that Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982, provides for grant of ordinary leave, for any other extraordinary reasons and under Rule 36, *ibid.*, the leave period will be excluded from the period of sentence and therefore, no prejudice would be caused to the State, if the prisoner is granted leave. They further submitted that under the T.N. Suspension of Sentence Rules, there is no provision for grant of leave if a close friend dies and under such circumstances, the prisoner has no other alternative, but to approach this Court under Article 226 of the Constitution of India.

4 Our attention was then invited to the judgment in *Radhakrishnan v. Home Secretary*⁴, wherein, a Division Bench of this Court had directed the State Government to make suitable amendments to the T.N. Suspension of Sentence Rules to provide a time limit for the disposal of the representations for ordinary leave. On facts, the Division Bench directed that the convict be granted ordinary leave for 10 days. However, this judgment cannot be taken to have laid down any law, for the reason that, there is no discussion about the powers of this Court to grant such a relief. It is well settled that in the absence of discussion or any binding ratio, a decision cannot constitute a binding precedent (See *Deepak Bhandari v. H.P. State Industrial Development Corporation Limited*⁵). As a matter of fact, in *Shanthakumari v. Government of Tamil Nadu*⁶, another Division Bench of this Court, has unequivocally reiterated that leave cannot be claimed as a matter of right.

5 The first contention that earlier Division Benches have been entertaining such petitions and granting reliefs, need not detain us for long as the Supreme Court, in *Nilofer Nisha* (*supra*) has, in no uncertain terms, held that past practice of entertaining habeas corpus petitions for parole or remission, etc. cannot clothe it with any semblance of legality. The relevant passage reads as under :

"Merely because a practice has been followed in the Madras High Court of issuing such type of writs

4 2020-2-L.W. (CrI). 467

5 (2015) 5 SCC 518

6 (2001) 3 CTC 715

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."

The learned counsel sought to distinguish Nilofer Nisha (supra) by contending that the said case related to commutation of the sentence of a prisoner and not to parole/leave. This submission, in our opinion, is a distinction without a difference, inasmuch as, the principle laid down therein would apply in all fours to these cases too.

6 The source of power to grant leave to a convict prisoner can be traced to the T.N. Suspension of Sentence Rules which has been framed by the State Government in exercise of power under Section 432(5) of the Code of Criminal Procedure, 1973. At this juncture, it is necessary to notice that the concept of leave is different from parole. In the case of leave, the sentence is suspended in exercise of power under Section 432 Cr.P.C./Article 162 of the Constitution of India and the period so granted will not be counted towards the total sentence period. However, in the case of a parole, there is no suspension of sentence i.e., there is no break in the prisoner serving sentence, with the result that the parole period would be counted towards the total sentence period, unless there is a law or rule to the contrary.

7 In *Sunil Fulchand Shah v. Union of India*⁷, a Constitution Bench of the Supreme Court considered the concept of parole and opined as follows:

"A 'parole' is not a 'suspension of sentence', but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the court. *Jenkins v. Madigan* [CA Ind, 211 F 2d 904, 906].

26. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been formed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking, an administrative action."

8 The judgment of the Constitution Bench and a subsequent decision in *Avtar Singh v. State of Haryana*⁸ were considered and followed by a Full Bench of this Court in *State represented by the Home Secretary and 4 others v. Yesu*⁹. Interestingly, the Full Bench, in *Yesu (supra)*, noticed that the Hon'ble Minister for Prisons was granting parole to convict prisoners in the State of Tamil Nadu without the backing of any rules. Therefore, the Full Bench, placing reliance on the judgments of the Supreme Court in *Maru Ram vs. Union of India*¹⁰, *Sunil Fulchand Shah vs. Union of India (supra)*, *Avtar Singh vs. State of Haryana* and another (supra) and *C.A. Pious vs. State of Kerala and another*¹¹, held as under:

"45. Thus, in the State of Tamil Nadu as of now, neither the Government nor any other statutory authority has power to grant parole for want of rules or a statute. The Government and the Authorities under the Tamil Nadu Suspension of Sentence Rules, have got power only to grant suspension of sentence and not parole.

46. In view of the said conclusion, we hold that until a legislation is made or appropriate Rules are issued by the Tamil Nadu Government regulating the grant of parole [temporary release], there shall be no temporary release of any prisoner on parole at all. In the event, any statute is made or the Government frames appropriate Rules regulating parole, the said Act or Rules may provide for the manner in which the period of parole may be treated either as part of the sentence period or not."

9 In *Yesu (supra)*, the Full Bench held that there was no law or administrative instruction to guide the exercise of executive power to grant temporary release of prisoners on parole. Consequently, the Full Bench held that until a law or rule or regulation was put in place, the Government could not exercise executive power to grant temporary release of prisoners on parole. In the matters before the Full Bench, it was noticed that parole was being arbitrarily granted at the discretion of the Minister concerned without any rule or regulation to guide

8 (2002) 2 SCC (CrI) 504

9 (2011) 5 CTC 353

10 (1981) 1 SCC 107

11 (2007) 8 SCC 312

its exercise. If executive starts arbitrarily granting paroles to convict prisoners, without the backing of statutory rules, it would lead to serious consequences, inasmuch as convict prisoners would merrily while away their time outside the prison gates, thereby reducing the sanctity of a judicial sentence to a total farce. After having held that the executive cannot grant parole/leave outside the Rules, the judiciary cannot arrogate to itself, the same power via Article 226. One cannot be heard to say that if the Minister exercises such a power, it would be for an oblique motive, whereas, if the Court exercises the same power outside the rules, it would be for a noble purpose. It must be remembered that both are Constitutional authorities.

10 In *Yesu (supra)*, the Full Bench held that as there was no law or regulation to grant temporary release on parole, such release of prisoners by way of emergency or ordinary leave could be granted only by way of a suspension of sentence under the T.N. Suspension of Sentence Rules. The Full Bench eventually concluded as under :

"27. In view of the said settled position of law, so far as the State of Tamil Nadu is concerned, since there is a statutory Rule in the form of the Tamil Nadu Suspension of Sentence Rules, occupying the field of suspension of sentence by grant of either emergency leave or ordinary leave, the executive power of the State under Article 162 of the Constitution cannot be exercised by the State in derogation of the said Rules. To put it otherwise, outside the scope of the said Rules, the Government or any other Authority of the Government shall not grant any suspension of sentence to a prisoner."

(emphasis supplied)

In view of the above, it would be restating the obvious to say that suspension of sentence, either by way of ordinary or emergency leave, to a convict prisoner cannot be granted dehors the provisions of the T.N. Suspension of Sentence Rules.

11 The next question is whether the convict prisoners have a right to avail ordinary or emergency leave under the T.N. Suspension of Sentence Rules. Rule 5, *ibid.* classifies leave into two kinds: emergency and ordinary leave. Emergency leave is granted by the Superintendent of Prison under Rule 10, whereas, ordinary leave is granted by the Government under Rule 37. The grounds for seeking emergency and ordinary leave are set out in Rules 6 and 20, respectively.

12 Rule 3, *ibid.* reads as under :

"3. Leave is not a right - Leave cannot be claimed as a matter of right. It is a concession granted to the prisoner."

It is, therefore, limpid that leave under the T.N. Suspension of Sentence Rules is discretionary in nature and cannot be claimed as a matter of right. It is a privilege granted in the form of a concession. Though the prayers in these petitions are couched in the form of habeas corpus, in substance, they seek a direction by way of a mandamus to the authorities to release the convict prisoners on leave. However, it is settled law that in the absence of a legal right, a writ of mandamus will not lie to compel the exercise of discretion to grant a concession/privilege. In *State of Rajasthan and another v. J.K.Udaipur Udyog Ltd. and another*¹², the Supreme Court held as under:

"25. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted."

13 In *IOCL and another v. Kerala State Road Trading Corporation and others*¹³, it was observed thus:

"15. Firstly, coming to the issue of the policy framed by the Government of India; the grant of subsidy is a matter of privilege, to be extended by the Government. It cannot be claimed as of right. No writ lies for extending or continuing the benefit of privilege in the form of concession."

(emphasis supplied)

14 Furthermore, it would be wholly impermissible for this Court to step into the shoes of the executive and exercise jurisdiction conferred on the authorities to grant emergency or ordinary leave. The power of judicial review under Article 226 of the Constitution of India is confined to an examination of the decision-making process. Ex consequenti, this Court cannot arrogate to itself, the role of the decision maker. In this

12 (2004) 7 SCC 673

13 (2018) 12 SCC 518

connection, the following observations of Lord Brightman in Chief Constable of North Wales v. Evans¹⁴ seem apposite:

"Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

15 In State of Kerala and others v. Kandath Distilleries¹⁵, the Supreme Court reiterated the aforesaid legal position and observed thus :

"30. The legislature when confers a discretionary power on an authority, it has to be exercised by it in its discretion, the decision oath to be that of the authority concerned and not that of the court. The court would not interfere with or probe into the merits of the decision made by an authority in exercise of its discretion. The court cannot impede the exercise of discretion of an authority acting under the statute by issuance of writ of mandamus. A writ of mandamus can be issued in favour of an applicant who establishes a legal right in himself and is issued against an authority which has a legal duty to perform, but has failed and/or neglected to do so, but such legal duty should emanate either in discharge of the public duty or operation of law."

(emphasis supplied)

16 In Nilofer Nisha (supra), the Supreme Court has affirmed the aforesaid position in the context of the power to grant remission or parole, and has observed as under :

"30. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise

14 (1982) 1 W.L.R. 1155

15 (2013) 6 SCC 573

these powers though once the powers are exercised, the court may hold that the exercise of powers is not in accordance with rules."

17 In view of the above, the power of judicial review to examine a refusal for grant of emergency or ordinary leave is available only post the decision-making process under the T.N. Suspension of Sentence Rules and not prior to that.

18 An incidental question is whether an independent power is available to this Court under Article 226 of the Constitution of India to suspend the sentence of a convict prisoner by granting emergency or ordinary leave. As has been pointed out supra, the grant of emergency or ordinary leave amounts to a suspension of sentence in exercise of the executive power of the State. When the courts are in seisin of a case, the judicial power to suspend a sentence of imprisonment, etc. pending an appeal or revision can be traced to Section 389 Cr.P.C. However, once a judicial sentence has attained finality and the role of the Courts has ended, suspension of sentence by way of ordinary or emergency leave to a convict prisoner can be granted only in exercise of executive power under Article 162 of the Constitution of India and Section 432 Cr.P.C. Inviting the Court to don the hat of the executive and suspend the sentences of convict prisoners by granting leave would, ex facie, violate the principle of separation of powers, inasmuch as the Court would be transgressing the Lakshman Rekha and encroaching into what is, essentially, an executive function.

19 In *Union of India v. M.S.Mohammed Rawther*¹⁶, the Supreme Court observed as under:

"6.The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles, the court can only set it aside and remit the matter back to the executive for a fresh decision but the court cannot assume the power of the Union of India. The court must exercise judicial restraint in such matters. There is broad separation of powers under the constitution and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too."

It is no doubt true that the powers of this Court under Article 226 of the Constitution of India are wide and plenary in character, but it is equally necessary to remind ourselves of

16 (2007) 12 SCC 527

the wise counsel of the German statesman and philosopher Goethe that self-limitation is the first mark of the master.

20 From a societal point of view, it is common knowledge that, so far, there has not been any outbreak of COVID-19 in any of the prisons in this State. The authorities have put in place a robust protocol by which new entrants are segregated, quarantined and thereafter, admitted in prisons. In such trying times, this Court cannot be invited to exercise a non-existent jurisdiction to dole out leave to convict prisoners forgetting the fact that a cumbersome procedure of quarantine for 14 days, etc. has to be observed each time a convict prisoner is readmitted to prison after leave.

21 In view of the aforesaid discussion, we are of the considered view that the prayers sought in these petitions are not maintainable.

22 In the result, these habeas corpus petitions stand dismissed.

23 We are also of the view that the continued numbering of habeas corpus petitions by the Registry, seeking ordinary or emergency leave, is seriously misconceived as it does not involve any unlawful detention at all. However, we cannot issue a direction to the Registry not to number the petitions seeking leave or parole as habeas corpus petitions, as such a decision has to be taken only by the Hon'ble Chief Justice, who is not only the master of the roster, but is also the administrative head of this Court.

Hence, the matter may be placed before the Hon'ble Chief Justice for a decision as to whether a direction should be issued by the Registrar General/Registrar (Judicial) not to number such petitions as habeas corpus petitions.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 THE STATE OF TAMIL NADU
REP.BY THE SECRETARY TO GOVERNMENT HOME
(PRISON) DEPARTMENT, SECRETARIAT,
CHENNAI-600 009.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF PRISON,
C.M.D.A TOWERS, EGMORE,
CHENNAI 08.
- 3 THE SUPERINTENDENT OF GENERAL PRISON
COIMBATORE.
- 4 THE INSPECTOR OF POLICE
B1 POLICE STATION, COIMBATORE.
- 5 THE ADDITIONAL DIRECTOR GENERAL OF POLICE (PRISON)
CMDA TOWERS, EGMORE,
CHENNAI - 600 008.
- 6 THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON - TRICHY,
TRICHY DISTRICT.
- 7 THE INSPECTOR OF POLICE
KARUNGALPALAYAM POLICE STATION
ERODE DISTRICT.
- 8 THE SECRETARY TO GOVERNMENT,
HOME PROHIBITION AND EXCISE DEPARTMENT,
SECRETARIAT, CHENNAI - 600 009.
- 9 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, SALEM - 7.
- 10 THE INSPECTOR OF POLICE,
NAATRAMPALLI POLICE STATION,
VELLORE DISTRICT.
- 11 THE STATE OF TAMILNADU REP.BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT
HOME (PRISON) DEPARTMENT TAMILNADU
GOVERNMENT CHIEF SECRETARIAT
FORT SAINT GEORGE, CHENNAI-600 009.
- 12 THE INSPECTOR OF POLICE,
PALAIYUR POLICE STATION,
NAGAPATTINAM DISTRICT.

- 13 THE DEPUTY INSPECTOR OF GENERAL OF PRISON
(COIMBATORE RANGE) OFFICE OF THE RANGE DIG
GANDHIPURAM, COIMBATORE-641 012.
- 14 THE SUPERINTENDENT OF PRISON
COIMBATORE CENTRAL PRISON, GANDHIPURAM,
COIMBATORE.
- 15 THE INSPECTOR OF POLICE,
KOLATHUR POLICE STATION,
SOUTH RAJA STREET, SALEM DISTRICT.
- 16 THE DEPUTY INSPECTOR GENERAL OF PRISONS,
VELLORE - 2.
- 17 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, CUDDALORE-4.
- 18 THE INSPECTOR OF POLICE
B4 VILLUPURAM TALUK POLICE STATION
VILLUPURAM.
- 19 THE INSPECTOR OF POLICE,
METTUPALAYAM POLICE STATION,
COIMBATORE DISTRICT.
- 20 THE SUPERINTENDENT OF PRISON,
SPECIAL PRISON FOR WOMEN,
PUZHAI, CHENNAI - 600 066.
- 21 THE DEPUTY INSPECTOR GENERAL OF PRISON,
VELLORE RANGE, VELLORE-2.
- 22 THE INSPECTOR OF POLICE,
SIVAGANGAI TOWN POLICE STATION,
SIVAGANGAI.
- 23 THE INSPECTOR OF POLICE
COIMBATORE POLICE STATION,
COIMBATORE.
- 24 THE DEPUTY INSPECTOR GENERAL OF RANGE,
COIMBATORE RANGE, COIMBATORE.
- 25 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI-I, CHENNAI.
- 26 THE SUPERINTENDENT OF PRISON,
THE CENTRAL PRISON, VELLORE.

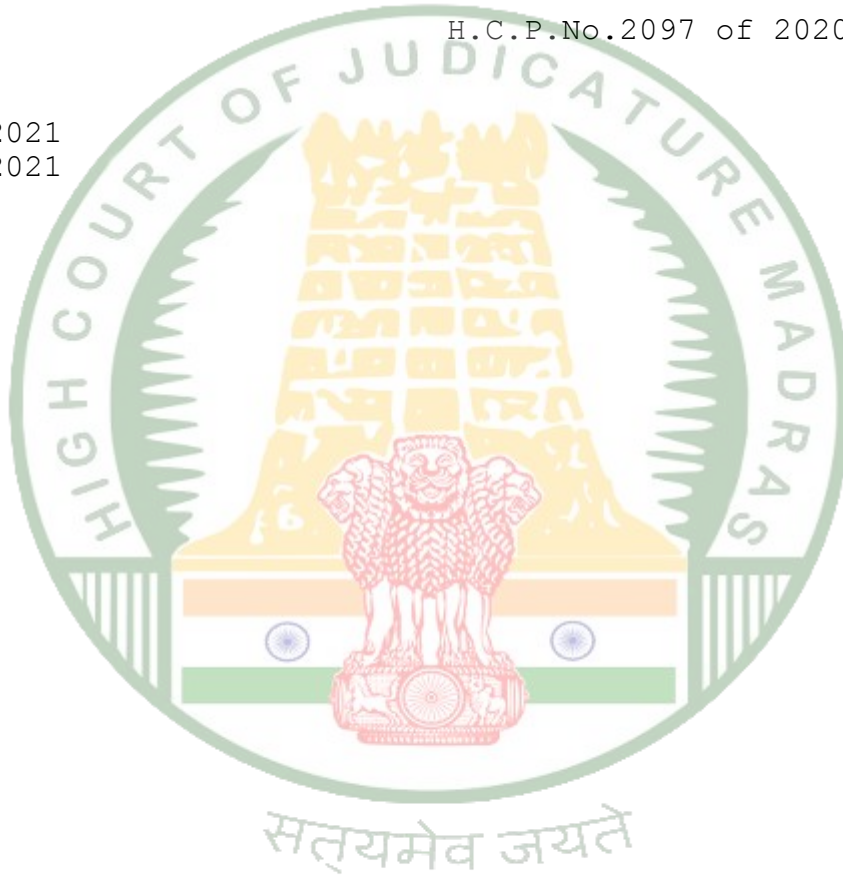
- 27 THE INSPECTOR OF POLICE,
AWPS AMBUR POLICE STATION
NOW THIRUPATHUR DISTRICT.
- 28 THE DEPUTY INSPECTOR GENERAL OF PRISON,
COIMBATORE ZONE (CENTRAL PRISON)
COIMBATORE-18.
- 29 THE INSPECTOR OF POLICE,
KOTAGIRI POLICE STATION,
KOTAGIRI.
- 30 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, VELLORE-2.
- 31 THE INSPECTOR OF POLICE,
DHANIPPADI POLICE STATION,
VELLORE DISTRICT.
- 32 THE DEPUTY INSPECTOR GENERAL,
CENTRAL PRISON, KOVAI,
KOVAI-641 018.
- 33 THE INSPECTOR OF POLICE,
B1, BAZAR POLICE STATION,
KOVAI.
- 34 THE INSPECTOR OF POLICE,
SULUR POLICE STATION,
COIMBATORE DISTRICT.
- 35 THE INSPECTOR OF POLICE,
UKKADAM POLICE,
COIMBATORE DISTRICT.
- 36 THE INSPECTOR OF POLICE,
KARUNGALPALAYAM POLICE STATION,
ERODE.
- 37 THE INSPECTOR OF POLICE,
ATTUR POLICE STATION, SALEM.
- 38 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS-104.

COPY TO

1. SUB ASSISTANT REGISTRAR,
CRIMINAL SECTION,
HIGH COURT, MADRAS.
2. THE REGISTRAR GENERAL,
HIGH COURT, MADRAS.
3. THE REGISTRAR JUDICIAL,
HIGH COURT, MADRAS.

H.C.P.No.2097 of 2020 etc. batch

JP (CO)
CS/25/03/2021
CS/22/04/2021



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