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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	24.08.2021
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CORAM:

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

W.P. No.17825 of 2020

Maruthamuthu

Petitioner

vs.

- 1 The Secretary to Government of Tamil Nadu
Home Department
Fort St. George,
Chennai 600 009
- 2 The Inspector General of Police
Tamil Nadu Prison Department
Chennai Metropolitan Development Authority
Tower-II, No.1,
Gandhi Irwin Road
Egmore, Chennai 600 008
- 3 The District Collector
Ariyalur District
Jayankondan Salai,
Ariyalur 621 707
- 4 The District Superintendent of Police
Ariyalur District,
Ariyalur 621 707
- 5 The Inspector of Police
All Women Police Station
Ariyalur 621 707
- 6 The Superintendent of Central Prison
Trichy
- 7 The Superintendent of Borstal School
Pudukkottai

Respondents



Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 2 and 6 to release forthwith the petitioner's son Karthik Kannan, aged about 27 years, detained in the Central Prison, Trichy, in accordance with G.O. Ms.No.1094, Home (Prisons-VI) Department dated 06.05.1987.

For petitioner Mr. Y. Arulmanickam

For respondents Mr. R. Muniyapparaj
Government Advocate (Crl.Side)

ORDER

P.N. PRAKASH, J.

For the sake of convenience, the various characters involved in this case, are referred to by their respective names.

2. Maruthamuthu, the petitioner herein, has preferred this writ petition seeking a writ of mandamus directing the respondents 2 and 6 to release forthwith, his son Karthik Kannan, aged about 27 years, detained in the Central Prison, Trichy, in accordance with G.O. Ms.No.1094, Home (Prisons-VI) Department dated 06.05.1987 (for brevity "G.O.Ms.No.1094").

3. To appreciate this case, it may be necessary to set out the bare minimum facts.

3.1 One "X" (name not divulged for the sake of anonymity), whose date of birth is 26.05.1995, gave a written complaint to the Inspector of Police, A.W.P.S., Ariyalur District, Ariyalur, alleging that Karthik Kannan had seduced her on 12.11.2010 on the promise of marrying her and thereafter, reneged from the said promise.

3.2 On this complaint, the said police registered a case in Cr.No.13 of 2010 on 25.12.2010 for the offences under Section 376, 417 and 506(I) IPC against Karthik Kannan and his family members.

3.3 After completing the investigation, the police filed a charge sheet in P.R.C. No.20 of 2012 in the Judicial Magistrate Court, Ariyalur, for the aforesaid offences against Karthik Kannan (A.1) and under Section 506(I) IPC against Maruthamuthu (A.2/petitioner herein), Anjammal (A.3) and Soundar (A.4).



3.4 On committal of the case to the Court of Session, trial was conducted in S.C. No.86 of 2012 by the Additional District and Sessions Court, Ariyalur. Eventually, the trial Court acquitted Maruthamuthu (A.2/petitioner herein), Anjammal (A.3) and Soundar (A.4) of all the charges and Karthik Kannan (A.1) of the charge under Section 506(I) IPC, but, convicted and sentenced Karthik Kannan (A.1) vide judgment and order dated 13.12.2012 in S.C. No.86 of 2012:

Provision under which convicted	Sentence
S. 376 (I) IPC	7 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 1 year rigorous imprisonment
S. 417 IPC	1 year rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 3 months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

3.5 After pronouncing the verdict, the trial Court prepared a committal warrant addressed to the Central Prison, Trichy and sent Karthik Kannan (A.1) along with escort police there.

3.6 Seemingly, the Superintendent of the Central Prison, Trichy, did not admit Karthik Kannan (A.1) on the ground that the latter was only 20 years of age and therefore, asked the escort police to admit him in the Borstal School, Pudukkottai.

3.7 Therefore, the escort police took back Karthik Kannan (A.1) to the trial Court and requested the trial Judge to give a fresh committal warrant addressed to the Superintendent, Borstal School, Pudukkottai.

3.8 Accordingly, the trial Court issued a committal warrant addressed to the Superintendent, Borstal School, Pudukkottai, pursuant to which, Karthik Kannan (A.2) was admitted in the Borstal School, Pudukkottai.

3.9 Thereafter, challenging his conviction and sentence, Karthik Kannan (A.1) preferred an appeal in CrI.A. No.32 of 2013 in the High Court and the same was pending.

3.10 While that being so, the Superintendent, Borstal School, Pudukkottai, released Karthik Kannan on 20.06.2015 on the ground that the latter had completed 23 years of age and therefore, he cannot be detained any further as an inmate there.



3.11 Thus, on the date of release, viz., 20.06.2015, Karthik Kannan (A.1) had completed only 2 years, 6 months and 9 days of incarceration as an inmate in the Borstal School, Pudukkottai.

3.12 The appeal preferred by Karthik Kannan (A.1) in CrI.A. No.32 of 2013 in the High Court was dismissed vide judgment dated 14.02.2020, wherein, this Court directed the trial Court to secure Karthik Kannan (A.1) and commit him to prison to serve out the remaining period of sentence, if any.

3.13 After the dismissal of CrI.A. No.32 of 2013 on 14.02.2020, the trial Court secured Karthik Kannan (A.1) and sent him to the Central Prison, Trichy, where, he was admitted on 06.03.2020 to undergo the remaining period of sentence.

3.14 Therefore, Maruthamuthu has filed the present writ petition seeking the relief stated in paragraph 2, supra.

4 Heard Mr.Y.Arulmanickam, learned counsel for Maruthamuthu and Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondents.

5 The Director General of Prisons and Correctional Services filed a counter affidavit dated 04.03.2021 and an additional affidavit dated 13.08.2021. Both the counter affidavits were served on the learned counsel for Maruthamuthu.

6 The learned counsel for Maruthamuthu contended that the Supreme Court, in State of Andhra Pradesh vs. Vallabhapuram Ravi¹, has clearly held that a prisoner admitted in the Borstal School cannot be shifted to the regular prison after he completes 23 years of age and so was the view reiterated by the Supreme Court subsequently in C. Elumalai vs. State of Tamil Nadu²; thus, following the law laid down by the Supreme Court in the above two cases, the State of Tamil Nadu, in G.O.Ms.No.1094, issued the following directions:

"The Government, after careful consideration, accepts the views of the Advocate General, Madras and direct that the adolescent offenders who are transferred from the Central Prison to the Borstal School in accordance with the terms of Section 10 of the Tamil Nadu Borstal School Act, 1925, should be released on the date on which they attained the age of 23 years and that they need not be transferred to the Central Prison to undergo the unexpired portion of their sentence of imprisonment."

¹ AIR 1985 SC 870

² AIR 1985 SC 118 [W.P (CrI.) No.981 of 1984 decided on 26.10.1984]



7 Hence, the learned counsel for Maruthamuthu contended that Karthik Kannan who was detained in the Borstal School from 14.12.2012 to 20.06.2015 should be released in terms of the law laid down by the Supreme Court in Vallabhapuram Ravi (supra), C. Elumalai (supra) and G.O.Ms.No.1094.

8 The learned Government Advocate (Crl. Side) refuted the aforesaid contention and submitted that Karthik Kannan is required to serve the remainder of the sentence in accordance with the judgment and order of the trial Court, confirmed by the High Court.

9 We gave our anxious consideration to the rival submissions.

10 The entire law relating to the Borstal School has been discussed threadbare by a 5 Judge Bench of this Court in N. Gowthaman @ Babu vs. The Government of Tamil Nadu, represented by its Home Secretary, Fort St.George, Chennai - 9 and another³. The need to constitute a 5 Judge Bench became imperative in order to resolve the conflicting decisions of several Benches. One such ruling was of a Division Bench in P. Shanmuganathan vs. Secretary to Government, Home Department, Chennai and another⁴, which was a public interest litigation, in which, the Division Bench issued a direction to the prison authorities to detain all adolescent remand prisoners in the Borstal School and not to remand them to the regular prisons.

11 With due respect to the view expressed therein, it is to be pointed out that the Tamil Nadu Borstal Schools Act, 1925 (for brevity "the Borstal Schools Act") would apply only to a person convicted of an offence, coupled with the fact that the said person is an adolescent offender as on the date of the conviction. The term "adolescent offender" has been defined in Section 2(1) of the Borstal Schools Act, which says that the convict should not be more than 21 years of age. It may be relevant to state here that there was only one Borstal School in the whole State of Tamil Nadu, which was in Pudukkottai. When the Division Bench in P. Shanmuganathan (supra) directed the prison authorities not to admit the adolescent remand prisoners in the regular prisons, but, to detain them in the Borstal School, the State Government hurriedly issued a notification in G.O. (D) No. 922, Home (Prisons IV) Department dated 12.08.2008 (for brevity "G.O. No.922") under Section 3(1) of the Prisons Act, 1894 declaring all the sub-jails in various districts of the State as Borstal Schools for the purpose of detaining remand prisoners. Therefore, all the Magistrates in the State of Tamil Nadu started sending adolescent remand prisoners to various sub-

³ 2016 (5) CTC 225

⁴ 2007 1 MLJ (Crl.) 775



jails, instead of sending them to the district jails or to the Central Prisons.

12 In N.Gowthaman @ Babu (supra), the 5 Judge Bench went into all these aspects and overruled P. Shanmuganathan (supra) and also quashed the notification in G.O. 922. The judgment in N.Gowthaman @ Babu (supra) was rendered by the 5 Judge Bench of this Court on 29.08.2016. The 5 Judge Bench held that a Borstal School requires a huge infrastructure like teachers, instructors and skilled persons to teach the adolescent convict prisoners various skills so that on release, they would have a meaningful life, whereas, such facilities are unavailable in a regular sub-jail. That apart, an adolescent convict prisoner admitted in the Borstal School would undergo a fixed period of detention, during which time, he can be rehabilitated, whereas, a remand prisoner will be released on bail by the Courts, depending upon the nature of the case against him.

13 The State Government, without understanding the object behind the establishment of the Borstal School and owing to its inability to accommodate all the remand prisoners arrested by various police throughout the State in the only Borstal School at Pudukkottai, conceived an ingenious idea to declare all the sub-jails in the State as Borstal Schools. This serious anomaly was observed by the 5 Judge Bench in N.Gowthaman @ Babu (supra).

14 Reverting to the case in hand, the admitted legal position is, an adolescent convict prisoner can be admitted in the Borstal School via three routes, viz.,

- i. Under Section 8 of the Borstal Schools Act by the Court at the time of passing a sentence of imprisonment;
- ii. By an order passed by the Inspector General of Prisons under Section 10 of the Borstal Schools Act; and
- iii. By the State Government under Section 10-A of the Borstal Schools Act in respect of a convict prisoner who has been sentenced to transportation.

15 In all the aforesaid three circumstances, the convict prisoner should be an adolescent offender, i.e., he should not be more than 21 years of age at the time of conviction. In the instant case, Section 10-A of the Borstal Schools Act will not apply, because, Karthik Kannan was not sentenced to transportation, but was sentenced to imprisonment. Therefore, only either Section 8 or Section 10, *ibid.*, would apply to him.

16 We perused the records of the trial Court and found that the trial Court had not passed any order under Section 8, *ibid.*, for detaining Karthik Kannan in the Borstal School.



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17 Thus, the only left over provision is Rule 10, *ibid.* Hence, we directed the Director General of Prisons to file an affidavit stating as to whether the Inspector General of Prisons had passed any order under Section 10, *ibid.*, to detain Karthik Kannan in the Borstal School.

18 Mr. Sunil Kumar Singh, I.P.S., Director General of Prisons, filed an additional affidavit dated 13.08.2021, wherein, at paragraph 5, he has stated as follows:

"I submit that, petitioner's son convict No.23470, Karthick Kannan, Son of Maruthamuthu was not detained in Borstal School, Pudukkottai, as per order of the Inspector General of Prisons, under Section 10 of the Tamil Nadu Borstal School Act, 1925. The petitioner's son was admitted in the Borstal School, Pudukkottai, as per the conviction warrant issued by the Additional District Sessions Judge, Ariyalur on 13.12.2012 to the Superintendent, Borstal School, Pudukkottai, under Borstal School Act, 1925, in connection with case in S.C. No.86/2012."

19 A reading of the above extracted portion clearly shows that Karthik Kannan was not detained in the Borstal School, Pudukkottai, pursuant to any order passed either under Section 8 or Section 10, *ibid.*, but, he was detained there based on a remand warrant that was issued by the trial Court. From the trial Court's records, we found two remand warrants, one addressed to the Superintendent, Central Prison, Trichy and the other addressed to the Superintendent, Borstal School, Pudukkottai. Even in Maruthamuthu's affidavit, he has fairly accepted that after pronouncing the judgment, the trial Court sent Karthik Kannan to the Central Prison, Trichy, but, since the jail authorities refused to admit Karthik Kannan in the Central Prison, Trichy as he was only 20 years of age, the escort police obtained a fresh warrant addressed to the Superintendent, Borstal School, Pudukkottai. We find that this confusion was on account of misconstruction of the law laid down in P. Shanmuganathan (*supra*) by the prison authorities. P. Shanmuganathan (*supra*) never dealt with adolescent convict prisoners, but dealt with adolescent remand prisoners.

20 Be that as it may, in the instant case, the fact remains that there was no judicial order passed either under Section 8 of the Borstal Schools Act or was there any administrative order passed under Section 10, *ibid.* In Vallabhapuram Ravi (*supra*), the Supreme Court has very clearly stated as under:

"21. If Section 433-A of the Code is kept out of the way, Section 10-A of the Act should be



interpreted in the same way in which it was understood all along. So construed a person who is detained under Section 10-A of the Act in a Borstal School would have to be released on his attaining 23 years of age....." (emphasis supplied)

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21 Likewise, in C. Elumalai (supra), the Supreme Court has held as under:

"In the circumstances it has to be held that the State Government of Tamil Nadu cannot keep any adolescent offender who is convicted of a capital offence but sentenced to imprisonment for life in respect of whom an order is made under Section 10-A of the Tamil Nadu Borstal Schools Act in a Borstal School or in any other kind of detention after he has attained 23 years of age. We, therefore, direct the Government of the State of Tamil Nadu to release all such inmates of the Borstal Schools in Tamil Nadu who have attained 23 years of age forthwith."

(emphasis supplied)

22 In both Vallabhapuram Ravi (supra) and C. Elumalai (supra), an adolescent convict prisoner who was sentenced to imprisonment for life and detained in the Borstal School pursuant to an order under Section 10-A of the Borstal Schools Act, was directed to be released on the prisoner attaining the age of 23 years.

23 A fortiori, in the absence of either a judicial order under Section 8 of the Borstal Schools Act or in the absence of an administrative order under Sections 10 and 10-A, *ibid.*, the benefit of release from custody on the completion of 23 years of age, cannot be granted merely based on a remand warrant. Be it noted that a remand warrant cannot be clothed with the capability to amplify or diminish the actual sentence passed by a Court. For instance, if a Court sentences a person to undergo 5 years rigorous imprisonment and while preparing the remand warrant, the clerk concerned makes an entry willfully or mistakenly as 3 years rigorous imprisonment, which the judicial officer also inadvertently signs, can the prisoner claim that he can be detained only for three years? The answer to this question is only an emphatic "No". Therefore, Maruthamuthu's claim that Karthik Kannan should be released based on the second remand warrant does not have legs to stand. Superadded, even for applicability of G.O.Ms.No.1094, there should be an order under Section 10 of the Borstal Schools Act, which is absent in the case in hand.



In the upshot, this writ petition fails as being bereft of any merit and is accordingly dismissed, however, sans costs.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Secretary, Home Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009
- 2 The Inspector General of Police
Tamil Nadu Prison Department
Chennai Metropolitan Development Authority
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- 7 The Superintendent of Borstal School
Pudukkottai

W.P. No.17825 of 2020

VBM(CO)
RGA(27/09/2021)