

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26.03.2021
CORAM :
THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA
W.P.No.19212 of 2020

Mr.R.Robert Payas
S/o.Balasundaram

... Petitioner

1.The Home Secretary
Government of Tamil Nadu
Secretariat St. George Fort, Chennai 600009

2.THE STATE
Through Superintendent of Police
CBI/ SIT / MDMA

3.The Superintendent of Prisons
Central Prison-I, Puzhal
Chennai 600 066
(R3 impleaded vide order dated
09.02.2021 made in WMP.2874/2021
in WP.19212/2020) ... Respondents

PRAYER: Writ petitions filed under Article 226 of the
Constitution of India, to issue a writ of Mandamus, directing
the 1st respondent to provide the petitioner 'A' Class facility
in the prison under Rules 225 and 227 of the Tamil Nadu
Prisoners Manual 1983.

For Petitioner : Mr.S.Saravanan
For Respondents : Mr.K.Srinivasan
Spl. Public Prosecutor (CBI Cases)
for R2
Mr.T.Shunmugarajeswaran
Govt. Advocate (Crl. Side)
for R1 & R3

O R D E R

The writ petition has been filed by the petitioner, seeking
to direct the 3rd respondent to provide the petitioner 'A' Class
facility in the prison under Rules 225 and 227 of the Tamil Nadu
Prisoners Manual 1983.

2.The brief facts of the case:

The petitioner was convicted by the Designated Court No.1,
under TADA Act, Poonamallee, Chennai in C.C.No.3 of 1992 under
common charge of Section 120B r/w 302, 326, 324, 201, 212, 216

IPC, Section 3, 4 and 5 of Explosive Substances Act, Section 25 of Arms Act, Section 12 of Passport Act, Section 14 of Foreigners Act, Section 6(1-A) of Wireless Telegraphy Act, and Section 3, 4 and 5 of TADA Act, 1987 and sentenced to death penalty along with all 25 accused who faced trial. Apart from the common charge, the petitioner was also convicted under Section 3(3) of TADA Act individually and sentenced to life imprisonment and the two sentences were ordered to run concurrently.

On Appeal, the Hon'ble Supreme Court on 11.05.1999 in Death Reference Case No.1 of 1998 with C.A.No.323 of 1998, acquitted the petitioner from all charges under TADA Act, and confirmed his conviction only u/s.120 B r/w 302 IPC and altered his death penalty to life imprisonment, by a majority order of the three Hon'ble Judges Bench.

During the confinement period the petitioner had filed a petition in CrI.M.P.No.3 of 2009 before the TADA Court at City Civil Court Complex, Chennai for an initial recommendation to classify him as 'A' Class prisoner. The Trial Court vide order dated 27.01.2009 upheld the petitioner's eligibility for 'A' class prisoner and directed the petitioner to approach the competent authority through the Superintendent of Prisons for classification of 'A' class and directed the competent authorities to consider such petition on merits.

The petitioner's premature released request under Article 161 of the Constitution has been considered and recommended by the Tamil Nadu State Council of Ministers and it is also pending before the Government.

While so, the petitioner has completed his Post Graduate in M.A. under the Manonmaniyam Sundaranar Open University in the year 2004 and he has also completed Certificate Course in Computing in 2002 and Certificate Course in Food and Nutrition in 2001 under Indira Gandhi National Open University.

The petitioner having completed the P.G. Degree was eligible for 'A' class facility, thereby, the petitioner had sent a representation dated 21.10.2020 to the 1st respondent through the Superintendent of Central Prison-I, Puzhal, Chennai u/s.227 of Tamil Nadu Prisoners Manual 1983, to treat him as 'A class' Prisoner. Since the said representation has not been considered, the present writ petition has been filed.

3.Learned counsel appearing for the petitioner would submit that the petitioner is a life convict and he has been suffering incarceration for more than 29 years. He would further submit that during the period of incarceration, the petitioner has completed his Post Graduate Degree in M.A. under the

Manonmaniyam Sundaranar Open University Course in the year 2004 and he has also completed Certificate Course in Computing in 2002 and Certificate Course in Food and Nutrition in 2001 under Indira Gandhi National Open University, thereby, the petitioner is eligible for 'A Class' facility. He would further submit that despite the representation given to the authorities on 21.10.2020, no steps have been initiated, thereby, the present petition has been filed.

4.The 3rd respondent has filed a counter. It has been stated that the representation of the petitioner dated 21.10.2020 had been received by the 3rd respondent on 02.11.2020 and that since the powers to grant 'A' class facility to the prisoner lies only with the Judicial Court or the Government of Tamilnadu the said representation of the petitioner dated 21.10.2020 has been forwarded to the Government. Further as per the procedure a report had been called for from the District Collector, Chennai vide the office Letter No.4552/R1/2019 dated 18.02.2020. Only after receipt of the said report, the appropriate authority / Government will be able to consider the representation.

5.Learned Government Advocate (Crl. Side) would submit that the representation of the petitioner dated 21.10.2020 has already been forwarded to the Government. However, they are awaiting for the report from the District Collector to proceed further and because of the Elections, there had been some delay in obtaining the report.

6.At this juncture, learned counsel for the petitioner would submit that the petitioner has completed Post Graduation and as per Rule 225 of the Tamil Nadu Prison Manual, 1983 he is otherwise entitled for 'A' class facility in view his educational qualification. He would further submit that the petitioner has become old and due to COVID pandemic situation his health condition is also deteriorating and only on account of the delay in getting the report the representation is not considered and thereby he would seek for a direction to the authorities to tentatively consider him as a 'A' class prisoner till his representation dated 21.10.2020 is considered by the Government. He would further submit that this Court in several other cases had directed the authorities to tentatively consider the prisoners as "A" class prisoner in view of Rule No.226 of Tamil Nadu Prison Manual, 1983 pending orders from the Government.

7.Heard the counsels. Perused the materials on record.

8.The representation dated 21.10.2020 seeking to provide 'A' class facility to the petitioner is pending. The petitioner having completed his P.G. Degree is eligible for A class

facility as per Rule No.226(1) of the Tamil Nadu Prison Manual, 1983.

9.In view of the fact that the representation of the petitioner is pending from 21.10.2020, this Court is inclined to issue a direction to the 3rd respondent herein to treat the petitioner as a 'A' class prisoner tentatively until the representation of the petitioner dated 21.10.2020 is considered by the Government.

10.With the above direction, this writ petition stands disposed of.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

kas

To

1.The Home Secretary
Government of Tamil Nadu
Secretariat St. George Fort, Chennai 600009

2.THE STATE
Through Superintendent of Police
CBI/ SIT / MDMA

3.The Superintendent of Prisons
Central Prison-I, Puzhal
Chennai 600 066

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

सत्यमेव जयते

W.P.No.19212 of 2020

KV(CO)

KKN 28.04.2021

WEB COPY