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W.P.(MD) No.292 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD) No.292 of 2020

K.Mariammal

... Petitioner

-vs-

1.The Home Secretary

Home Department

Secretariat, Fort St.George

Chennai

2.The Additional Director General of Prisons

Wanels Road

Egmore, Chennai-8

3.The Superintendent of Central Jail

Madurai Central Prison

Madurai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to consider the petition dated 23.07.2019 submitted to first respondent for premature release of the petitioners husband K.Moorthy extending the benefit of the G.O.M.S.No.64, Home (Prison), dated 01.02.2018, life convict No.5414 detained in the Central Jail, Madurai and undergoing the life sentence in S.C.No.34 of 1999, on the file of the learned First Additional Sessions Judge, Salem.

For Petitioner : Ms.W.Pamelin

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

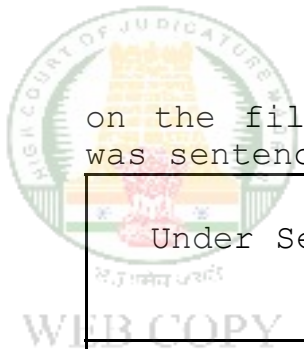
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This writ petition is filed by the wife of the life convict seeking premature release of her husband by extending the benefits of G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.

2. The facts of the case is that the life convict was tried for the charges under Sections 148, 341 and 302 I.P.C. (five counts) and Section 3 of the Explosive Substances Act in S.C.No.34 of 1999,



on the file of the learned I Additional Sessions Judge, Salem and was sentenced to undergo the following imprisonments:

Under Section 302 (5 counts) I.P.C.	Imprisonment for life under each counter consecutively and to pay a fine of Rs.5,000/- for each count in default R.I. for 2 years
Under Section 148 I.P.C.	Rigorous imprisonment for one year
Under Section 341 I.P.C.	Simple imprisonment for one month
Under Section 3 of Indian Explosive Substances Act, 1908 (Central Act No.6 of 1908)	Rigorous imprisonment for one year.

3. It is the case of the petitioner that her husband is entitled for premature release as per G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, wherein the State Government, in exercise of its power under Section 433-A of the Code of Criminal Procedure, 1973, has taken a policy decision for the release of prisoners on their good conduct in the light of the birthday centenary celebration of the Former Chief Minister Dr.M.G.Ramachandran. The said Government Order has laid down the category of prisoners entitled for premature release and the pre-requisite conditions to consider their case. In the case on hand, the Government has not considered the case of the convict herein for the reason that he has not satisfied the requisite conditions for the premature release as laid down in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.

4. The counter affidavit filed on behalf of the respondents indicates that the life convict was found guilty for the major offence under Section 302 I.P.C. (5 counts) and slapped with imprisonment of life for each count to run consecutively, besides for the offence under Section 3 of Indian Explosive Substances Act, 1908, which is a Central Act, he was sentenced to undergo one year rigorous imprisonment. The conviction and sentence awarded by the Trial Court was confirmed by the High Court, however, the period of sentence was ordered to run concurrently and the said order was confirmed by the Honourable Supreme Court vide Judgment dated 16.07.2019 in Criminal Appeal Nos.571 - 573 of 2010.

5. Though G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, enables the life convicts, who have completed ten years of actual imprisonment as on 25.02.2018, to seek premature release, as a pre-condition, the prisoners should exhibit satisfactory behaviour and they should not have been convicted and sentenced for the offence punishable under the Central Acts.



6. Apart from the embargo imposed in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, it is also stated in the counter affidavit that the convict herein had suffered prison punishment i.e. forfeiture of the prison privilege of interview for three months twice as per Sub-Rule (4) of Rule 302 of the Tamil Nadu Prison Rules, 1983 for possessing cellphone inside the prison illegally.

7. On the facts of the case, the State has taken note of the brutal murder of five remand prisoners and injury to four Police personnel by the petitioner's husband and relying upon the Judgment of the Honourable Supreme Court rendered in **Rajan vs. The Home Secretary, Home Department of Tamil Nadu and others**, dated 25.04.2019, found that the husband of the petitioner is not eligible for premature release for having not satisfied the basic requirements for consideration.

8. This Court does not find any infirmity or illegality in the decision taken by the State Government for not considering the case of the petitioner under G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.

9. At this juncture, the learned counsel appearing for the petitioner submitted that the lift convict is suffering imprisonment for more than 17 years and even otherwise, his case can be considered for premature release under Rule 340 of the Tamil Nadu Prison Rules, 1983.

10. In response to the above submission, the learned Additional Public Prosecutor referred to Paragraph No.12 of the counter affidavit, wherein it is stated that the Prison Authorities have initiated the process of constituting Advisory Board to consider the case of life convict, who has completed 14 years of sentence as on 29.12.2018 and due to covid pandemic situation, the case of the life convict cannot be taken up for consideration by the Advisory Board.

11. This Court is conscious of the fact that premature release is not a matter of right. Life sentence means it is for the entire life and any premature release can be done only following the due process of law and such process is subject to the prerogative power of the Executive. In this case, we find that the State has considered the case of the life convict and has initiated the process under the Tamil Nadu Prison Rules, 1983. Hence, it is suffice to record that the respondents shall expedite the said process and communicate the decision to the petitioner as well as the life convict at the earliest.



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12. With the above observations, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To:

- 1.The Home Secretary,
Home Department,
Secretariat, Fort St.George,
Chennai.
- 2.The Additional Director General of Prisons,
Wanels Road,
Egmore, Chennai-8.
- 3.The Superintendent of Central Jail,
Madurai Central Prison, Madurai District.
- 4.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.W. PAMELIN, Advocate (SR-34558[F] dated 16/11/2021)

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RD(27.12.2021) 4P 6C