



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.3806 of 2010

and

M.P(MD)No.1 of 2010

R.Soundarapandiyan

: Petitioner

Vs.

1.State represented by
the Principal Secretary to Government,
Home (Prison IV) Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The Director General of Prisons,
CMDA Towers II, No.1,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3.The Deputy Inspector General of Prisons,
Madurai Range,
Central Prison Campus,
Madurai - 625 016.

4.The Superintendent,
Central Prison,
Madurai - 625 016.

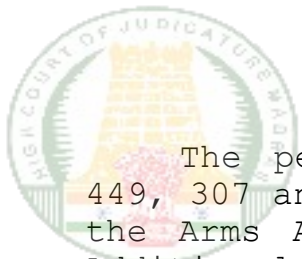
: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the petitioner's premature release rejection order in NO.18402/Tha.Ku.1/2009, dated 19.12.2009 on the file of the respondent No.4 and quash the same as illegal and directing the respondents to treat the petitioner as an eligible life convict prisoner for premature release from Central Prison, Madurai on the basis of G.O.Ms.No.1155 Home (Prison-IV) Department dated 11.09.2008.

For Petitioner : Mr.C.Mayil Vahana Rajendran

For Respondents : Mr.S.Ravi,

Standing Counsel for the State

**ORDER**

The petitioner was tried for the offence under Section 379, 449, 307 and 302 (3 counts) IPC and under Section 25(1-b) (A) of the Arms Act, 1959 in S.C.No.331 of 2001 on the file of the II Additional District Sessions Judge, Madurai. The trial Court by judgment dated 28.02.2002 found the petitioner guilty, convicted and imposed death sentence. On the appeal filed by the petitioner in CrI.A.No.512 of 2002 and in R.T.No.3 of 2002, this Court by judgment dated 22.04.2002 confirmed by the conviction, but modified the death sentence to that of a life imprisonment and since then the petitioner has been in central prison at Madurai. According to the learned Counsel, the petitioner has completed 14 years of imprisonment and he is entitled for pre-mature release.

2.The petitioner's wife one S.Murugeswari made a representation for considering the case of her husband for premature release and the same was rejected by the Superintendent of Prison, Madurai vide his proceedings No.18402/Tha.Ku.1/2009, dated 19.12.2009 that the petitioner Soundarapandian's premature release cannot be considered, since he has been convicted under Section 25(1-b) (A) of the Arms Act. As against the said rejection, the petitioner has filed the present writ petition.

3.It appears that the request of the petitioner for premature release was rejected on the ground that the petitioner was also convicted for the offence under Section 25(1-b) (A) of the Arms Act. The petitioner was tried for the offence under Sections 379, 449, 307 & 302 (3 counts) IPC and under Section 25(1-b) (A) of the Arms Act. The death sentence imposed by the trial Court was modified as that of life imprisonment by this Court on appeal. Insofar as the offence under Section 25(1-b) (A) of the Arms Act is concerned, the petitioner was sentenced to undergo rigorous imprisonment for one year. The sentences were ordered to run concurrently.

4.The petitioner is in prison for more than 14 years. Meaning thereby, he has already undergone the sentence period for the offence under Section 25(1-b) (A) of the Arms Act. If an accused has already undergone the imprisonment period for a particular offence, then such an offence cannot be cited as a bar for considering his case for any relief.

5.In similar circumstances, the Hon'ble Supreme Court, in **Rajan v. Home Secretary of Tamil Nadu [W.P.(CrI.)No.321 of 2018]**, has held as follows:

"19. ...Considering the fact that the sentence awarded for the said offence has already been completed by the petitioner and thus cannot be reckoned for the purpose of deciding the representation of remission of life sentence..."

20. ...We also hold that consultation with the Central Government would not be necessary and the State Government being the appropriate Government, must exercise power conferred upon it in terms of Section 432 and 433 of CrPC."



6.In **State of Tamil Nadu v. P.Veera Bharathi [Crl.A.No.120 of 2009, dated 22.01.2019]**, the Hon'ble Supreme Court, while concurring with the views of this Court in HCP(MD)No.540 of 2016, dated 26.10.2016, has held as follows:

"But, if a lifer is to be convicted for much lesser offence, say offences under Section 224, 498A of Indian Penal Code etc., and sentenced to small periods of imprisonment, notwithstanding the fact that he had completed more than 10 years of custody, he would still not be eligible for early release. Such a situation, in our considered view, cannot be allowed to prevail by understanding the operation of the Rules in the manner suggested on behalf of the appellants."

7.Since the petitioner has already completed the sentence for the offence under Section 25(1-b) (A) of the Arms Act, it cannot be now cited as a bar by the respondents to decline his case for premature release.

8.Mr.S.Ravi, learned Standing Counsel for the State has also produced a copy of the recommendation made by the Advisory Board for releasing the petitioner / life convict prisoner no.3933, namely, Soundarapandian S/o.Ramasamy, under Section 432(2) Cr.P.C. The opinion of the Superintendent of Central Prison, Madurai, was also produced before this Court, wherein, the conduct of the petitioner was remarked as good.

9.In view of the subsequent developments, the impugned proceedings of the 4th respondent is set aside and the 1st respondent shall take a decision on the premature release of the petitioner in accordance with law, based on the recommendation of the I Additional District Judge, Madurai in D.No.1904/2021, dated 18.03.2021 and the opinion of the Superintendent, Central Prison, Madurai within a period of eight weeks from the date of receipt of a copy of this order.

10.In the result, this writ petition is disposed with the above direction. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary to Government,
Home (Prison IV) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Prisons,
CMDA Towers II, No.1,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Central Prison Campus,
Madurai - 625 016.
- 4.The Superintendent,
Central Prison,
Madurai - 625 016.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The I Additional District Judge,
Madurai.

W.P (MD) No.3806 of 2010
22.07.2021

MGJ(14.12.2021) 4P 7C