



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 12.11.2021

Delivered on: 30.11.2021

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CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
W.P. (MD)No.15727 of 2021

P.Veera Bhaarithi

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home (Prison) Department,
Tamil Nadu Govt., Chief Secretariat,
St. George Fort,
Chennai - 600 009.

2.The Additional D.G.P./I.G. of Prisons,
Wanels Road, Egmore,
Chennai - 600 008.

3.Mr.P.Kanagaraj,
D.I.G. of Prisons,
Madurai Range,
Central Prison Campus,
Madurai - 625 016.

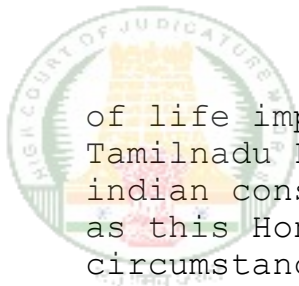
4.Mr.Senthamarai Kannan,
Superintendent,
Central Prison,
Palayamkottai - 627 002.

... Respondents

Prayer in WP(MD). 15727/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records in the order G.O. (D) No.227/Home (Prison IV) Department/2017 dated 23-02-2017 passed by the 1st respondent which arbitrary rejected the petitioners premature release from life imprisonment, and quashing the same as illegal and consequently to release the petitioner VEERA BHAARATHI son of PONNIAH aged about 50/2021 years forthwith from the sentence

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of life imprisonment, under the provisions of Rule No.341 of the Tamilnadu Prison Rules, 1983 read with Articles 14,20 and 21 of the Indian constitution and to pass such further or other order/orders as this Honourable Court may deem fit and necessary in the circumstances of the case and thus render justice.

PRAYER: 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 G.O.(D)No.227, Home (Prison - IV) Department/2017, dated 23.02.2017, passed by the first respondent, which arbitrarily rejected the premature release from life imprisonment and quashing the same as illegal and consequently, to release the petitioner viz., Veera Bhaarithi, S/o.Ponniah, aged about 50 / 2021 years, presently confined at Palayamkottai Central Prison, bearing L.Ct.No.3334, in person before this Court from their illegal custody, and to set him at liberty forthwith under the provisions of Articles 14, 20 and 21 of the Constitution of India.

For Petitioner : P.Veera Bhaarithi
Party-in-Person

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

S.VAIDYANATHAN, J.

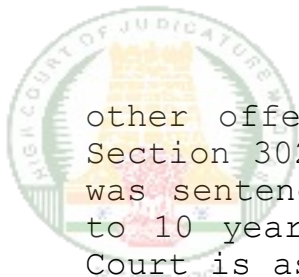
and

G.JAYACHANDRAN, J.

The petitioner herein P.Veera Bhaarithi, a life convict, has approached the Government for premature release from life imprisonment. His request was declined by the Government vide impugned Government Order in G.O.(D)No.227, Home (Prison - IV) Department, dated 23.02.2017. The petitioner challenging the said order, has initially filed H.C.P.(MD)No.1038 of 2017. This Court pointed to the petitioner that his detention is not an illegal detention, but lawful custody of the State in view of the conviction, therefore, the Habeas Corpus Petition is not maintainable. Hence, the petitioner sought leave to convert the same as Writ Petition. Accordingly, the Habeas Corpus Petition was converted into a Petition seeking a Writ of Certiorarified Mandamus, for the relief stated above.

2.Before advertng to the merits of the case, certain facts, which are relevant, are narrated below.

3.The petitioner herein is the first accused in S.C.No.30 of 1999, on the file of the Principal Sessions Court, Virudhunagar. He along with two others were charged for the offences under Sections 302 I.P.C. and 376 I.P.C., besides other offences. The trial Court found all the three accused including the petitioner herein guilty of offence under Section 302 read with Section 34 of I.P.C. and all



other offences. He was sentenced to death for the offence under Section 302 read with Section 34 of I.P.C and for other offences, he was sentenced to undergo rigorous imprisonment ranging from 3 years to 10 years. The sentence imposed on the petitioner by the trial Court is as below:-

Section of Law	Sentence	Fine amount
302 r/w 34 IPC	Death	Nil.
341 r/w 34 IPC		Rs.500/- in default to undergo simple imprisonment for one week.
328 r/w 34 IPC	To undergo Rigorous imprisonment for ten years	Rs.1,000/- in default to undergo rigorous imprisonment for two years.
404 r/w 34 IPC	To undergo Rigorous imprisonment for three years	Rs.3,000/- in default to undergo rigorous imprisonment for two years.
376 IPC	To undergo Rigorous imprisonment for seven years	Rs.3,000/- in default to undergo rigorous imprisonment for two years.
201 r/w 34	To undergo Rigorous imprisonment for seven years	Rs.2,000/- in default to undergo rigorous imprisonment for two years.

4.Since death sentence was imposed on the petitioner, the case was referred to this Court for confirmation. In Referred Trial No.2 of 1999, a Division Bench of this Court, by judgment dated 10.08.2000, confirmed the conviction, however, modified the death penalty as imprisonment for life. The operative portion of the judgment of the Division Bench of this Court in the Referred Trial heard along with the appeals filed by the respective accused is as below:-

''30.

The judgment and order of conviction of all the accused under Sec.302 I.P.C. read with Sec.34 passed by the trial Court is upheld. However, the death sentence awarded by the trial Court is modified to life imprisonment in case of all the three appellants. Criminal Appeal No.872 of 1999 by the first accused Veerabharathi, Criminal Appeal No.939 of 1999 by the second accused Rahmathullah and Criminal Appeal No.925 of 1999 by the third accused Elango alias Murugan are dismissed with a modification in the sentence as stated above.



R.T.No.2 of 1999 is disposed of and we refuse to confirm the death sentence awarded to the three accused.

The conviction and sentence of all the accused for the offence under Sec.376 I.P.C. is confirmed. So also, the conviction of the accused persons on other counts i.e., under Secs.341 r/w 34, 328 r/w 34 and 201 r/w 34 is upheld and the sentence is confirmed.

The accused persons are acquitted of the offences under Secs.397 and 404 (against second and third accused), Sec.397 read with 34 and Sec.404 read with 34 (against the first accused) and the sentences are set aside.''

5.The petitioner herein not satisfied with the modification, had preferred S.L.P.(Crl.)Nos.4019 and 4020 of 2000. The same were dismissed by the Hon'ble Supreme Court on 04.12.2000, confirming the life sentence. Thus, the death sentence imposed on the petitioner herein was modified into life imprisonment by the High Court and on dismissal of the S.L.Ps., the judicial process reached finality.

6.While so, earlier, the petitioner herein attempted to take advantage of the order passed by the State of Tamil Nadu in G.O.(Ms) No.1155, Home (Prison - IV) Department, dated 11.09.2008, which proposed premature release of the convicts, who have completed seven years of actual imprisonment as on 15.09.2008, subject to certain conditions. Since his request to extend the benefit of the said Government Order was declined, the petitioner herein filed W.P.(MD) No.10590 of 2009 seeking premature release based on G.O.(Ms)No.1155, Home (Prison - IV) Department, dated 11.09.2008. However, the said Writ Petition was dismissed on 26.02.2010. A challenge to the said order of the learned Single Judge was also dismissed by a Division Bench of this Court in W.A.(MD)No.193 of 2010 on 02.08.2010. Review Application (MD)No.65 of 2012 filed by the petitioner was also dismissed on 25.09.2012. The petitioner preferred S.L.P. before the Hon'ble Supreme Court in S.L.P.(Crl.)No.6481 of 2013, which came to be dismissed on 18.11.2014. While dismissing the S.L.P., the Hon'ble Supreme Court, in its order dated 18.11.2014, make the following observations:-

'We are of the view that the petitioner's case for remission/commutation, etc., in accordance with the Tamil Nadu Prison Manual be considered by the State Authority and an appropriate order be passed on the petitioner's entitlement for release within a period of two months from today.''



7. In view of the said observation and direction, the State Government had considered the case of the petitioner herein in accordance with the Tamil Nadu Prison Manual and rejected the request of the petitioner for premature release, vide G.O.(D)No.646, Home (Prison - IV) Department, dated 28.08.2015. The rejection of his request for premature release was on the ground that the prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of I.P.C. are not eligible for premature release. The Government for the above reason thought fit that the request of the petitioner cannot be placed before the Advisory Board for consideration due to the embargo in Rule 341(3) of the Tamil Nadu Prison Rules, 1983, [for brevity 'the Rules']. The said order was challenged by the petitioner in H.C.P.(MD)No.540 of 2016. A Division Bench of this Court after considering the records and the applicability of Rule 341(3) of the Rules, held that Rule 341(2) and (3) of the Rules makes it *ipso facto* clear that the case of life convict shall be considered for premature release only on his completion of 10 years of actual imprisonment and it is manifestly clear that the prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of I.P.C. are not eligible for being considered for premature release. However, in view of the clarification given by the Director General of Prisons in No.14189upl1/89, dated 04.11.1989, that in a case, where a convict is undergoing imprisonment for life for the offence under Section 302 of I.P.C. and has also been convicted and sentenced for the offences under Sections 376 and 396 of I.P.C., if the sentences were ordered to run concurrently, after serving the sentence period for the offences under Sections 376 and 396 of I.P.C., the convict would be eligible for being considered for premature release in respect of the life sentence for the offence under Section 302 of I.P.C. Hence, this Court allowed H.C.P.(MD) No.540 of 2016, vide order dated 26.10.2016 and directed the Government to re-consider the petitioner's request for premature release within a period of eight weeks from the date of receipt of a copy of the said order.

8. In the said circumstances, the State Government have constituted the Advisory Board as per the provisions of the Tamil Nadu Prison Rules and had taken up the case of the petitioner for premature release. Accepting the Advisory Board's recommendation, the Home Department has passed G.O.(D)No.227, Home (Prison - IV) Department, dated 23.02.2017, rejecting the request of premature release of the life convict P.Veera Bhaarithi, S/o.Ponniah. The said Government Order rejecting the request for premature release based on the recommendation of the Advisory Board, is now under challenge in this Writ Petition.



9.The prime attack on the impugned order dated 23.02.2017 is about improper reliance of the two adverse communications by the Additional Director General of Police / Inspector General of Prisons, dated 31.01.2014 and 14.03.2015, which were prior to the positive recommendation of Superintendent, Central Prison, Palayamkottai, recommending premature release of the prisoner. Further, it is also contended that Rule 339 of the Prison Manual contemplates the procedure to be adopted by the Advisory Board constituted for considering premature release, wherein sub-rule 4 mandates that the Board while considering the case of premature release, shall take note of the social history of the prisoner, the circumstances of his criminal behavior, conduct in prison, response to training and treatment, notable changes in his attitude, degree of criminality, health and mental condition and the possibility of his resettlement on his premature release and also **the circumstances as were not before the Court at the time of his conviction.**

(Emphasis added)

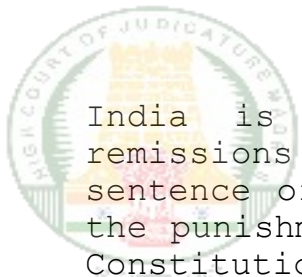
10.The petitioner has appeared in person besides submitted his written arguments, primarily emphasise on the point that the two adverse reports by Additional Director General of Police / Inspector General of Prison is a manipulation by the authorities and the Advisory Board has not considered his case as per the procedure contemplated under Rule 339 of the Tamil Nadu Prison Manual, particularly, the circumstances which were not before the Court at the time of conviction. His conduct of complying the parole conditions without any violation, the doubtful circumstances prevail over the finding of his guilt were not taken note by the Advisory Board and the Government. The petitioner herein repeatedly canvassed before this Court that he is innocent and certain facts were not before the Court, at the time of his conviction, the Advisory Board ought to have looked into those facts for the purpose of premature release.

11.Per contra, the learned Additional Public Prosecutor appearing for the respondents has filed counter affidavit and has contended that based on imaginary and vague allegations, the party-in-person has challenged the order rejecting his plea for premature release. The Advisory Board on due application of mind and on considering the merits of the case based on the prison record and the submissions made by the convict, after careful consideration and examination, had rejected the request stating out the reasons. The recommendation of the Advisory Board being based on record was accepted by the Government and there is no perversity, illegality or non-application of mind in the impugned order to interfere. The learned Additional Public Prosecutor referred the impugned Government Order to emphasise that the challenge to the impugned Government Order is baseless.

12.The legal position regarding premature release of a convict in short is as under:-

Under Article 72 of the Constitution of India, the President of

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India is empowered to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence and in cases where the punishment or sentence is by a Court Martial. That apart, the Constitution vest a right on a convict, who suffers death sentence, to seek pardon. Whereas, in case of a convict sentenced for any offence against any law relating to a matter to which the executive power of the State extends, the Governor of the said State under Article 161 of the Constitution of India, can exercise his power to grant pardons, reprieves, respites or remissions of punishment. Apart from constitutional right, the right of a convict to seek remissions, reprieves for commutation is contemplated under Section 432 of the Code of Criminal Procedure.

13. In the instant case, the death sentence imposed on the petitioner was altered to imprisonment for life by the appellate Court. The issue before this Court is to test whether the rejection of his request for premature release by the State exercising the power under Code is legally sustainable or not.

14. When the March of Law on this point taken up for consideration, this Court finds that in **G.V.Godse Vs. State of Maharashtra** reported in **1961 (1) Cri.L.J. 736**, a Constitution Bench of the Hon'ble Supreme Court held that imprisonment for life means prison life for rest of the life span and not for 20 years. The Hon'ble Supreme Court has further held that the convict does not acquire any right to be released prematurely as it is within the exclusive province of the appropriate Government to grant remission. Followed by the said judgment, in **Maru Ram Vs. Union of India** reported in **1981 SCC (Cri) 112**, the Constitution Bench of the Hon'ble Supreme Court after considering the law and its interpretation by the Courts concluded as below:-

'72. We conclude by formulating our findings:

(1) We repulse all the thrusts on the vires of Section 433-A. Maybe, penologically the prolonged term prescribed by the section is supererogative. If we had our druthers we would have negatived the need for a fourteen-year gestation for reformation. But ours is to construe, not construct, to decode, not to make a code.

(2) We affirm the current supremacy of Section 433-A over the Remission Rules and short-sentencing statutes made by the various States.

(3) We uphold all remissions and short-sentencing passed under Articles 72 and 161 of the Constitution but release will follow, in life sentence cases, only on government making in order en masse or individually, in that behalf.



(4) We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar power, and Section 433-A, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like.

(5) We negate the plea that Section 433-A contravenes Article 20(1) of the Constitution.

(6) We follow Godse case [Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440 : AIR 1961 SC 600 : 1961 Cri LJ 736] to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by government.

(7) We declare that Section 433-A, in both its limbs (i.e. both types of life imprisonment specified in it), is prospective in effect. To put the position beyond doubt, we direct that the mandatory minimum of 14 years' actual imprisonment will not operate against those whose cases were decided by the trial Court before December 18, 1978 when Section 433-A came into force. All "Lifers" whose conviction by the court of first instance was entered prior to that date are entitled to consideration by government for release on the strength of earned remissions although a release can take place only if government makes an order to that effect. To this extent the battle of the tenses is won by the prisoners. It follows, by the same logic, that short-sentencing legislations, if any, will entitle a prisoner to claim release thereunder if his conviction by the court of first instance was before Section 433-A was brought into effect.

(8) The power under Articles 72 and 161 of the Constitution can be exercised by the Central and State Governments, not by the President or Governor on their own. The advice of the appropriate Government binds the Head of the State. No separate order for each individual case is necessary but any general order made must be clear enough to identify the group of cases and indicate the application of mind to the whole group.

(9) Considerations for exercise of power under Articles 72/161 may be myriad and their occasions protean, and are left to the appropriate Government, but no consideration nor occasion can be wholly irrelevant, irrational, discriminatory or mala fide.



Only in these rare cases will the court examine the exercise.

(10) Although the remission rules or short-sentencing provisions proprio vigore may not apply as against Section 433-A, they will override Section 433-A if the government, Central or State, guides itself by the selfsame rules or schemes in the exercise of its constitutional power. We regard it as fair that until fresh rules are made in keeping with experience gathered, current social conditions and accepted penological thinking – a desirable step, in our view – the present remission and release schemes may usefully be taken as guidelines under Articles 72/161 and orders for release passed. We cannot fault the Government, if in some intractably savage delinquents, Section 433-A is itself treated as a guideline for exercise of Articles 72/161. These observations of ours are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not survive until replaced by a more wholesome scheme.''

15.Later, the above dictum of the Hon'ble Supreme Court has clarified and reiterated in **Epuru Sudhakar Vs. Government of Andra Pradesh** reported in **2006 (8) SCC 161** holding that the power of the State Government under Section 432 of the Code of Criminal Procedure is controlled by Section 433-A of the Code of Criminal Procedure. The exercise or non-exercise of the powers by the State Government under these provisions can be subjected to judicial review.

16.Therefore, this Court has no doubt about the legal position that the impugned order can be subjected to judicial review of course subject to the guidelines laid by the Hon'ble Supreme Court in **Maru Ram's** case [supra] and subsequent cases following **In Re Maru Ram**.

17.Section 433 and 433-A of the Code of Criminal Procedure, 1973 reads as follows:-

''433. Power to commute sentence.-

The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860) ;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;



(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433-A. Restriction on powers of remission or commutation in certain cases.-

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.''

18.In the instant case, the petitioner had served more than 14 years of imprisonment. From the date of conviction till the date of filing this petition, the petitioner was granted emergency leave and ordinary leave for more than 100 times. After filing this petition, he has obtained Parole on the ground that he want to effectively contest this application and the Court has also acceded to his request and granted Parole. The records reveals that from 01.01.2019 till 12.11.2021, when this Court directed the petitioner to surrender before the Prison authorities on completion of hearing of this petition and the purpose for which the Parole was granted has been served and he was enjoying the liberty.

19.While advertng to the merits of this petition, it is relevant to extract below the operative portion of the the impugned order dated 23.02.2017.

''10.The Advisory Board held on 21.12.2016 has made the recommendation as follows:-

இன்று 21.12.2016 அன்று அறிவுரைக் கழகம் கூடி அனைத்து ஆவணங்களையும் பரிசீலனை செய்து, சிறையில் இவரது நடத்தை திருப்தி இல்லை என்பதாலும், *Additional Director General of Police, Ref.No.33325/CS3/2014 (5), dated 31.01.2014* மற்றும் *10645/CS3/15, 14.03.2015* ஆகிய அறிக்கைகளின்படி சிறையில் முறை தவறி நடந்து கொண்டு உள்ளதாலும், அறிவுரைக் கழகத்தின் முன் திருந்திய நிலையில் இல்லாமல் தவறுக்கு வருந்தாமலும் தன்னை தண்டித்தது தவறு என்ற நிலைப்பாட்டுடன் வாதிட்டு, அதனை வலியுறுத்தி அதற்கான வாதங்களை முன் வைத்ததாலும் சிறைவாசி இன்னமும் திருந்தி மன நிலைக்கு வரவில்லை என முடிவு செய்து முன் விடுதலைக்கு தகுந்த இனம் இல்லை என முடிவு செய்து பரிந்துரைக்க இயலாது என நிராகரிக்க முடிவு செய்யப்பட்டது."

11.The Superintendent, Central Prison, Palayamkottai, has not recommended for the premature release of the prisoner as his conduct in prison is



not satisfactory and the Deputy Inspector General of Prisons, Madurai Range, has also not recommended for the premature release of the prisoner under Advisory Board Scheme.

12. The Additional Director General of Police / Inspector General of Prisons has also stated that based on the reports of the Advisory Board, the Superintendent, Central Prison, Palayamkottai and the Deputy Inspector General of Prisons, Madurai Range, he has not recommended for the premature release of life convict prisoner No.3334, Veera Bhaarithi, S/o.Ponniah, confined in Central Prison, Palayamkottai. He has requested the Government to issue appropriate orders.

13. The Government have carefully considered and examined this case in detail as follows:-

(i) The case has been extensively tried and after examining all the witnesses and prosecution exhibits and other records, the trial Court has sentenced him to death. On appeal, this sentence was modified into life sentence by the High Court of Madras. All the pleadings, explanations, justifications etc., could have been made by the convict prisoner before the trial Court and based on which only the Sessions Court had sentenced him to death. The High Court has only modified the sentence and has not acquitted him in appeal and his appeal before the Hon'ble Supreme Court of India was also dismissed.

(ii) The convict has not proved his innocence during the course of trial.

(iii) In earlier the petitioner submitted a representation, has requested to subject him to polygraph test and thereafter to re-investigate his case based on the result of such test. In which, it has been viewed that re-investigation of the case which has already been concluded by sentencing the petitioner to death, subsequently, which was modified as life imprisonment by the Hon'ble High Court of Madras and upheld by the Supreme Court of India need not be reconsidered in the context of a polygraph test alone but should be seen taking into account the overall evidence appreciated by the Courts and accordingly, the Government rejected the request of the petitioner vide G.O.(Ms)No.318, Home (Police X) Department, dated 23.03.2016.



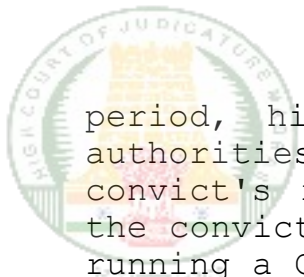
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(iv) The reason mentioned by the Advisory Board held on 21.12.2016, to reject the premature release of life convict, is that the life convict's conduct was not satisfactory and he has not suffered for his conviction.

(v) The main objective of the prison department is not only to confine prisoners and deter them from committing offence but also to Reform, Rehabilitate and Re-socialize them, so that they can freely mix and mingle with the society after the release and become useful citizens. With this end in view several reformatory measures. The convict not having been reformed is evident from his stand that he claims to be innocent and still holds a view that he has not committed the crime for which he has been convicted and undergoing imprisonment. This shows his defiant attitude towards any reformation. It is apparent that the purpose of incarceration period is not fulfilled.

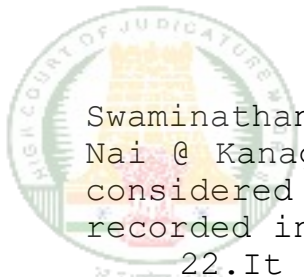
14.The Government have decided to accept the recommendation of the Advisory Board held on 21.12.2016 at Para 10 above. Accordingly, the case of premature release of the life convict prisoner No.3334, Veera Bhaarathi, S/o.Ponniah, confined in Central Prison, Palayamkottai, under Advisory Board Scheme is rejected.''

20.The petitioner referring to Form - 6, dated 21.12.2016, signed by the Superintendent of Prison, Central Prison, Palayamkottai, would submit that the Superintendent of Prison in the said Form has mentioned that there is no complaint against the petitioner as per the Prison Record. While so, he would submit that a statement in Paragraph 11 of the impugned order that the Superintendent, Central Prison, Palayamkottai, has not recommended for the premature release of the prisoner as his conduct in the prison not satisfactory is a misleading, incorrect and perverse statement. He would also submit that there is no adverse report from the Additional Director General of Police / Inspector General of Prisons, dated 31.01.2014 and 14.03.2015 as mentioned in Paragraph 10 of the impugned order. The said report not served to him and seen the light of the day. Since very serious allegations made, this Court thought fit that the Prison Record should be called for examination. Accordingly, the learned Additional Public Prosecutor was directed to produce the Prison Records. On production of the Prison Records, the Advisory Board Register maintained by the Central Prison, Palayamkottai, was perused and this Court finds that at Page Nos.99 to 103 of the Register, the proceedings of the Advisory Board in respect of the convict has been recorded. From the entries, we find that on completion of 14 years



period, his case was taken up for consideration by the Prison authorities. The Probation Officer of Rasipuram area, where the convict's family resides, has recommended for premature release of the convict on the basis that the convict is a B.E. Graduate and was running a Computer Center, his premature release will not affect the peace and tranquility in the locality. The Probation Officer has also observed that the convict owns 4 Acres of land at Aruppukkottai. Likewise, the District Collector, Virudhunagar, has recommended for premature release on the basis that the convict is a B.E. Graduate, hailing from respectable family and the victim family are not residing in Rasipuram area. The Superintendent, Central Prison, Palayamkottai, has recorded that the convict was transferred from Madurai Central Prison to Palayamkottai Central Prison, on 29.03.2015, for administrative reasons. The conduct of the convict is not satisfactory and therefore, he is not recommending for his premature release. This statement is signed by the Superintendent of Central Prison, Palayamkottai, on 21.12.2016. Based on the reports received from the District Collector and Superintendent of Central Prison, Palayamkottai, the Advisory Board, which met on 21.12.2016, had declined to recommend for premature release. The learned Principal District Judge and the learned Chief Judicial Magistrate, Tirunelveli District are the signatories to this recommendation as members of the Advisory Board. The contention of the petitioner that there was no adverse remark by the Prison Superintendent is found to be incorrect, since the Superintendent of Central Prison, Palayamkottai, has specifically recorded in the Advisory Board Register that the conduct of the convict is not satisfactory and is not recommending for premature release.

21. The point for consideration now focused the effect of Form - 6 annexed to the letter of the Superintendent of Central Prison, Palayamkottai, wherein he says nil complaint against the convict. The petitioner herein suspects that the statement of the Superintendent of Central Prison, Palayamkottai, in the Advisory Board Register ought to have obtained subsequently. This Court is unable to countenance such imaginary allegation for the simple reason that the statement of the Superintendent of Central Prison, Palayamkottai, is found in Page No.102 of the Register and the same is signed by the Superintendent of Central Prison, Palayamkottai, along with date. Subsequently, the recommendation of the Advisory Board is found in Page No.103 of the Register. This has been signed by the Advisory Board Members, consisting of the learned Principal District Judge and the learned Chief Judicial Magistrate, Tirunelveli and other members. This Register is a continuous and contemporaneous document maintained by the Prison authorities. On the very same date, the Advisory Board has also considered premature release of few other life convicts, who were eligible for considering premature release. The proceedings are recorded from Page No.81. At Page No.81, Convict No.5248 [Richard], at Page No.86, Convict No.6471 [Paulraj], at Page No.92, Convict No.6320 [Palani], at Page No.99, Convict No.3334 [P.Veera Bhaarithi, the convicted person], at Page No.104, Convict No.8144 [Swami @



Swaminathan @ Muthukumar], at Page No.109, Convict No.5719 [Vettai Nai @ Kanagaraj] and at Page No.114, Convict No.2234 [Murugan] were considered on the same day by the Advisory Board and the details are recorded in running pages.

22.It is well settled proposition of law that premature release of a convict is neither fundamental right nor a statutory right to be enforced through Courts. It is the prerogative of the State to consider the case of premature release subject to the rules framed. As held by the Constitution Bench of the Hon'ble Supreme Court, the exercise of the executive power if found to be perverse or *mala fide* or in violation of natural justice principle, the High Courts or the Hon'ble Supreme Court can exercise the power of judicial review.

23.Rule 339 of the Tamil Nadu Prison Rules, 1983, which is relevant for considering the request for premature release, reads as below:-

'339.Procedure to be adopted by the Advisory Board.-

(1) The members of the Advisory Board shall always treat the information about prisoners as confidential.

(2) A brief summary of the cases coming for consideration by the Advisory Board with the connected records shall be circulated among all members of Advisory Board well in advance of the meeting.

(3) The Advisory Board shall examine if the cases placed it satisfy the rules and if there has been any undue delay in placing such cases before the Board.

(4) The Board, while considering the due cases for premature releases, shall take note of the social history of the prisoner, the circumstances of his criminal behaviour, conduct in prison, response to training and treatment, notable changes in his attitude, degree of criminality, health and mental condition and the possibility of his re-settlement on his premature release and also the circumstances as were not before the Court at the time of his conviction.

(5) The Advisory Board shall also take into consideration of the following records, namely:-

(a) Report from the Superintendent of the Prisons and also the psychological study report of the Psychologist, if any;

(b) Report of the Medical Officer of the Central Prison, wherever necessary;

(c) Report of the Probation Officer.

(6) In the event of the Advisory Board recommending or not recommending the premature release against the opinion of the Probation Officer



and the District Collector, detailed reasons in justification of such recommendation shall be recorded in the Advisory Board's proceedings.

(7) Minutes of the Advisory Board Meeting shall be recorded and signed by the Chairman and all members present.

(8) After the meeting of the Advisory Board, all records shall be submitted to the Inspector General of Prisons by the Superintendent of the Prisons concerned who shall forward the same to the Government.''

24.The Advisory Board therefore while considering premature release of a life convict is expected not only to consider the degree of criminality but also the facts and circumstance that were not before the Court at the time of conviction. While considering so, they should also take into consideration the report of the Superintendent of Central Prison, Probation Officer and others. Not an isolated recommendation or opinion of any one person is sufficient for premature release. It must be holistic appreciation of recommendation by the stakeholders and the subjective satisfaction of the Advisory Board cumulatively arrived at in the Meeting. The Board consists of respectable persons of high position, who are subject experts, particularly when Judicial Officers of high rank, like Principal District Judge and Chief Judicial Magistrate are part of the Committee, the allegation of *mala fide* and manipulation of document, purely out of imagination cannot be countenanced.

25.The two adverse remarks of Additional Director General of Police / Inspector General of Prisons noted in the impugned order are as below:-

Sl. No.	Additional Director General of Police / Inspector General of Prisons Reference No. and date	Report
1.	No.33325/CS.3/2014 (s), dated 31.01.2014	Life Convict Prisoner No.7209, Veera Bhaarathi, Son of Ponnaiah @ Kamatchi Chettiar Central Prison, Madurai, collected details of the prisoners who have convicted in a single case, approached them voluntarily and assured for their early release, Advocate Santhakumaresan had hand in glove with the prisoner and collected Rs.5000 each of such prisoner and the prisoner P.Veera Bhaarathi gets commission.



2. No.10645/CS.3/2015,
dated 14.03.2015

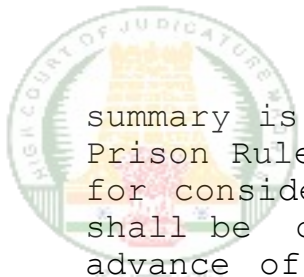
Life Convict No.7209, Veera Bhaarathi, Son of Ponnaiah @ Kamatchi Chettiar, Central Prison, Madurai, involved in homosex with life convict No.5313 Maruthu Pandi, son of Palanikumar at 7th Block.

A source report has been lodged against him alleging that he is collecting money from the remand prisoners for their release on bail etc., and it is also learnt that he is still continuing the same practice and the remand prisoners who do not get bail despite of money paid by them are discontent with him.

26.These remarks are by the Additional Director General of Police pertaining to the conduct of the convict while he was in Central Prison, Madurai. Form - 6, which is relied by the convict is by the Superintendent of Central Prison, Palayamkottai. From the report of the Superintendent of Central Prison, we find that the convict was transferred to Palayamkottai Prison from Madurai Central Prison only on 29.03.2015. Probably, in Palayamkottai Prison, there is no complaint or adverse remarks against the convict, which has prompted the Superintendent of Central Prison, Palayamkottai, to record nil complaint. This does not mean that the Superintendent of Central Prison, Palayamkottai, has recommended for premature release. Irrespective of the complaint in one prison and non-pendency of complaint in the other Prison, in case of convict, who has been served imprisonment at two prisons at two different point of times, the conduct of the convict has to be tested in whole and not in part, which the Advisory Board has done in this case and arrived at the conclusion that the convict is not fit for premature release.

27.The allegation of the petitioner that the communication of the Additional Director General of Police referred in the impugned order is a secret communication is an ill-conceived allegation. It is not secret communication. It has been disclosed in the impugned order itself and admittedly, even before that, in the counter filed by the State in earlier Writ Petition (MD)No.7558 of 2015 filed by the wife of the life convict, the said fact has been disclosed by the State.

28.The contention of the petitioner that the two communications of the Director General of Police / Inspector General of Prisons, dated 31.01.2014 and 14.03.2015 were never sent along with brief



summary is only based on surmises. Rule 339(2) of the Tamil Nadu Prison Rules, 1983, contemplates a brief summary of the cases coming for consideration by the Advisory Board with the connected records shall be circulated among all members of the Advisory board well in advance of the meeting. Therefore, the petitioner cannot presume that these two communications were not circulated well in advance. It is a fact admitted by the petitioner that he was interviewed by the Advisory Board on 21.12.2016 and only after giving fair opportunity of being heard and on perusal of the record, the Advisory Board has come to the said conclusion, which is reflected in the impugned order.

29.It is to be noted that the information given in Form - 6 as nil complaint, does not per se a Certificate of Good Conduct of the convict and the convict is entitled for premature release.

30.Under Rule 339 of the Tamil Nadu Prison Rules, good conduct is one of the factors for considering the premature release. It is not the only factor. There are other factors, which are not favourable to the petitioner herein and therefore, the Advisory Board in their wisdom found the convict unfit for premature release and has not recommended for premature release. The State Government, which is the final authority to exercise the power of remission, had accepted the recommendation of the Advisory Board. The scope of this Court while exercising its power under judicial review is very limited. The alleged perversity and non-application of mind when found to be false and baseless, this Court cannot overshoot its power and step into the shoes of the executive.

31.Therefore, this Court is of the firm view that in the instant case, the impugned order does not bristle with any *mala fide* or non-exercise of power vested. There is no violation of principles of natural justice. In the said circumstances, there is no scope to interfere with the decision of the executive under the garb of judicial review.

32.The petitioner relying upon the observation of the Hon'ble Supreme Court in **Union of India vs. V.Sriharan @ Murugan @ others** reported in **2016 (7) SCC 1**, submitted that the impugned order is patently illegal and violation of constitutional right, hence, it has to be reviewed by this Court exercising his judicial power. No doubt, the Hon'ble Supreme Court in the said judgment has observed as below:-

'110. it has been consistently held by this Court that when it comes to the question of reviewing an order of remission passed which is patently illegal or fraught with stark illegality on constitutional violation or rejection of a claim for remission, without any justification or colourful exercise of power, in either case by the executive



authority of the State, there may be scope for reviewing such orders passed by adducing adequate reasons.''

33.As far as the present case is concerned, as discussed above, this Court finds no illegality or violation of Constitution while considering the request for remission by the petitioner herein. When the impugned order does not have semblance of *mala fide* or illegal, the action of the executive exercising its plenary power cannot be interfered.

34.For the above said reasons, this Court finds that there is no merit in the writ petition. Hence, this writ petition is dismissed upholding the impugned order of the Government rejecting the request for premature release of the life convict. While dismissing the Writ Petition, we want to emphasize that premature release is not a matter of right, and the term ''life sentence'' means that it is for the entire life in the light of the judgment of the Apex Court in the case of **Union of India vs. V.Sriharan**, reported in **(2016) 7 SCC 11**, followed by yet another judgment in **Rajan vs. Home Secretary, Home Department of Tamil Nadu and others**, reported in **(2019) 14 SCC 114**. The principles enunciated therein have been followed by us in a judgment **in K.Mariammal vs. The Home Secretary, Home Department, Secretariat, Fort St.George, Chennai and others [W.P. (MD) No.292 of 2020] decided on 15.11.2021.**

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

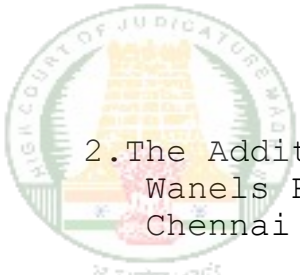
Sub Assistant Registrar(CS)

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 of Tamil Nadu,
Home (Prison) Department,
St. George Fort,
Chennai - 600 009.



2.The Additional D.G.P./I.G. of Prisons,
Wanels Road, Egmore,
Chennai - 600 008.

3.The Superintendent of Prison,
Puzhal Central Prison,
Chennai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.P.Veera Bhaarithi,
S/O V.Ponniah,
Life Convict, No.3334,
Now at Puzhal Central Prison,
Chennai.

Through
The Superintendent of Prison,
Central Prison of Puzhal, Chennai.
(Communicated by Reg Post and E-mail also)

Copy to

1.The DIG of Prison, Madurai Range,
Madurai.

2.The Superintendent of Central Prison,
Palayamkottai.

3.The Inspector of Police,
Chittlapakkam Police Station,
Chennai.

W.P. (MD) No.15727 of 2021
30.11.2021

MGJ(06.12.2021) 19P 10C