



WP.No.1204 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 07..12..2022

Orders Pronounced on : 16..12..2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice N.ANAND VENKATESH

Writ Petition No.1204 of 2021

.....

Rabiya
W/o Ibrahim

..... Petitioner

-Versus-

1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai 600 009.

2.The Superintendent,
Central Prison,
Kovai.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Government Order issued by the 1st respondent in G.O.(D).No.864, Home (Prison-IV) Department, dated 07.08.2019 and to quash the same and consequently direct the respondents to release the

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detenu, viz., Ibrahim [Convict No.10900], aged 54 years, Son of Mohamed Hussain, now, confined at Central Prison, Coimbatore, prematurely, as per Government Orders in G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008 and G.O.(Ms) No.64, Home (Prison-IV) dated 01.02.2018

For Petitioner : Dr.S.Manoharan

*For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor*

ORDER

N.ANAND VENKATESH.J.,

This Writ Petition has been filed challenging the impugned Government Order issued by the 1st respondent in G.O.(D) No.864, Home (Prison-IV) Department, dated 07.08.2019 and for a consequential direction to the respondents to release the detenu viz., Ibrahim @ Netti Ibrahim (Convict No.10900), who is now confined at Central Prison, Coimbatore, in line with Government Orders in G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008 and G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.



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2. The facts of the case, in brief, is that the husband of the petitioner is a life convict, who was confined at Central Prison, Coimbatore, for the last 24 years. The petitioner made a representation to the respondents to consider premature release of the detenu in the light of G.O.(Ms) No.1155, dated 11.09.2008. Since the above said representation was not considered, the petitioner filed H.C.P.No.2887 of 2018 before this court seeking for appropriate directions and this court, by order dated 03.01.2019, directed the respondents to consider the representation given by the petitioner and to dispose of the same within a period of two weeks from the date of receipt of a copy of the order.

3. Pursuant to the above directions issued by this court, the representation made by the petitioner was considered in the light of G.O.Ms.No.1155 dated 11.09.2008 and the 1st respondent vide G.O.(D) No.864, Home (Prison-IV) Department, dated 07.08.2019, rejected the representation for premature release of the detenu. Aggrieved by the same, the present writ petition was filed before this court.



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4. Heard Dr.S.Manoharan, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor, for the respondents 1 & 2.

5. The points that arise for consideration in the present writ petition are as under:-

(i) Whether the order passed by the 1st respondent, in G.O.(D) No.864, Home (Prison-IV) dated 07.08.2019, rejecting the representation of the petitioner for premature release of the detenu viz., Ibrahim @ Nettai Ibrahim, was not in line with G.O.(Ms) No.1155, Home (Prison-IV) dated 11.09.2008?

(ii) Whether any discrimination was shown by the respondents while considering the premature release of the detenu Ibrahim @ Nettai Ibrahim, qua the other detenus, who were granted premature release under the relevant Government Order?

(iii) Whether any direction must be issued to



the respondents to consider the premature release of the detenu viz., Ibrahim @ Netti Ibrahim under G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021?

Points (i) and (ii):

6. The detenu was convicted and sentenced along with two others in connection with the murder of a Rashtriya Swayamsevak Sangh (RSS) activist, by judgement dated 06.02.2001 in S.C.No.201 of 1999 by the II Additional Sessions Judge, Coimbatore, for offences u/s 148 and 302 of IPC. The judgement and order of convictions and sentences were confirmed upto the Apex Court.

7. To commemorate the Birth Centenary of Peraringnar Anna, the State Government issued G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008 and ordered premature release of 1405 convict prisoners by virtue of exercise of powers by the Governor under Article 161 of the Constitution of India. Further, to commemorate the Birth Centenary of Dr.M.G.Ramachandran, the State Government issued a fresh remission Government Order in G.O.(Ms) No.64, Home (Prison-IV)



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Department, dated 01.02.2018 ordering premature release of 1650 convict prisoners.

8. One of the accused persons viz., Yasudeen, also made a representation through his mother seeking for premature release and the same was rejected by the 1st respondent in G.O.(D) No.727 dated 04.07.2019. Yasudeen was also one of the accused persons, who was convicted and sentenced along with the detenu in the present case, viz., Ibrahim @ Nettai Ibrahim.

9. The reason that has been assigned by the 1st respondent while rejecting the representation for premature release of the detenu is extracted hereunder:-

“5. The Government have examined the request of Tmt.Rabiya made in her representation on 28.11.2018 seeking premature release of her husband/life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim, Son of Mohamed Hussain, confined in Central Prison, Coimbatore, with relevant records and based on the guidelines



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framed in G.O.(Ms) No.1155, Home (Pri-IV) Depr, dated 11.09.2008. In this case, the life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim, son of Mohamed Hussain along with two others were involved in the brutal murder of one person belonging to R.S.S. Party with a communal motive in a serial bomb blast case which killed the extremely violent murder committed by the life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim, has communal overtones in a communally sensitive area which will also added to social tension and the Government apprehends that the release of life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim will disturb peace and harmony prevailing in that area and that create law and problem. The Government, therefore, decided to reject the request of Mt.Rabiya seeking premature release of her husband/life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim, Son of Mohamed Hussain, confined in Central Prison, Coimbatore and order accordingly.”



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10. It is clear from the above that the main reason that was assigned for rejecting the request for premature release was that the offence committed by the detenu had communal overtones in a communally sensitive area in Coimbatore and hence, the release of the detenu will disturb the peace and harmony prevailing in that area and create law and order problem. The same reason was also assigned, when the request made for the premature release of Yasudeen was considered by the respondents.

11. The rejection of the premature release of Yasudeen was put to challenge before this Court in W.P.No.1196 of 2021. This Writ Petition was dismissed by an order dated 31.03.2022. To appreciate the reasoning that was given in the said order, the relevant portions are extracted hereunder:-

“10. In **Satish** (supra), the Supreme Court was dealing with Section 2 of the Uttar Pradesh Prisoners Release on Probation Act, 1938, which provided for the premature release of convict prisoners on certain grounds. Since the Uttar Pradesh Government had not properly applied the said provision, the Supreme Court had to intervene and direct release of the convict prisoners therein.



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In Tamil Nadu, we do not have any enactment akin to Uttar Pradesh Prisoners Release on Probation Act, 1938. In Tamil Nadu, the State would normally announce schemes, from time to time, for the premature release of convict prisoners and only if a person becomes eligible for consideration under such a scheme, will the Government examine his case and decide, either to grant or not to grant premature release to him under Article 161, *ibid*. The Governor would pass orders based on the advice of the Cabinet. Since the impugned order under challenge in this case has been passed under Article 161 of the Constitution of India, we have to examine its validity on the anvil of the law relating to judicial review of an order passed under Article 161, *ibid*.

11. As regards **Nilofer Nisha** (*supra*) which arose from this Court, this Court had ordered premature release to several convict prisoners under G.O.64, which was challenged by the State before the Supreme Court. The Supreme Court allowed the appeals filed by the State, however, by exercising its power under Article 142 *ibid.*, on a case-to-case basis, ordered premature release of



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some convict prisoners in that case. We cannot arrogate to ourselves the power of the Supreme Court under Article 142, *ibid.*, and order premature release of Yasudeen.

12. As stated above, in **Nilofer Nisha** (*supra*), the Supreme Court had gone into all the aspects of G.O.64 which contemplates the constitution of two Committees, viz., State Level Committee and District Level Committee, for examining the cases of convict prisoners and send their recommendations to the Government. We are told that 1,650 convict prisoners were released by the State Government under G.O.64 and the cutoff date was fixed as 25.02.2018 and as on that date, undoubtedly, Yasudeen was eligible for being considered, as he had completed 20 years and 29 days of sentence as could be seen from paragraph 6 of the counter affidavit of the State Government. However, in paragraph 7 of the counter affidavit, reasons for not releasing Yasudeen under G.O.64 have been stated, which reads as under:

“7. Though the life convict prisoner in this case had completed the required 20 years of imprisonment on the crucial date for consideration on 25.02.2018, as per



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the guidelines issued in para 5(II)(4) & (6) of G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, there should be safety for the prisoner's life, as well as to the society if the prisoner is released. In this case, the report of the Commissioner of Police, Coimbatore City and the Probation Officer, Coimbatore have shown that the release of the prisoner will create communal problem in the area. Hence, he is considered ineligible for premature release as per the condition stipulated of the above Government Order. The first level Committee constituted as per the Government Order has not recommended for his release. Hence, his case was not recommended to Government for premature release for the following reasons:

i. He along with 2 others was involved in a brutal murder of one person belonging to R.S.S. organization with a communal motive.

ii. He was also convicted for threatening to kill the former Deputy Inspector General of Prisons, Coimbatore Range and abusing the prison officials u/s 353, 294(b) and 506(I) of IPC.

iii. The Commissioner of Police, Coimbatore City has informed that his release will create communal



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problem in the area.

iv. The Probation Officer has not recommended on the basis of the report of the Commissioner of Police, Coimbatore city.

v. The extremely violent murder has communal overtones in a communally sensitive area added to social tension, and the release of a person in communal violence would disturb peace and harmony prevailing in that area. There will be law and order problem if he is released.”

We cannot say that the reasons assigned in the impugned order are totally perverse.

13. As regards Zahid Hussein (supra), the Supreme Court was dealing with the order passed by the Review Board under Rule 591 of the West Bengal Rules for Superintendence and Managements of Jails, wherein, certain guidelines were framed by the Government for the consideration of the case of convict prisoners for premature release. From paragraph 14 of the said judgment, it is seen that the prison authority had recommended the premature release of the petitioner therein, but, the Review Board rejected the request. The Supreme Court went into the reasons given by them and found that the Review



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Board had not considered the guideline, viz.,
“whether there is any fruitful purpose of
confining of these convicts any more.”

14. Coming to the case of **Jagdish** (supra), the Haryana Government had put in place a remission policy dated 04.02.1993. The convict prisoner therein was convicted on 20.05.1999. Subsequently, the said Government put in place a short sentencing policy on 13.08.2008. When the convict prisoner therein claimed remission under the remission policy dated 04.02.1993, it was denied by holding that his case could be considered only under the remission policy dated 13.08.2008 and since he did not satisfy the conditions of the 13.08.2008 remission policy, he would not be entitled to premature release. In that context, the Supreme Court, in paragraphs 53 and 54, held that the State should have considered the case of the convict prisoner, in terms of the remission policy dated 04.02.1993, as that was the policy that was in force at the time of the conviction of the prisoner and that, the subsequent policy dated 13.08.2008, should



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not have been applied at all. Coming to the case in hand, in the State of Tamil Nadu, there is no general remission policy as such. However, under Rule 341 of the Tamil Nadu Prison Rules, 1983, individual case of convict prisoners for release can be considered by an Advisory Board and not under G.O.1155 or G.O.64.

15. In **Rajkumar** (supra) also, the issue was similar to the one in **Jagdish** (supra), with regard to the applicability of the remission policy that was in vogue, at the time of the conviction of the prisoner therein. A reading of paragraph 4 of **Rajkumar** (supra) shows that the petitioner therein was convicted on 25.03.2010 and that his case would have to be considered under the policy dated 13.08.2008.

16. In **Sharafat Ali** (supra), the Supreme Court was dealing with a petition under Article 32 of the Constitution of India. In paragraph 6, the Supreme Court held that the application for premature release has to be considered, on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. After holding so, in paragraph 7, the Supreme Court



held that the order of the State Government contains general observations to the effect that the release may result in resentment on the side of the victim.

17. It is trite that when a person is sentenced to imprisonment for life, he is required to undergo the imprisonment until the end of his natural life. Of course, the State has the sovereign power to remit the sentence. Under our Constitutional scheme, the Court cannot issue a mandamus to the Governor to act under Article 161, *ibid.*, but, can only judicially review the order of the Governor within certain parameters. In **Epuru Sudhakar and Another Vs. Government of Andhra Pradesh and Others [(2006) 8 SCC 161]**, the Supreme Court has held in paragraph 65 that “the President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves”. Further, in paragraph 66, it has been held as follows :

“... ... Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be,



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has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future.”

18. Mr.Manokaran contended that the conduct of Yasudeen in the prison is a relevant consideration for premature release. One can have no quarrel with the above, but that cannot be the only consideration. In *Epuru Sudhakar* (supra), the Supreme Court has held that the Governor should keep in mind the family of the victims, the society as a whole and the precedent it sets for future. In the impugned order, all these have been factored cumulatively. The fact that Yasudeen was involved in a case of threatening the DIG of Prisons, when the latter came for searching the Prisoners' Block has also been adverted to.

19. As regards the power of this Court to judicially review the order of the President/Governor passed under Article 72/161, *ibid.*, the Supreme Court has opined in ***Epuru Sudhakar*** (supra) as under:

“34. The position, therefore, is undeniable that judicial review of the



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order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

- (a) that the order has been passed without application of mind;
- (b) that the order is mala fide;
- (c) that the order has been passed on extraneous or wholly irrelevant considerations;
- (d) that relevant materials have been kept out of consideration;
- (e) that the order suffers from arbitrariness.”

Therefore, it cannot be stated that the order that has been passed without application of mind nor is there any material placed before us to show that the order is mala fide or had been passed on extraneous or wholly irrelevant considerations or the relevant materials have been keep out of consideration or that it suffers from arbitrariness.”

12. The above reasonings, will also squarely apply to the facts of the present case.

13. G.O.Ms.1155, Home (Prison-IV) Department, dated 11.09.2008,



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carves out the contingencies where the prisoners will not be eligible for the concession and one such contingency is where the prisoners committed an offence of religious prejudices. This was taken into consideration by the 1st respondent and considering the nature of the crime that was committed by the detenu, the 1st respondent came to a conclusion that there was a communal motive and there are communal overtones which disentitles the detenu from being considered for premature release under G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008.

14. Earlier one other co-accused person viz., A.Ibrahim Son of Abdul Razak, who was convicted along with the detenu in this case, also sought premature release through his sister Nadira Banu and the same was rejected on similar grounds. It became a subject matter of challenge before this Court in W.P.No.7995 of 2020 and this court dismissed the writ petition by an order dated 23.12.2021. The reasons that were assigned while dismissing the writ petition are almost similar to the ones assigned in the later order dated 31.03.2022 in W.P.No.1196 of 2021.

15. In the light of the above discussions, this court finds that the



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impugned Government Order, in G.O.(D) No.864, Home (Prison-IV) dated 07.08.2019 passed by the 1st respondent, is in line with G.O.(Ms) No.1155, Home (Prison-IV) dated 11.09.2008 and the request made by the co-accused, who had also sought premature release, was also rejected in the same lines and no discrimination was shown as against the detenu in the present case, viz., Ibrahim @ Nettai Ibrahim. Therefore, the Points (i) and (ii) are answered accordingly.

Point (iii):

16. The learned counsel for the petitioner submitted that the detenu was convicted and sentenced when he was 19 years old and he has already suffered incarceration for nearly 24 years as of now. The learned counsel further submitted that there is also a subsequent Government Order in G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 and relying upon the above said Government Order, one Kannan, who was also involved in a crime with religious overtones, was released by the 1st respondent vide G.O.(Ms) No.816, Home (Prison-IV) Department, dated 31.10.2022.

17. The learned counsel for the petitioner also made his submissions



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by relying upon G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018. The learned counsel also relied upon the following judgements to emphasise his submission that a life convict, who has conducted himself well in the prison and had acquired educational qualifications when he was suffering incarceration and there were no adverse remarks against the prisoner for a long period of time, must be considered for premature release as is done in the case of the other life convicts, who were released after under going the imprisonment lesser than the period suffered by the detenu, viz., Ibrahim @ Netti Ibrahim:-

(i) *State of Haryana v. Jagdish*, [(2010) 4 SCC 216];

(ii) *Zahid Hussein v. State of West Bengal*, [(2001) 3 SCC 750];

(iii) *Satish alias Sabbe v. State of Uttar Pradesh* 2020 SCC OnLine SC 811 [Special Leave Petition (Crl.) No.7369 of 2019 dated 30.09.2020]

(iv) *R.P.Ravichandran v. State of Tamil Nadu*, 2022 SCC OnLine SC 1675 [Criminal Appeal No.1974 of 2022 dated 11.11.2022]

(v) *The Home Secretary (Prison) v. Nilofer Nisha* [(2020) 14 SCC 161]



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18. Coming to the petitioner's claim for premature release under G.O.(Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018, we are afraid that this claim is beyond the scope of the main prayer in this writ petition, in that, the main prayer is for quashing the order of the first respondent in G.O. (D) No.864, Home (Prison-IV) Department dated 07.08.2019 denying premature release under G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008. G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018 was not under the consideration of the Government while passing the impugned order, because, this Court, in the order dated 03.01.2019 in H.C.P. No.2887 of 2018, had directed the Government to consider the case of the petitioner and pass orders under G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008 and not under G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018. To be noted, G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018 and G.O.(Ms) No.1155, Home (Prison-IV) Department, dated 11.09.2008 arise under two different circumstances.

19. Be that as it may, in paragraph 20 of the counter affidavit that has



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been filed by the State in this writ petition, they have given the following reasons for not considering the case of the petitioner under G.O. (Ms.)

No.64, Home (Prison-IV) Department dated 01.02.2018:

“20 Further, it is submitted that as per the guidelines issued in G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018 as amended in G.O. Ms.(No.)302, Home (Prison-IV) Department dated 03.05.2018, all eligible cases of prisoners were considered by the Committees constituted by the Government therein. The case of petitioner's husband/life convict prisoner No.10900, Nettai Ibrahim @ Ibrahim, Son of Mohamed Hussain was also considered and not recommended to Government by the State Level Committee as he is not eligible for consideration for the reasons mentioned in para 7 supra as per the G.O.(Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018. Hence, the averment that the G.O. (Ms.) No.64, Home (Prison-IV) Department, dated 01.02.2018, has not been properly applied to the petitioner's husband/life convict No.10900, Nettai Ibrahim @ Ibrahim, Son of Mohamed Hussain for premature release is not correct and there is no violation of Article 14, 19 and 21 of the Constitution of India as contended by the petitioner.”

20. It is true that this Court had earlier directed the release of various convict prisoners under G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018, which orders were challenged in the Supreme Court in **State v H. Nilofer Nisha (2020) 4 SCC 161**, wherein, the Supreme Court set aside the orders passed by this Court, but, proceeded to exercise its powers under 142 of the Constitution of India on a case-to-case basis and



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directed release of the convict prisoners therein. We are afraid, we are not clothed with the power of the Supreme Court under Article 142, *ibid.*, to engage in such an exercise.

21. The learned counsel also produced before us the information that was provided under the Right to Information Act, 2005, in order to prove the good character of the detenu inside the prison.

22. We find that the detenu has undergone incarceration for nearly 24 years. The detenu had indulged in the commission of offence when he was 19 years old. The age factor of the detenu has to be necessarily taken into consideration and also the conduct of the detenu inside the prison assumes importance. If the offence involved has communal overtones, there should be no difference in treatment as between the convicts, who are Hindus or Muslims. That is the reason why the learned counsel for the petitioner brought to our notice the premature release that was extended to one Kannan in G.O.(Ms) No.816, Home (Prison-IV) Department, dated 31.10.2022. Some of the judgements relied upon by the learned counsel for the petitioner touches upon the powers of the Apex Court under Article 142 of the Constitution of India and this court cannot exercise such jurisdiction



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and order for premature release. That apart, this court cannot issue positive directions to the respondents directing the pre-mature release of the detenu based on the materials that were placed before us.

23. In the light of the above, we direct the respondents to consider the pre-mature release of the detenue viz., Ibrahim @ Nettai Ibrahim under G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 and on the detenu satisfying the requirements contained in the relevant Government Order, necessary orders shall be passed within a period of three months from the date of receipt of a copy of this order. Point (iii) is answered accordingly.

In the result, this Writ Petition is dismissed with the above directions.

[P.N.P., J.] [N.A.V.,J.]
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Index: yes/no
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To
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- 1.The Secretary to Government of Tamil Nadu, Department of Home, Fort St. George, Chennai 600 009.
- 2.The Superintendent, Central Prison, Coimbatore.
- 3.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH.J.,
AND
N.ANAND VENKATESH.J.,

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Pre Delivery Order
in
W.P.No.1204 of 2021

Orders pronounced on
16..12..2022