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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.04.2022

PRONOUNCED ON: 19.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P. No.5292 of 2021 & W.M.P. No.5852 of 2021

G. Thangavelu @ Velu

...Petitioner

vs.

1 The State of Tamil Nadu
represented by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009

2 The Director General of Prisons & I.G. of Prisons
Gandhi Irwin Road
Egmore
Chennai 600 008

3 The Superintendent of Prisons
Central Prison
Salem - 7

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to consider the representation dated 06.09.2019 of the petitioner's wife and release the petitioner immediately under G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018.

For petitioner Mr. P. Pugalenthir

For respondents Mr. Hasan Mohamed Jinnah
assisted by
Mr. R. Muniyapparaj
Additional Public Prosecutor



ORDER

P.N.PRAKASH, J.

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The petitioner's wife Rajamani addressed a representation dated 06.09.2019 seeking a direction to the respondents to release the petitioner prematurely under G.O. (Ms.) No.64, Home (Prison-IV) Department dated 01.02.2018 (for short "G.O. 64") and finding no response, the petitioner himself has followed it up by filing the instant writ petition seeking a writ of mandamus directing the respondents to consider his wife's representation dated 06.09.2019 and release him immediately under G.O. 64.

2 In response to the averments in the petitioner's affidavit, the Joint Secretary and Under Secretary to Government, Home, Prohibition and Excise Department, has filed a counter affidavit dated 30.11.2021 wherein at paragraph 3, he has stated the various cases in which the petitioner has been convicted and sentenced and the said particulars are reproduced hereunder:

Cr. No. & Police Station	Court & Sessions Case No.	Section under which convicted	Period of imprisonment
Nattrampalli P.S.Cr. No.240/1987	Principal Sessions Judge, Vellore S.C. No.42/1989	S.302 IPC S.396 (2 counts) S.395 IPC	Life imprisonment Life imprisonment R.I. for 5 years (all sentences to run concurrently)
Adhiyamankottai P.S.Cr.No.47/1998	Assistant Sessions Judge, Dharmapuri S.C. No.187/1998	S.324 IPC	R.I. for 6 months
Thoppur P.S. Cr.No.101/1995	Judicial Magistrate No.II, Dharmapuri S.C.No.114/1995	S.224 IPC	S.I. for 13 months and fine of Rs.500/- in default to undergo simple imprisonment for one month



3 Be that as it may, to commemorate the Birth Centenary of Dr.M.G. Ramachandran, the Government of Tamil Nadu issued G.O.64 for premature release of convict prisoners fixing several eligibility criteria for consideration of their cases for premature release by the Governor under Article 161 of the Constitution of India. In the said G.O., the cut-off date was fixed as 25.02.2018. In other words, the cases of convict prisoners, who satisfied the eligibility criteria prescribed therein as on 25.02.2018, were sent to the Governor via the Cabinet, for consideration under Article 161, *ibid.* It is reported that under G.O.64, the Governor, in exercise of powers under Article 161, *ibid.*, based on the aid and advice of the Cabinet, ordered the release of 1,650 convict prisoners.

4 It is to be pointed out that G.O.64 envisages constitution of two Committees, viz. District Level Committee and State Level Committee for considering the cases of convict prisoners and recommending their premature release to the Government. The counter affidavit states that the case of the petitioner was not recommended by the District Level Committee as well the State Level Committee for the following reasons:

- The petitioner was released on emergency leave for six days on 04.02.1995. He did not return to prison and absconded. Therefore, a case in Thoppur P.S. Cr. No.101 of 1995 was registered against him under Section 224 IPC and he was secured only on 08.01.1999, i.e., after a period of nearly four years.
- That apart, the petitioner was involved in the following prison offences:

2	27.07.1993	Made erroneous propaganda among prisoners and prevented them from working in prison industries	Forfeiture of 20 days remission
3	04.08.1993	He was again involved in spreading erroneous propaganda among prisoners and abused the prison officials	Forfeiture of 20 days remission
4	18.08.1994	He along with 33 prisoners involved in hunger strike and not obeyed the instruction of the prison officials	Forfeiture of 10 days remission



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5	27.01.1999	When released on emergency leave for 6 days, did not return to prison on expiry of leave and absconded. He was arrested in another case on 08.01.1999 after 4 years.	Case registered under Section 224 IPC
6	18.11.2008	He along with other prisoners, made demands beyond prison rules and did not take food. They demanded raw rations instead of cooked food and allow them to cook separately. This created an embarrassing situation in the prison.	20 days forfeiture of remission
7	19.11.2008	He along with other prisoners protested by not taking food and demanded the raw ration.	Severely warned and recommended for prison transfer.
8	07.07.2014	One Nokia cell phone and battery hidden between 2 books was seized from him.	Temporary cancellation of all prison privileges for 4 months and interview was cancelled for two months. Complaint was also registered in the local police station.

5 Be it noted, one of the conditions stipulated in G.O.64 is that the prisoner's behaviour should be satisfactory. When the petitioner has such a notorious track record, his case was rightly not recommended by the District and State Level Committees to the Government for premature release. In our opinion, a mandamus cannot be issued to the Governor to consider a convict prisoner's representation and pass orders under Article 161 of the Constitution of India, because, the power under Article 161, *ibid.*, is a sovereign and discretionary one vested with the Governor who himself can exercise it only on the aid and advice of the Cabinet. This cannot be like giving a representation to the Tahsildar for issuance of a patta for a land and thereafter, filing a writ petition seeking a mandamus to the Tahsildar to consider the representation and pass orders.

6 When an accused is convicted and sentenced to imprisonment for life by the judiciary, he has to undergo the sentence upto the end of his natural life (See *Maru Ram vs. Union of India and others* [(1981) 1 SCC 107]). After having



sentenced an accused to imprisonment for life, the judiciary does not have the power to remit his sentence as that power vests only with the executive under Article 72/161 of the Constitution of India. In a given case, even if the two Committees recommend to the Government for premature release of a convict prisoner, the Government is not bound by the said recommendation. A Constitutional Court can only judicially review the order of the Governor passed under Article 161, *ibid.*, within certain parameters set out in the various judgments of the Supreme Court, but, cannot issue a writ of mandamus to the Cabinet or the Governor to consider the representation and pass orders under Article 161, *ibid.* In the instant case, the reasons given by the two Committees for not recommending the petitioner's case to the Government for premature release under G.O. 64 cannot be said to be perverse. In such perspective of the matter, we find no merit in this writ petition.

As a sequitur, this writ petition stands dismissed, however, sans costs. Connected W.M.P. stands closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

cad

To

1. The Chief Judicial Magistrate
Vellore District
2. The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Secretariat
Chennai 600 009
3. The Director General of Prisons & I.G. of Prisons
Gandhi Irwin Road
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4. The Superintendent of Prisons
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5. The Public Prosecutor
High Court of Madras
Chennai 600 104

W.P. No.5292 of 2021

NR (CO)
SP (26/04/2022)