



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2022

PRONOUNCED ON: 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.P.No.12442 of 2021

Fathima ..Petitioner/Wife of the Detenu

Vs.

State represented by

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

2. The Superintendent,
Central Prison,
Palayamkottai - 627 007.

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the representation dated 15.04.2021 and consequently release the detenu Mohammed Moosa, S/o.Mohammed Anwar, Convict No.9400, detained at the Central Prison, Palayamkottai, prematurely, as per 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.

For Petitioner : Ms.K.Dheepakshi
for Mr.S.Manoharan

For Respondents: Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

This writ petition has been filed seeking a direction to the respondents to consider the representation dated 15.04.2021 and consequently release the detenu Mohammed Moosa, S/o.Mohammed



Anwar, Convict No.9400, detained at the Central Prison, Palayamkottai, prematurely, as per G.O.(Ms).No.1155, Home (Prison-IV) Department (for brevity "G.O.1155"), dated 11.09.2008 and G.O.(Ms).No.64, Home (Prison-IV) Department (for brevity "G.O.64"), dated 01.02.2018.

2.The minimum facts that are required for deciding this writ petition are as under:

2.1The petitioner's husband Mohammed Moosa (C.T.No.9400) was involved in the murder of one Dr.Sridhar, who was a member of Bharathiya Janatha Party, in connection with which, he faced a prosecution along with twelve others in S.C.No.140 of 2000 in the Additional District Court, (Fast Track Court), Thiruchirapalli, in which, he was convicted and sentenced as follows on 07.10.2003:

Provision under which convicted	Sentence
Section 302 and 120-B IPC r/w 302 IPC	Imprisonment for life and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
Section 148 IPC	Two years rigorous imprisonment and fine of Rs.500/-, in default to undergo six months rigorous imprisonment.

2.2 The appeal filed by Mohammed Moosa in Crl.A.No.1807 of 2003 was dismissed by a Division Bench of this Court on 22.02.2008 and the Supreme Court also confirmed the conviction and sentences in Crl.A.No.2119 of 2009 on 13.04.2016.

2.3 Apart from the above, Mohammed Moosa was involved in three other cases, as could be seen from paragraph nos.4, 5 and 6 of the counter affidavit filed by the State, which read as follows:

"4. Further, it is submitted that, the petitioner's husband life convict prisoner No.9400, Moosa @ Tada Moosa @ Syed Bai, son of Mohamed Hanifa, along with 13 others was acted unitedly in pursuance of a common conspiracy, formed, nursed and urged to take vengeance against the police and prison officials to cause destruction to public properties with a view to teach a lesson to others on their mistaken presumption that under trial prisoners concerned in Coimbatore Serial Bomb Blast cases kept in various Central Prisons in Tamil Nadu were subjected to harassment and ill-treatment,



WEB COPY

planted bombs at various places in Chennai, Coimbatore and Trichy including the office of the Inspector General of Prisons at Chennai and Commissioner of Police, Chennai City. Hence, he was concerned in F2 Egmore Police Station Crime No.1018/1999 clubbed with D1 Triplicane Police Station Crime No.696/1999, F1 Chintadripet Police Station Crime No.1253/1999, Trichy B6 Cantonment Police Station Crime No.616/1999, Coimbatore B1 Bazaar Police Station Crime No.1163/1999, Kerala Payyangadi Police Station Crime No.137/1999 (Thrissur CBCID Crime No.105/1999) and Kasargode Railway Police Station Crime No.4/1999 (Thrissur CBCID Crime No.106/1999) and was convicted and sentenced to undergo the following sentences by the Sessions Court for Explosive Trial of Bomb Blast Cases, Poonamallee, in S.C.No.8 of 2003 dated 07.09.2006.

S.No	Section	Sentenced awarded
1	120(B) Indian Penal Code read with Section 3 of Explosive Substances Act, 1908	Rigorous imprisonment for 8 years
2	120(B) Indian Penal Code read with Section 4(a) of Explosive Substances Act, 1908	Rigorous imprisonment for 6 years
3	120(B) Indian Penal Code read with Section 4(b) of Explosive Substances Act, 1908	Rigorous imprisonment for 6 years
4	120(B) Indian Penal Code read with Section 5 r/w 6 of the Explosive Substances Act, 1908	Rigorous imprisonment for 5 years
5	120(B) Indian Penal Code read with 307 Indian Penal Code	Rigorous imprisonment for 8 years
6	120(B) read with Section 4 of TNPPDL Act 1992	Rigorous imprisonment for 3 years



WEB COPY

S.No	Section	Sentenced awarded
7	120(B) Indian Penal Code read with Section 9-B(1) (b) of Explosive Substances Act, 1908, read with 141 of Explosives Substances Act Rules 1983 (against the 1 st charge)	Rigorous imprisonment for 2 years
8	4(b) r/w 6 and 5 of Explosive Substances Act 1908 (against the 3 rd charge)	Rigorous imprisonment for 6 years
The substantive sentences imposed on the prisoner on all charges were ordered to run concurrently.		

5.It is submitted that, the above life convict prisoner was also concerned in Coimbatore Serial Bomb Blast cases and was convicted and sentenced to undergo life imprisonment under Section 120-B (1) read with 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468, 471 of Indian Penal Code, Sections 3, 4(b), 5, 6 of the Explosive Substances Act, 1908, Section 3 read with Section 25(1-B)(a) of the Arms Act 1959 and Section 3(i), 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, rigorous imprisonment for 3years under Section 153(a) (1) of the Indian Penal Code. Rigorous imprisonment for 3 years under Section 148 of the Indian Penal Code. Rigorous imprisonment for 7 years under Section 307 of the Indian Penal Code. The sentences were ordered to run concurrently in Sessions Case No.2/2000 on the file of the Sessions Judge for Bomb blast cases, Coimbatore (Coimbatore serial bomb blast case) on 24.10.2007. The appeal preferred by the prisoner was dismissed by the Hon'ble High Court of Judicature at Madras in Criminal Appeal No.1034/07, dated 18.12.2009. The appeal preferred by the petitioner's husband before the Honourable Supreme Court of India is still pending in Criminal Appeal No.1205-1208/2011.

6. The above life convict prisoner was also concerned in C.C.No.4/1994 of R.C.16(S)/93/CBI/SCB/MAS (RSS Building Bomb Blast Case,



WEB COPY

Chetput, Chennai) and was convicted and sentenced to undergo rigorous imprisonment for 5 years for the offences under section 3(4) of Terrorist and Disruptive Activities (Prevention) Act of 1987 by the Designated Court No.II under Terrorist and Disruptive Activities (Prevention) Act of 1987, Chennai on 21.06.2007."

2.4 Seeking premature release of Mohammed Moosa under G.O.1155 and G.O.64, this writ petition for a mandamus has been filed by his wife Fathima.

3. Heard Ms.K.Dheepakshi, learned counsel representing Mr.S.Manoharan, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel for the petitioner submitted that this writ petition has been pending since April 2021 and there is a delay in disposal of the same, which should be considered as one of the grounds for allowing this petition. She further submitted that the petitioner's husband Mohammed Moosa had acquired M.Sc., M.B.A. and M.A. degrees, while in prison, which itself shows that he has reformed and deserves to be released under G.O.1155 and G.O.64.

5. Per contra, the learned Additional Public Prosecutor refuted the aforesaid submissions and stated that the reasons for not releasing Mohammed Moosa under the said two Government Orders have been clearly set out in the counter affidavit dated 03.02.2022 that has been filed by the Joint Secretary to Government, Home Department.

6. This Court gave its anxious consideration to the rival submissions.

7. To commemorate the Birth Centenary of Peraringnar Anna, the State Government issued G.O.1155, for granting premature release of 1,405 life convicts under Article 161 of the Constitution of India (for brevity "Article"). The cut off date for the said G.O. was fixed as 15.09.2008 (being the Birth Centenary of Peraringnar Anna) and the case of those prisoners, who were found eligible for premature release in terms of the said G.O. were accordingly set free.

8. It is seen that Mohammed Moosa was convicted in S.C.No.8 of 2003 only on 07.09.2006 and was awarded eight years rigorous imprisonment for the offence under Section 120-B IPC r/w Section 3 of the Explosive Substances Act, 1908. Similarly, Mohammed Moosa was sentenced to undergo life imprisonment in S.C.No.2 of



2000 (Coimbatore Serial Bomb Blast Cases) only on 24.01.2007.

9. Therefore, by no stretch of the imagination, Mohammed Moosa's case could have been considered by the authorities for premature release in terms of G.O.1155. In Coimbatore Serial Bomb Blast Case, 19 explosions took place between 14.02.1998 and 17.02.1998, resulting in the death of 58 persons and injuries to 250 persons, apart from the huge loss of private and public properties. The police recovered unexploded bombs from 24 places and defused them.

10. As regards the claim of Mohammed Moosa to be released under G.O.1155, it is stated as follows in paragraph no.12 of the counter affidavit:

"12. With regard to the averments in paragraph (8) of the affidavit, the case of petitioner's husband/life convict prisoner No.9400, Moosa @ Tada Moosa @ Syed Bai, son of Mohamed Hanifa was also not considered for the premature release as per G.O.(Ms).No.1155, Home (Prison-IV) Department, dated 11.09.2008, for the reason that the offences committed by the petitioner was on religious prejudice and therefore ineligible for consideration as per para 1(i)(b) of the G.O.(Ms)No.1155, Home (Prison-IV) Department, dated 11.09.2008."

11. G.O.64 was issued by the State Government on 01.02.2018 to commemorate the Birth Centenary of Dr.M.G.Ramachandran and the cut off date for the said G.O. was fixed as 25.02.2018. The said G.O. has stipulated certain eligibility conditions for the very consideration of the case of a convict prisoner for premature release under Article 161.

12. As regards the claim of Mohammed Moosa to be released under G.O.64, it is stated as follows in paragraph nos.10 (vii), (viii) and (ix) of the counter affidavit:

"10.....

vii) Hence, he is not eligible for consideration of premature release as per para 5 (2)(A)(v) & (vi) of 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.

viii) He was also convicted under section 471 of Indian Penal Code in Sessions case No.2/2000 by the Sessions Court for Bomb Blast Cases, Coimbatore. As per para 5(2)(A)(ii) of G.O.Ms. No.64 Home (Prison IV) Department, dated 01.02.2018 as amended in G.O.Ms. No.302, Home



WEB COPY

(Prison IV) Department, dated 03.05.2018, the prisoners convicted for the above offence is not eligible for consideration of premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence.

ix) These extremely violent murders have communal overtones in a communally sensitive area added to social tension, and the release of such a person would disturb peace and harmony prevailing in that area. Hence, there will be law and order problem, if he is released."

13. In our considered opinion, the reasons given by the Government for not considering the case of Mohammed Moosa both under G.O.1155 as well under G.O.64 cannot be said to be illegal or perverse.

14. That apart, in *Epuru Sudhakar & Another vs. Government of A.P. & Ors.*¹, the Supreme Court has very clearly held as follows:

"Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations.

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, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the

¹ (2006) 8 SCC 161



precedent it sets for the future."

15. Under our constitutional scheme of things, the Governor has to act under Article 161 only on the aid and advice of the Cabinet. The power to grant remission is a sovereign power that is vested on the Governor under Article 161, to enforce which, a writ of mandamus cannot be issued. The constitutional Court can only judicially review the validity of an order passed by the Governor under Article 161 within certain limited parameters, but, cannot direct the Governor to consider the representation of a convict prisoner and pass orders thereon.

16. It is not akin to giving a representation to the Thasildar for a legal heirship certificate and thereafter, filing a writ petition seeking a mandamus to the Thasildar to consider the representation and pass orders. The power under Article 161 is a sovereign discretionary power vested on the Governor, who can act only on the aid and advice of the Cabinet. The Cabinet is accountable to the legislature and the legislators are accountable to the people. Once the judiciary objectively determines the culpability of a person and sentences him, its work stops. Thereafter, the ball lies in the court of the executive to ensure that the sentence imposed on the accused by the judiciary is executed, for which, prisons are established. After having sentenced a person for a term of imprisonment, the judiciary cannot usurp the power of the Governor under Article 161 and issue a mandamus for the premature release of such a person.

17. It is trite that no convict prisoner has a fundamental right or a statutory right for premature release under Article 161. In the absence of any legal right, a writ of mandamus cannot lie, as held by the Supreme Court in *Mani Subrat Jain and Others Vs. State of Haryana and Others*², the relevant paragraph of which reads as under:

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England, 4th Edn., Vol. I, para 122; *State of Haryana Vs. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; *Jasbhai Motibhai Desai Vs. Roshan Kumar Haji*

² (1977) 1 SCC 486



Bashir Ahmed [(1976) 1 SCC 671 : (1976) 3 SCR 58] and Ferris : Extraordinary Legal Remedies, para 198.)"

In view of the foregoing discussion, this writ petition stands dismissed as being devoid of merits. Costs made easy.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St.George,
Chennai - 600 009.
2. The Superintendent,
Central Prison,
Palayamkottai - 627 007.
3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

W.P.No.12442 of 2021

GPL(CO)
RGA(26/04/2022)