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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022
PRONOUNCED ON : 28.01.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

W.P.No.12910 of 2021

S.Manimaran ... Petitioner
Vs.

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

2.The Director General of Police and
Inspector General of Prisons
Gandhi Irwin Road
Egmore
Chennai 600 008

3.The Superintendent of Prisons
Central Prison-I
Puzhal, Chennai 600 066

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent No.1 to consider the representation of the petitioner dated 14.08.2019 and release the petitioner immediately under G.O.Ms.No.64 Home (Prison-IV) Department dated 01.02.2018 for premature release.

For Petitioner Mr.P.Pugalenthir
For Respondents Mr.Hasan Mohamed Jinnah
Public Prosecutor assisted
by
Mr.R.Muniyapparaj
Additional Public
Prosecutor



O R D E R

P.N.PRAKASH, J.

The petitioner viz., S.Manimaran, is a life convict prisoner (CT.No.761), convicted by the Additional District Court (FTC-I), Chengalpattu, in S.C.No.273 of 1999 on 15.02.2002 of the offences under Sections 498-A and 302 IPC and sentenced as tabulated hereunder :

Provision under which convicted	Sentence
Section 498-A IPC	Three years rigorous imprisonment
Section 302 IPC	Imprisonment for life

The aforesaid sentences were ordered to run concurrently. Challenging the said conviction and sentences, the appeal in CrI.A.No.70 of 2003 filed by the petitioner was dismissed by this Court on 30.07.2005. Seeking premature release under G.O. (Ms) No.64, Home (Prison-IV) Department dated 01.02.2018 (for brevity "G.O.64") on the ground that the petitioner has undergone the sentence for the offence under Section 498-A IPC, the present writ petition has been filed.

2. Heard Mr.P.Pugalenth, learned counsel for the convict prisoner and Mr.Hasan Mohamed Jinnah, learned Public Prosecutor assisted by Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the State.

3. The Joint Secretary, Government of Tamil Nadu has filed a counter affidavit dated 30.11.2021, wherein, it is stated that as on 25.02.2018, being the cutoff date fixed in G.O.64, the petitioner has completed 16 years of actual imprisonment, but, he was not considered for pre-mature release as per paragraph 5(II) (2) (A) (x) of G.O.64, which reads as follows :

"5(II) (2) Prisoners convicted for the following offences are ineligible for consideration for 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 namely:-



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(A) Prisoners convicted for the following offences, namely:-

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix. Cruelty against women or dowry death
(Section 498-A and 304-B of IPC)
- x.

(emphasis supplied)

4. The entitlement of a convict prisoner, who has completed the sentence of imprisonment for the offence under Section 498-A IPC, for pre-mature release under G.O.64, has been extensively considered by a Division Bench of this Court, comprising P.N.Prakash and R.N.Manjula, JJ. in K.Devaraj Vs. State and Others (W.P.Nos.12581, 12583 and 12664 of 2021 decided on 27.01.2022) and the relief was negatived. The said cases were argued in extenso by Mr.M.Radhakrishnan and Mr.P.Pugalenth, Advocates. In the light of the law laid down in Devaraj (supra) and in the absence of any challenge to paragraph 5(II)(2)(A)(x) of G.O.64, the petitioner will not be entitled to pre-mature release, in terms of G.O.64.

5. Paragraph 5(II)(2)(A)(x) of G.O.64 clearly states that immaterial of the fact, whether the prisoner had undergone the sentence for the offence under Section 498-A IPC or not, he would not be entitled to be considered for pre-mature release. When it is the policy of the State, not to show any leniency to a person, who has been convicted for having inflicted cruelty on a woman, which finds an expression in paragraph 5(II)(2)(A)(x) of G.O.64, this Court cannot issue a mandamus ignoring it.

6. In this context, it is profitable to allude to the judgment of the Supreme Court in Sanaboina Satyanarayana Vs. Government of A.P. and Others [(2003)10 SCC 78], wherein, it is held as follows :

"8. Clause (iv) of para (3) of the government order dated 25-1-2000 specifically stated that prisoners convicted for "crimes against women such as Sections 376 and 354 IPC while being sentenced to imprisonment for life", will fall outside the scheme for remission granted under the said GO. When the



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clause noticed above, in the latter portion referred to two of the provisions of IPC, after the words "such as", it was more by way of illustration of the excepted category of offences relating to crimes against women in general and not with an intention to be exhaustive of the same and to merely confine the words "crimes against women" to only those convicts for crime against women under Sections 376 and 354 IPC. Acceptance of any such plea would amount to not only doing violence to the language of the order of the Governor but also rewriting the same and that too in utter disregard of the very intention, a laudable one in larger and greater public interest. When keeping into consideration the societal needs and dictates of the gruesome events happening in large scale all over the State, a conscious decision has been taken by the policy-maker to keep out a class of anti-socials from availing the benefit of the remission; courts cannot by stretching the language confer an undeserved benefit upon the class of convicts, who, in our view also, have not only been designedly but deservingly kept out of the scheme for according the benefit of remission."

7. Pertinent it is to state here the following observation of the Supreme Court in paragraph 26 of the judgment in Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha [(2020)14 SCC 161] :

"26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations."

(emphasis supplied)

In the result, this writ petition is dismissed as being devoid of merits. No costs.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.
2. The Director General of Police and
Inspector General of Prisons,
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3. The Superintendent of Prison,
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4. The Public Prosecutor,
High Court, Madras.

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