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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2022

PRONOUNCED ON : 27.01.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.12667 of 2021

Palanisamy

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

3.The Superintendent of Prisons
Central Prison
Coimbatore.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to consider the representation dated 05.04.2019 made by the petitioner for premature release under G.O.Ms.No.64 Home (Prison-IV) Department dated 01.02.2018 and set him at liberty.

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



O R D E R

R.N.MANJULA, J.

WEB COPY The petitioner is one Pazhanisamy, a life convict prisoner (CT No.10612), who was convicted and sentenced in S.C.No.54 of 2007 on 12.10.2007 by the Additional District and Sessions Court (FTC-IV), Erode @ Bhavani, of the offences under Sections 302 and 307 IPC (3 counts) and sentenced to undergo imprisonment for life under Section 302 IPC and sentenced to undergo seven years rigorous imprisonment for each count under Section 307 IPC (3 counts). The said sentences were ordered to run concurrently. His appeal to the High Court was dismissed. Seeking premature release in terms of G.O.(Ms) No.64, Home (Prison-IV) Department dated 01.02.2018 (for brevity "G.O.64"), he has filed the instant writ petition.

2. The Joint Secretary to the Government of Tamil Nadu has filed a counter affidavit dated 06.12.2021, wherein, it is stated in paragraph 4 that the petitioner has undergone 10 years, 9 months and 23 days of actual imprisonment as on 25.02.2018, being the cut-off date fixed by G.O.64. However, the reasons for denying the petitioner relief under G.O.64, is set out in paragraph 6, which is as under :

"6. It is submitted that as per the above Government order though the petitioner/life convict prisoner No.10612, Palanisamy, son of Sankara Gounder, has completed the stipulated period of 10 years as on 25.02.2018, his case was also considered. But not recommended for premature release by the second level/District level Committee and the State level Committee constituted under the said Government Order for the reason that, he was involved in the heinous acid attack on his own son's family and caused the death of 3½ years old girl child and caused grievous injuries on other members including another girl child of 9 months old. This cruel incident caused an irreparable loss and prolonged trauma to the victims family and it has been reflected in the Probation officer's report as the life of the prisoner will not be safe, if he is released prematurely and the prisoner will not be accepted by the members of his own family, there is no safety of life of the victim's family if the prisoner is released prematurely, as he had not satisfied the condition stipulated in para 5(II)(4), (5) & (6) of G.O.(Ms).No.64, Home (Prison-IV) Department, dated 01.02.2018."



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

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4. Mr.Pugalenth submitted that since the petitioner satisfies the condition relating to the period of incarceration stipulated by G.O.64, he would be entitled to be considered for premature release.

5. We gave our anxious consideration to the aforesaid submission.

6. A Division Bench of this Court, authored by one of us (PNPJ), in Sikkander Vs. State rep. by its Secretary to Government of Tamil Nadu and Others (2021 SCC Online Mad 6586), has discussed in detail the contours of G.O.64 and in paragraphs 17 and 18, it has been held as follows:

"17.The scheme contemplated under G.O.64 is a general amnesty on a case to case basis. The expression "case to case" finds emphasis in more than one place, and is indicative of the intent that the Government Order cannot be construed as a rogue's charter to indiscriminately seek premature release by all and sundry. The scheme contemplates a District Committee (second level) headed by the Superintendent of Prisons of the Central Prison concerned and the Additional Superintendent of Prisons, Jailor, Administrative Officer and Probation Officer as its members. The Range Deputy Inspector General of Prisons concerned and Regional Probation Officer of the region concerned shall examine the proposal of the District Committee and forward the same to the State Level Committee along with its recommendation. The State Level Committee is headed by the Inspector General of Prisons, the Deputy Inspector General of Prisons (Hqrs.) and Administrative Officer (Hqrs.) as its members. It is on the basis of their recommendations that the executive headed by the Council of Ministers tenders its advice to the Governor for release of eligible prisoners under the Government Order. The District and State Level Committees serve as fact-finding bodies to collect data and provide intelligence inputs in order to enable the Cabinet to take an informed decision on releasing or refusing to release a convict under G.O.64. It must, therefore, follow that the recommendations of these Committees do not constitute binding edicts on the Cabinet or on the Governor.



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18. It is well settled that the right to apply for premature release does not give the convict any vested right to be released. This position was put beyond the ken of controversy by a Constitution Bench of the Supreme Court in *Union of India v. V. Sriharan* [(2016) 7 SCC 1], wherein, it was observed thus :

"The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in *Godse* [*Gopal Vinayak Godse v. State of Maharashtra*, AIR 1961 SC 600 : (1961) 1 Cri LJ 736 : (1961) 3 SCR 440]. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner."

7. In *Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha* [(2020)14 SCC 161], the Supreme Court has held in paragraph 26 as follows :

"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)

8. Thus, from the above, it is clear that no convict prisoner has a fundamental, constitutional or a vested right, to claim premature release. In this case, the allegations against the convict prisoner is that he was involved in a heinous acid attack of his own son's family and caused death of a 3½ years old child, apart from causing grievous injuries to another 9 months old child. These factors had gone into the mind of the District Level Committee and the State Level Committee, for not recommending the case of the petitioner for premature release.

9. This Court cannot force the State by issuing a writ of mandamus to ignore the recommendations of the two Committees and



grant premature release to the petitioner. A mandamus against the mandates of a rule, cannot be issued.

In view of the foregoing discussion, we find no good reasons to entertain the claim of the petitioner for premature release under G.O.64 and accordingly, this writ petition is dismissed as being devoid of merits. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009
2. The Additional Director General of Police and
Inspector General of Prisons
Gandhi Irwin Road
Egmore
Chennai 600 008
3. The Superintendent of Prisons,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

W.P.No.12667 of 2021

PCH(CO)
RLP(08/02/2022)