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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022
PRONOUNCED ON : 27.01.2022

CORAM

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

W.P.NO.16528 OF 2021

G.Priya

.. Petitioner

Vs.

1.The Home Secretary (Prison)
Home Department
Secretariat
Fort St. George
Chennai 600 009

2.Additional Director General of Prison and
Inspector General of Prisons
Whannels Road
Egmore, Chennai 600 008

3.The Superintendent of Prison
Special Prison for women
Puzhal Jail-3
Chennai 600 006

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ in the nature of Certiorarified Mandamus, to call for the records of impugned order issued by the 2nd respondent ref. vide No.14468/CP.1/2021, dated 28.06.2021, by rejecting the petitioner's constitutional fundamental right of premature release, is illegal and without any basis and therefore, the same is liable to be quashed and direction shall be issued to the respondents 1,2,3 in pursuance of the G.O.(Ms) No.1155, dated 11.09.2008, Home (Prison-IV) Department to pass order(s) for the petitioner's premature release.



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For Petitioner Mr.P.Jegan
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.

This writ petition has been filed to quash the order passed by the 2nd respondent in No.14468/CP.1/2021 dated 28.06.2021 and for a direction to the respondents to pass orders for premature release, in pursuance of G.O.(Ms) No.1155, dated 11.09.2008, Home (Prison-IV) Department (for brevity "G.O. 1155").

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

2.1. G.Priya, the petitioner herein, is a life convict (CT.No.844), having been convicted and sentenced to imprisonment for life by the I Additional Sessions Court, Cuddalore in S.C.No.312/2012 on 14.02.2013, which conviction and sentence have been confirmed by the High Court in appeal as well by the Supreme Court.

2.2. The State of Tamil Nadu issued G.O.1155 (supra) for premature release of life convict prisoners on the occasion of the Birth Centenary of Perararingnar Anna on 15.09.2008. The said G.O.1155 prescribes minimum eligibility conditions as on 15.09.2008 that would entail a convict prisoner to be considered for premature release.

2.3. The petitioner gave a representation dated 23.04.2021 to the prison authorities, seeking premature release under G.O.1155, which has been rejected by the 2nd respondent on 24.06.2021, challenging which, the petitioner has filed the instant writ petition, besides seeking a mandamus as stated above.

3. Heard Mr.P.Jegan, learned counsel for the petitioner and Mr.Hasan Mohamed Jinnah, learned Public Prosecutor appearing for the State.

4. The petitioner's representation dated 23.04.2021 has been rejected by the 2nd respondent on 24.06.2021, on the short ground that G.O.1155 cannot be made applicable to the petitioner, as she was convicted and sentenced by the trial Court only on



14.02.2013, whereas, G.O.1155, inter alia, clearly spells out that for availing premature release, the convict should have completed seven years of actual imprisonment as on 15.09.2008, being the Birth Centenary of Perarinar Anna.

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5. It is clear as crystal that G.O.1155 is an one time premature release scheme and does not operate in perpetuity. This is limpid from a bare reading of the last paragraph of G.O.1155 which is extracted below for ready reference:

"6. In exercise of the powers conferred under Article 161 of the Constitution of India, the Governor of Tamil Nadu hereby remits the unexpired portion of sentence of imprisonment for life passed on the 1405 life convicts mentioned in Annexures I, II and III to this order, confined in various Central Prisons, Special Prisons for Women and the prisons in the State of Kerala subject to the conditions mentioned in para 1 above."

6. When this was brought to the notice of the learned counsel for the petitioner, he placed strong reliance on the judgment of the Supreme Court in State of Haryana and Others Vs. Jagdish and Harpal [(2010) 4 SCC 216] and submitted that the premature release policy of the Government as on the date of the conviction and sentence of the prisoner should be made applicable. One can have no quarrel with the aforesaid proposition of law, but, Jagdish and Harpal (supra) turns out on its own facts, which could be culled out from paragraph 5 as under :

"5. ... The respondent was convicted and sentenced to life imprisonment vide judgment and order dated 20-5-1999 and the policy which was in existence at that point of time was dated 4-2-1993. The respondent, having served more than 10 years' imprisonment, approached the High Court that in spite of having undergone the sentence as per the aforesaid policy dated 4-2-1993, his case for premature release was not being considered in view of the new policy of short sentencing, introduced on 13-8-2008."

7. A reading of the above clearly shows that the convict prisoner in that case was convicted and sentenced on 20.05.1999 and the premature release policy that was in vogue was 04.02.1993, which should have been made applicable to him and instead, when the authorities sought to apply the premature release policy dated 13.08.2008, the Punjab and Haryana High



Court intervened and granted relief to the convict prisoner, which was confirmed by the Supreme Court.

8. The situation in Tamil Nadu is not akin to the one that obtains in the State of Haryana, in the matter of premature release. In Tamil Nadu, there is no fixed policy for premature release. The Government, from time to time, would announce a scheme for premature release and the scheme will set out the eligibility conditions as on a particular date.

9. In the instant case, G.O.1155 dated 11.09.2008, clearly stipulated that 15.09.2008 would be the date on which the conditions for eligibility of a convict prisoner for premature release, would be reckoned. Admittedly, as on 15.09.2008, the petitioner was not even an accused in the case in which she was convicted and sentenced, as the occurrence itself was on 09.09.2012. In such view of the matter, we do not find any infirmity in the order impugned, warranting interference.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The Home Secretary (Prison)
Home Department
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2.The Additional Director General of Prison and
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3.The Superintendent of Prison
Special Prison for women
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4.The Public Prosecutor
High Court, Madras

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+1cc to Mr.P.Jegan, Advocate, S.R.No.5518

W.P.No.16528 of 2021

PMK (CO)
PM/08/02/2022