



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022

PRONOUNCED ON : 08.06.2022

CORAM

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

W.P.NO.24304 OF 2021
AND
W.M.P.NO.25619 OF 2021

Nagarajan

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Department of Home (Prison)
Secretariat, Fort St. George
Chennai 600 009.
2. The Additional Director General of Prisons
Whannels Road
Egmore, Chennai 600 008
3. The Superintendent of Prison
Central Prison
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records made in G.O.(D) No.1008 Home (Prison-IV) Department, dated 04.09.2019 on the file of the 1st respondent and quash the same as illegal and direct the respondent to release the detenu viz., Nagarajan, S/o.Vellaiyan @ Nallathambi, aged about 57 years, now confined at the Central Prison, Cuddalore.



For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

WEB COPY

O R D E R

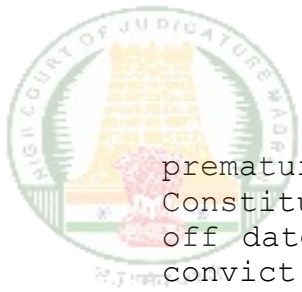
P.N.PRAKASH, J.

Challenging the order in G.O.(D) No.1008, Home (Prison-IV) Department dated 04.09.2019 (for brevity "the impugned order") passed by the 1st respondent, refusing to grant premature release of Nagarajan (life convict No.12933) under G.O.Ms.No.64 Home (Prison-IV) Department, dated 01.02.2018 (for brevity "G.O.64") and for a direction to release him prematurely, the instant writ petition has been filed.

2. The facts in brief are as under :

2.1. The petitioner viz., Nagarajan is alleged to have suspected the fidelity of his second wife viz., Manimegalai and had believed that the girl baby born to her was not through him and therefore, he said to have taken Manimegalai and the five-months old girl baby to a tapioca field in their village, belaboured Manimegalai with a stick and stamped the baby resulting in the death of both Manimegalai and the baby. Thereafter, in order to screen the offence, he is said to have buried their dead bodies in the tapioca field. In connection with these murders, a case in Villupuram Taluk P.S. Crime No.963 of 2002 was registered and Nagarajan was prosecuted for the offences under Section 302 IPC (2 counts) and Section 201 IPC in S.C.No.78 of 2004 in the Court of the Principal Sessions Judge, Villupuram, in which, on 08.03.2007, Nagarajan was convicted of the offences under Section 302 IPC (2 counts) and Section 201 IPC and was sentenced to undergo life imprisonment (2 counts) and to pay fine of Rs.2,000/- for each count, in default to undergo rigorous imprisonment for 3 months for the offence under Section 302 IPC (2 counts) and 2 months rigorous imprisonment for the offence under Section 201 IPC. His appeal in CrI.A.No.425 of 2007 was dismissed by this Court on 25.03.2008.

2.2. While so, in order to commemorate the Birth Centenary of Dr.M.G.Ramachandran, the State issued G.O.64 dated 01.02.2018, which was amended in G.O.(Ms) No.302, Home (Prison-IV) Department dated 03.05.2018, fixing certain eligibility criteria for consideration of the cases of convict prisoners for



premature release by the Governor under Article 161 of the Constitution of India. In the said Government Order, the cut-off date was fixed as 25.02.2018. In other words, the cases of convict prisoners, who satisfied the eligibility conditions prescribed by G.O.64 as on 25.02.2018, were collated and scrutinized by two Committees viz., District Level Committee and State Level Committee. The cases recommended by the State Level Committee 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 release of 1,650 convict prisoners in the State.

2.3. Though the case of Nagarajan was recommended by the State Level Committee, the Governor, on the aid and advice of the Cabinet, has refused to grant premature release to him, for the reasons set out in the impugned order. The operative portion of the impugned order reads as under :

"4. The Government have examined the recommendation of the State Level Committee for the premature release of the life convict prisoner No.12933, Nagarajan son of Vellaiyan @ Nallathambi, with relevant records. In this case the life convict prisoner No.12933, Nagarajan son of Vellaiyan @ Nallathambi, confined in Central Prison, Cuddalore was convicted the Principal Session Judge, Villupuram on 08.03.2007 in Sessions Case No.78 of 2004 under Section 302 (2 counts) and 201 of the Indian Penal Code for murdering his wife Manimegalai and his five month old baby by hitting her with stick and stamping the female child. Considering the cruel and brutal nature of the offence committed by him, the Government have decided to reject the recommendation of the State Level Committee for the premature release of the life convict prisoner No.12933, Nagarajan son of Vellaiyan @ Nallathambi, confined in Central Prison, Cuddalore and order accordingly.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT"

Challenging the same, the instant writ petition has been filed for the relief as stated in the opening paragraph.



4. The Joint Secretary to the Government has filed a detailed counter affidavit dated 29.03.2022 justifying the impugned order.

"(x) Cruelty against women or dowry death (Section 498A and 304B of IPC)"

6. Mr.Sankarasubbu cited the case of the accused involved in the infamous Dharmapuri bus burning case who were prematurely released and submitted that the case of the petitioner cannot be said to be more heinous than that case. He placed reliance on a Division Bench judgment of this Court in C.Amudha vs. Shankar, Tamil Nadu Jail Service and Another [2021(3) CTC 721], wherein, in a contempt proceedings, it has been held that, since the accused in Dharmapuri bus burning case was granted premature release under G.O.64, there is no justification to deny the same relief to the convict prisoner therein. Based on this observation, Mr.Sankarasubbu submitted that no prisoner can be denied the relief under G.O.64, once he satisfies the threshold conditions as such a denial would be violative of Article 14 and 21 of the Constitution of India.

7. Finally, Mr.Sankarasubbu placed reliance on the judgment of the Supreme Court in Satish @ Sabbe vs. The State of Uttar Pradesh [2020 SCC OnLine SC 811]; Home Secretary (Prison) and Others vs. H.Nilofer Nisha [(2020) 14 SCC 161] and contended that the Supreme Court had granted reliefs to convict prisoners and hence, this Court should follow suit.

8. Per contra, Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor refuted the aforesaid submissions of Mr.Sankarasubbu.



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

10. These issues have already been raised before this Court and this Court had answered them extensively in Sikkander vs. State rep. by its Secretary to Government of Tamil Nadu and Others (2021 SCC Online Mad 6586) and N.Sarojini vs. State (W.P.No.18204 of 2020 decided on 27.04.2022). In any event, it is necessary for this Court to deal with the submissions made at the Bar.

11. At the outset, it is a misnomer to state that the release of a convict prisoner is under G.O.64. G.O.64 only prescribes the eligibility conditions for identifying the cases of convict prisoners and sending them to the Government for consideration under Article 161 of the Constitution of India. For that purpose, G.O.64 fixed a cut-off date which is 25.02.2018. As on 25.02.2018, if a convict prisoner had completed 10 years of actual imprisonment, his case would be considered by the District Level Committee and the State Level Committee. In this case, the petitioner viz., Nagarajan had completed 10 years, 7 months and 8 days of actual imprisonment as on 25.02.2018 and therefore, his case was recommended by the State Level Committee and was sent to the Government for consideration.

12. At this juncture, we entertain a very strong doubt, as to whether the case of the petitioner would pass muster the condition in paragraph 5(II)(2)(A)(x), which has been extracted in paragraph 5 supra. In this case, the petitioner had beaten his wife black and blue suspecting her fidelity. Had she survived, he would have been prosecuted for the offence under Section 498-A IPC. According to us, the offence under Section 498-A IPC is a minor offence qua the major offence under Section 302 IPC, for which, the petitioner has been convicted and sentenced. It would be incongruous to say that the petitioner would not be entitled to premature release, had he been convicted of the offence under Section 498-A IPC, but, would be entitled to premature release, for beating his wife and causing her death.

13. 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], where the Supreme Court had to deal with a somewhat similar ineligibility condition stipulated in G.O.Ms.No.18 Home (Prisoners-C) Department dated 25.01.2000 issued by the Government of A.P., which reads as under :



“(iv) Prisoners convicted for crimes against women such as Sections 376 and 354 IPC, while being sentenced to imprisonment for life.”

In that case, the convict prisoner was convicted of the offence under Section 498-A IPC and it was argued that since he had not suffered a conviction either for the offence under Section 376 IPC or for the offence under Section 354 IPC, he would be entitled to premature release. This argument was outrightly rejected by the Supreme Court, by holding that the expression “such as” is 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. Of course, our interpretation of paragraph 5(II)(2)(A)(x) of G.O.64 is based on minor offences merging with major offences principle. However, we hasten to add that we are not saying that a person cannot be convicted both under Sections 498-A and 302 IPC as there are numerous instances, wherein, such convictions have been upheld by the Supreme Court. Our observations in paragraph 12 supra are in the context of paragraph 5(II)(2)(A)(x) of G.O.64 and not as a general proposition of law that Section 498-A IPC would merge with Section 302 IPC if the offender is the husband and the deceased is his wife.

14. Be that as it may, we now proceed to address the other submissions made by Mr. Sankarasubbu. G.O.64 clearly states in paragraph 5(V) and (VIII) as under :

“(V) The above cases shall be examined with reference to the above guidelines on a case to case basis.

(VIII) The life imprisonment prisoners cannot claim premature release as a matter of right.”

It is trite that no one has a vested right or constitutional right or fundamental right for premature release under Article 161 of the Constitution of India. Just because, the State Level Committee had recommended the case of the petitioner, it does not mean that the Cabinet is bound to accept the recommendation. As stated clearly in the above extracted paragraphs from G.O.64, the Cabinet examined the cases of the convict prisoners sent to it on a case by case basis. This is clear from the following observations of the Supreme Court in Sanaboina Satyanarayana (supra) :

“9. The plea of discrimination needs mention only to be rejected. The remission proposed in commemoration of 50 years of the Indian Republic



WEB COPY

itself is a boon and concession to which no one had any vested right. As to what classes of persons or category of offenders to whom the remission has to be extended is a matter of policy, particularly when it is also a constituent power conferred upon the constitutional functionary and Head of the State Government, larger area of latitude is to be conceded in favour of such authority to decide upon the frame and limits of its exercise under Article 161 itself."

15. In this case, the cruel and the brutal manner in which the two murders were committed by the petitioner, weighed with the Cabinet in refusing to recommend his case for premature release to the Governor under Article 161 of the Constitution of India. The following passage from *Epuru Sudhakar vs. State of Andhra Pradesh* [(2006) 8 SCC 161], has been extracted in G.O.64 itself and the same reads as under :

"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 precedent it sets for the future."

(emphasis supplied)



A reading of the above shows that the Governor (on the aid and advice of the Cabinet) is the sole judge of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. The Supreme Court has also held that the Governor (Cabinet) should bear in mind the effect of his decision on the society.

16. If a person who had killed his wife and a five-month old baby is released prematurely, what message it would send to the law abiding citizens in the society, was borne in mind by the Cabinet and therefore, it cannot be stated that the decision of the Cabinet, in not recommending the case of the petitioner to the Governor for release under Article 161 of the Constitution of India is perverse.

17. In *Satish @ Sabbe (supra)*, the issue before the Supreme Court was not an order passed by the Governor under Article 161 of the Constitution of India, but the failure of the Uttar Pradesh Government to follow the letter and spirit of Section 2 of the Uttar Pradesh Prisoners Release on Probation Act, 1938, which is a law made by the Uttar Pradesh legislature and which was not followed by the Uttar Pradesh Government properly. Hence, we are afraid that the said judgment cannot come to the rescue of this petitioner.

18. Coming to the case of *Nilofer Nisha (supra)*, the orders passed by this Court granting premature release under G.O.64 were taken on appeal to the Supreme Court and the Supreme Court has discussed the length and breadth of G.O.64 and has set aside the orders of this Court by allowing the appeals preferred by the State Government. Thereafter, the Supreme Court, in exercise of its power under Article 142, *ibid.*, went into the track record of each of the convict prisoner and directed their premature release on a case by case basis. We are not clothed with similar powers, though Mr. Sankarasubbu persuaded us by submitting that the power under Article 226, *ibid.*, is far more wider than the power under Article 142, *ibid.* We are not willing to fall into this snare. We know our limitations well.

19. As regards *C. Amudha (supra)*, it is true that in that case, a Division Bench of this Court had directed the release of the convict prisoner therein in a contempt proceedings, by observing that when the Government had released the convict prisoners involved in the Dharmapuri bus burning case, relief to others cannot be denied. In *C. Amudha (supra)*, the State had failed to bring to the notice of the Division Bench that negative equality has no place in our constitutional scheme. This has been explained by the Supreme Court very recently in



21. Of course, the order of the Governor is not immune from judicial interference and the parameters for such interference has been set out by the Supreme Court in paragraph 34 of Epuru Sudhakar (supra) as under :

WEB COPY

"34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness."

We find that the impugned order in this case does not suffer from any of the aforesaid vices for us to interfere.

In the result, this writ petition is dismissed as being devoid of merits. No costs. Connected Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gya

To

1. The Secretary
Department of Home (Prison)
Secretariat, Fort St. George
Chennai 600 009
2. The Additional Director General of Prisons
Whannels Road
Egmore, Chennai 600 008
3. The Superintendent of Prison
Central Prison
Cuddalore.



4. The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.33535

WEB COPY

W.P.No.24304 of 2021

SMI (CO)
RLP (22/06/2022)