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W.P.No.19934 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2022

PRONOUNCED ON : 14.03.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

W.P.No.19934 of 2020

E.Ayyappan

.. Petitioner

Vs.

1.State of Tamil Nadu
Rep. by its Additional Chief Secretary
Home Department
Fort St. George
Chennai 600 009

2.The Additional Director General of Police
Prisons Department
Whannels Road
Egmore, Chennai 600 008

3.The Superintendent of Central Prison
Central Prison
Coimbatore

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to impugned G.O.(D).No.1471 Home (Prison-IV) Department, dated 27.11.2019, passed by the Additional Chief Secretary to Government, Home Department, Fort St. George, Chennai-9 and quash the same and consequently direct the respondents 1 to 3 to release Manikandan, S/o.Elango, aged about 42 years, life convict No.22330, who is now confined in the Central Prison, Coimbatore and to set him at liberty by invoking the benevolent Government Order passed in G.O.Ms.No.1155 dated 11.09.2008 and G.O.Ms.No.64 Home (Prison-IV) Department, dated 01.02.2018 for his premature release.

For Petitioner	Mr.S.Shanmugavelayutham Senior Counsel for Mr.L.Baskaran
For Respondents	Mr.Hasan Mohamed Jinnah Public Prosecutor assisted by Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

P.N.PRAKASH, J.

This writ petition has been filed by one Ayyappan for premature release of his brother Manikandan, life convict (CT.No.22330) under G.O.Ms.No.1155 Home (Pri.IV) Department, dated 11.09.2008 (for brevity “G.O.1155”) and G.O.Ms.No.64 Home (Prison-IV) Department, dated 01.02.2018 (for brevity “G.O.64”).



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WEB COPY 2. Though in the prayer, there is a reference to G.O.1155, Mr.Shanmugavelayutham, learned Senior Counsel representing Mr.L.Baskaran, learned counsel on record for the petitioner, did not press for release under the G.O.1155 because, when the said Government Order was passed by the State Government on 11.09.2008, Manikandan had not satisfied the threshold conditions even. Therefore, submissions were made by the learned Senior Counsel for premature release of Manikandan on the strength of the subsequent G.O.64. The submissions of Mr.R.Muniyapparaj, learned Additional Government Pleader were also heard.

3. It is seen that Manikandan was arrested by the police in Tirupathur P.S. Crime No.121 of 2002 for the murder of his grandmother Kamatchiammal on 06.02.2002. After he was released on bail in the said crime number, he was involved in the murder of his uncle Shanmugam, in which he was arrested by the police in Tirupathur P.S. Crime No.1237 of 2002.



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4. For the murder of his grandmother Kamatchiammal, Manikandan was tried in S.C.No.176 of 2002 and was sentenced to imprisonment for life under Section 302 IPC on 17.07.2003. His appeal in CrI.A.No.1856 of 2003 was dismissed by this Court on 10.07.2006.

5. For the murder of his uncle Shanmugam, Manikandan faced a prosecution in S.C.No.206 of 2003, in which, he was convicted and sentenced to imprisonment for life under Section 302 IPC on 27.10.2004. His appeal in CrI.A.No.597 of 2005 was dismissed by this Court on 10.06.2007.

6. Since he was awarded life imprisonment in both the cases, he filed H.C.P.No.901 of 2010, seeking a direction from this Court to the effect that the two life sentences shall run concurrently. This Court, by order dated 19.08.2010, in H.C.P.No.901 of 2010, directed that the life imprisonment awarded in both the cases shall run concurrently.



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7. While so, to commemorate the Birth Centenary of Dr.M.G.Ramachandran, the former Chief Minister of Tamil Nadu, the State Government issued G.O.64 on 01.02.2018, for premature release of convict prisoners. In such a circumstance, Dhanalakshmi gave a representation dated 27.02.2019, seeking premature release of her brother Manikandan under G.O.64. Since no orders were passed on the said representation, Dhanalakshmi filed H.C.P.No. No.470 of 2018, seeking premature release of Manikandan, in terms of G.O.64.

8. During the hearing of H.C.P. No.470 of 2018, the State contended that case of Manikandan cannot be considered because, the Probation Officer, Tirupathur, had given a report that the release of Manikandan may bring harm to the family members of the deceased.

9. At this juncture, it may be relevant to state here that the Government has not passed any negative order, but, had placed only the adverse report of the Probation Officer, before this Court. A Division Bench



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of this Court disposed of H.C.P.No.470 of 2018 on 30.10.2018, with the

following observations :

"7. Even while we are conscious that G.O.(Ms) No.64, Home (Prison IV) Department dated 01.02.2018 is not under challenge before us, we consider it our duty to inform our views on two aspects. One of the considerations for grant of relief is stated to be the safety of the prisoner, if let at large. Refusing release of a prisoner on the ground that his safety is at risk would amount to denying him the same not owing to any fault of his but on an apprehension of possibility of wrong doing by others. This, we consider unreasonable. In such cases, we would recommend that prisoners be released but in doing so be informed of the possibility of harm to them. Again, one other consideration is the possibility of harm to family members of deceased/injured at the hands of the prisoner. Though this ground of denial of relief might be justified in certain cases, the same should not be brought into play over prolonged periods. The report of Probation Officer, Thirupathur, which informs the possibility of harm to the family members of deceased although the prisoner has been in prison for over 16 years can only be seen as unreasonable. Extending such reasoning would lead to the prisoner spending his life time in jail. With the above observations, we direct the authorities to dispose of petitioner's representation within a period of 12 weeks from today.

The Habeas Corpus Petition, accordingly, is disposed of."

10. Since the Division Bench had directed the authorities to dispose of Dhanalakshmi's representation within a period of 12 weeks, the State Government passed an order in G.O.(D) No.1471, Home (Prison-IV) Department, dated 27.11.2019, the operative portion of which, is as under :

"6. The Government have examined the request of Tmt.S.Dhanalakshmi second read above, seeking premature release of her



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brother Life Convict prisoner No.7485, Manikandan son of Elangovan confined in Central Prison, Salem. In consultation with the Additional Director General of Police/Inspector General of Prisons, Chennai-8 and in terms of the guidelines framed in the G.O.(Ms.) No.64, Home (Pri.IV) Department, dated 01.02.2018 along with relevant records above and decided to reject the same for the following reasons and order accordingly:

- i. The life convict prisoner Manikandan son of Elangovan, confined in Central Prison, Salem involved in the two separate cases of the brutal murders of Thiru Shanmugam, Ex.M.L.A. and his mother.
- ii. The life of victim's family will be in danger.
- iii. The Probation Officer, Thiruppattur has not recommended for his premature release since his release will create law and order problem in the area, the life of victim's family will be in danger.
- iv. The Superintendent, Central Prison, Salem has not considered his case for premature release, he is not eligible for consideration.”

The said Government Order is now under challenge in this writ petition.

11. The State has filed its counter affidavit dated 29.02.2022, refuting the contentions raised by the learned Senior Counsel for the petitioner.

12. Before advertng to the rival submissions, it may be necessary to highlight a few salient features of G.O.64. In the preamble of G.O.64, the guidelines issued by the Supreme Court for grant of premature release in ***Epuru Sudhakar and Another Vs. Government of Andhra Pradesh and Others [(2006) 8 SCC 161]***, ***Maru Ram and Others Vs. Union of India***



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and Others [(1981) 1 SCC 107] and Union of India Vs. V.Sriharan @

Murugan and Others [(2016) 7 SCC 1], have been extracted. Thereafter, under G.O.64, two Committees were formed to examine the cases of convict prisoners for premature release on a case-to-case basis. The relevant portion of G.O.64 is as under :

“5. The Government after careful examination have decided to frame the following guidelines for considering the cases of life convict prisoners for releasing them prematurely under Article 161 of the Constitution of India, in commemoration of the Birthday Centenary of 'Bharat Ratna', Puratchi Thalaivar Dr.M.G.Ramachandran, former Chief Minister of Tamil Nadu, based on the announcement of Hon'ble Chief Minister:

(I) The following committees are constituted for examining the premature release of the life convict prisoners, case to case basis, on the above lines.

- i. the State level committee headed by the Inspector General of Prisons and the Deputy Inspector General of Prisons (Hqrs), Legal officer, Administrative officer (Hqrs) shall be members of the committee.
- ii. the Second level/District committee wherein the Central Prisons/Special Prisons for Women located, headed by the Superintendent of Prisons of the concerned Central Prison and the Additional Superintendent of Prison, Jailor, Administrative Officer and Probation Officer shall be members of the committee.
- iii. the concerned Range Deputy Inspector General of Prisons and Regional Probation Officer of the concerned region shall examine the proposal of the second level committee and send the same to the State Level Committee along with recommendation.”

(emphasis supplied)



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13. The minimum eligibility condition for taking up the case of a convict prisoner for consideration of his claim for premature release was that, he should have completed 10 years of actual imprisonment as on 25.02.2018. That apart, if a life convict is above 60 years of age and has completed 5 years of actual imprisonment as on 25.02.2018, his case would also be considered by the aforesaid two Committees. Apart from this, G.O.64 sets out various parameters, which should be borne in mind by the aforesaid two Committees, while referring the case of a convict prisoner to the State Government under Article 161 of the Constitution of India. A few parameters viz., the prisoner's behaviour should be satisfactory; that there is safety for the prisoner's life, if released; that there is safety of life of the family which was affected by the prisoner, if released, *etc.* are worthy of mention. Apart from the above, certain salient features in G.O.64 are as follows :

”... .. (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.“

14. Admittedly, Manikandan has completed 15 years, 5 months and



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10 days of actual imprisonment as on 25.02.2018 and shall therefore, be eligible for being considered for premature release. However, he had not satisfied the other requirements of G.O.64, about which, we shall discuss below.

15. Mr. Shanmugavelayudham contended that it is not open to the State, to rely upon the report of the Probation Officer and refuse premature release, after the Division Bench order of this Court in H.C.P.No.470 of 2018, in the earlier round, as referred to in paragraph 9 above. We may venture to point out that when the order dated 30.10.2018 was passed by the Division Bench in H.C.P.No.470 of 2018, only the report of the Probation Officer was available before the Division Bench. In G.O.64, the report of the Probation Officer is not the be-all and end-all, for granting premature release thereunder, as pointed out by the Supreme Court in ***Home Secretary (Prison) and Others Vs. H.Nilofer Nisha [(2020) 14 SCC 161]***. It may be profitable to extract the following passage of ***Nilofer Nisha (supra)***:

“32. We are clearly of the view that the Court itself cannot examine the eligibility of the detenu to be granted release under the Scheme at this stage. There are various factors, enumerated above, which have to be considered by the committees. The report of the



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Probation Officer is only one of them. After that, the District Committee has to make a recommendation and finally it is the State Level Committee which takes a final call on the matter. We are clearly of the view that the High Court erred in directing the release of the detenu forthwith without first directing the competent authority to take a decision in the matter. Merely because a practice has been followed in the Madras High Court of issuing such type of writs for a long time cannot clothe these orders with legality if the orders are without jurisdiction. Past practice or the fact that the State has not challenged some of the orders is not sufficient to hold that these orders are legal.”

That apart, the condition laid down in G.O.64 that the report of the Probation Officer should be obtained, is not under challenge. It is only the Probation Officer's report that is being collaterally challenged.

16. In *Epuru Sudhakar (supra)*, it is clearly held that the President or the Governor must keep in mind the families of victims and what impact the order of release of a convict prisoner, would have on them as well on the society. In the instant case, Manikandan is alleged to have murdered his own grandmother and also his uncle, in two different incidents and therefore, if the Probation Officer feels that his release will create law and order problem in that area and that the life of the families of the victims will be in peril, the authorities cannot ignore it. The Probation Officer's report is only one element in the decision making process, the others, being the



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District Level Committee, the State Level Committee and the State Cabinet.

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17. Mr. Shanmugavelayutham contended that both the life sentences have been directed to run concurrently and therefore, Manikandan's case should be considered as a single block. This argument has no legs to stand, in the light of the judgment in *Muthuramalingam and Others Vs. State* [(2016) 8 SCC 313], wherein, the law has been laid down authoritatively in paragraph 34 as under :

“34. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not *ipso facto* result in remission of the sentence awarded to the prisoner for the other.”

18. Remission is granted punishment-wise and person-wise. Assuming for a moment that, the State Government grants remission in respect of the sentence that was imposed on Manikandan for the murder of his grandmother Kamatchiammal, that remission would not automatically apply for the remission of the life sentence for the murder of his uncle



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Shanmugam, though both the life sentences have been directed to run concurrently.

19. Mr. Shanmugavelayutham submitted that Manikandan has come out on parole for 21 times and nothing had happened to him and therefore, the objection of the Probation Officer, as aforesaid, is merely a smokescreen.

20. It is pertinent to point out that grant of parole which is a temporary release, is totally different from remission which is a permanent release. Just because a convict prisoner who was released on parole, had not suffered any attack on him or that he had not attacked the victim's family, the belief entertained by the Probation Officer that if he is prematurely released, the chances of the victim's family attacking him or he attacking the victim's family, cannot be said to be unfounded. In fact, in the counter affidavit, it is stated as follows :

“9.(c) While in custody at prison he had written a letter dated 05.01.2004 to the victims family threatening them that he will cause danger to their lives if they go against his wishes. A complaint was registered by the victims at the Town Police Station, Thirupatur.”



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21. *Superadded*, Manikandan does not satisfy yet another eligibility condition, *viz.*, the prisoner's behaviour should be satisfactory as prescribed in G.O.64, in that, he was involved in prison offences on 7 occasions, as could be seen from the following paragraph of the counter affidavit.

“10.(d) During his incarceration he has involved in the following prison offences:

<i>Date</i>	<i>Nature of offence</i>	<i>Punishment awarded</i>
04.07.2007	<i>He quarrelled with his co-prisoners because of drinking water problem</i>	<i>Forfeited 20 days of remission</i>
29.12.2007	<i>He threatened to commit suicide with a demand to shift him from Central Prison block to his own block and hit his head on the wall</i>	<i>Prohibited from interview for 1 month</i>
31.08.2008	<i>Quarrelled with one remand prisoner No.51941 Aruppu Kumar due to enmity</i>	<i>Prohibited from interview for 1 month</i>
10.03.2009	<i>Quarrelled with co-prisoners during lunch</i>	<i>Prohibited from interview for 15 days</i>
22.03.2015	<i>Scolded the duty warder in filthy language for not allowing to watch television</i>	<i>Prohibited from interview for 1 month</i>
03.04.2019	<i>A cell phone was seized from him</i>	<i>Prohibited from interview for one month and forfeited all prison privileges for 6 months</i>
15.08.2019	<i>Seized ganja from his block</i>	<i>Prohibited from interview for 1 month</i>



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22. In response to the above, Mr. Shanmugavelayutham contended that Manikandan has undergone the punishment for these prison offences and so, he would become eligible for premature release. In support of this contention, he placed reliance on the judgment of this Court in

Paramasivam Vs. State [2019(1) MWN (Cr.) 202 (DB)] :

“6. Though there are decisions of this Court, which inform that even in respect of offences committed against the Central Enactments, it will be open to the State to consider premature release, we need not wax elaborate since in the instance case the Convict Prisoner has been convicted for a period of one year for offence under Section 25(1)(b)(a) of Arms Act and he has long since undergone such sentence. Denial of relief on the ground informed, despite his having undergone sentence therefor would amount to dual punishment which is impermissible in law.”

23. In our opinion, the aforesaid comparison is wholly misplaced. In ***Paramasivam (supra)***, the issue was, whether a life convict would be entitled to the benefit of G.O.64, if he had already undergone the sentence of imprisonment under the Arms Act, for which, he was convicted and sentenced along with Section 302 IPC. In that context, the Division Bench of this Court held that, once the life convict had undergone the sentence for the offence under the Arms Act, nothing further would survive for remission of the sentence of imprisonment imposed under the Arms Act. What would



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survive is, the remission of life imprisonment for the sentence under Section 302 IPC. Prison offences are not *stricto sensu* panel offences and they are administrative punishments, which would not fall within the domain of criminal law. The fact that Manikandan was administratively punished on seven occasions for prison offences, shows that his behaviour in the prison was not proper. If Mr. Shanmugavelayutham's argument were to be accepted, then, whatever prison offence a prisoner commits, the prison administration should not take any action against him and must wait for a remission order of the Government to be passed, in order to deny him premature release. Such interpretation would lead to ludicrous results and discipline can never may be maintained in any prison.

24. Mr. Shanmugavelayutham contended that the Government had granted remission for the persons involved in Dharmapuri bus burning case and Melavalavu murder case, which are more heinous than the offences committed by Manikandan and therefore, on parity under Article 14 of the Constitution of India, Manikandan should also be released prematurely. In support of this contention, he placed reliance on the judgment of a Division



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Bench of this Court in ***C.Amutha Vs. Shankar [2021-1-L.W. (Crl.) 161]***.

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25. Negative equality under Article 14 of the Constitution of India, cannot be claimed at all. In other words, just because, the State Government had committed a wrong by ordering release of the accused in other heinous cases, that wrong, by itself, cannot be a ground, for the release of others. The following passage from the judgment of the Supreme Court in ***R.Muthukumar and Others Vs. Chairman and Managing Director, TANGEDCO and Others [2022 SCC OnLine SC 151]***, is a complete answer to the claim of negative equality :

“28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.”

(emphasis supplied)

If anyone were to challenge those orders as arbitrary, then, this Court, has the powers to examine them and quash them even, as illegal.



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WEB COPY 26. Further, in *Nilofer Nisha (supra)*, the Supreme Court has very clearly 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. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules."

(emphasis supplied)

Superadded, as held in *Nilofer Nisha (supra)*, the report of the Probation Officer is only one of the factors to be reckoned, for grant of remission under G.O.64 and it is not that, just because the Probation Officer's report is in favour of the convict prisoner, the convict prisoner has to be released prematurely.

27. Mr. Shanmugavelayutham placed strong reliance on the judgment of this Court, led by one of us (PNPJ), in *K. Rajasekar Vs. State and Others (MANU/TN/0641/2022)*, in support of his contention relating to equality under Article 14 of the Constitution of India.



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28. In ***Rajasekar*** (*supra*), the husband Rajasekar and his wife Shanthi, on account of abject poverty, smothered their three month old child and killed her. The Government granted remission to the husband Rajasekar, but, refused to grant remission to the wife Shanthi, on the ground that the crime was a heinous one. In that case, both of them were convicted under Section 302 read with 34 IPC, as nobody knew, who amongst the two had actually smothered the child, as that was done in secrecy. Therefore, on those facts, this Court held that, if according to the Government, the act of the husband was not heinous, the Government cannot be heard to say that, the act of the wife was heinous and deny her premature release.

29. In this case, as could be seen from the impugned order, the Second Level Committee had not recommended the case of Manikandan. In a given case, even if the two committees recommend to the State Government for premature release, the State Cabinet and the Governor are not bound by the recommendations. The State Cabinet and the Governor can independently come to a decision, to grant or not to grant the relief of premature release to a certain prisoner. In this case, as could be seen from



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the impugned order, the State Government is of the view that since Manikandan is involved in two brutal murders, they are not willing to release him prematurely. This reason by the State Government, cannot be said to be perverse.

30. In ***Epuru Sudhakar*** (*supra*), it is clearly held by the Supreme Court that "the President and the Governor are the sole Judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves." Therefore, this Court cannot sit in judgment over the "sufficiency of facts", even in the impugned order. Even in G.O.64, it is clearly stated that "the life imprisonment prisoners cannot claim premature release as a matter of right." (emphasis supplied)

31. In ***Epuru Sudhakar*** (*supra*), the Supreme Court has laid down the following parameters for judicial interference, in remission orders :

"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*;



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- (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.”

32. We are afraid that the case of Manikandan, does not pass muster the parameters laid down in ***Epuru Sudhakar (supra)*** set out above, for quashing the impugned order.

33. That apart, in ***Sikkander Vs. State rep. by its Secretary to Government of Tamil Nadu and Others (2021 SCC Online Mad 6586)***, this Court has discussed all the aspects relating to premature release under G.O.64 and the law laid down therein is a binding precedent.

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

[P.N.P., J.] [A.A.N., J.]
14.03.2022

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P.N.PRAKASH, J.
AND
A.A.NAKKRIAN, J.

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1.The Additional Chief Secretary
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2.The Additional Director General of Police
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3.The Superintendent of Central Prison
Central Prison
Coimbatore

4.The Public Prosecutor
High Court, Madras

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