



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.3759 of 2021

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T.Vijayalakshmi

...Petitioner /

Sister of the detenue

-Vs-

The State represented by its

1.The Secretary to Government of Tamil Nadu,
Department of Home, Fort. St. George,
Chennai-600 009.

2.The Superintendent,
Central Prison Palayamkottai,
Palayamkottai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order G.O.(D)No.1247 issued by the first respondent dated 23.10.2019 and to quash the same and consequently, direct the respondents to release the detenue, Thangaperumal, S/o.Pilliyar Nadar, life Convict No.1890, prematurely confined at Central Prison, Palayamkottai as per the G.O.(Ms)No.64, dated 01.02.2018.

For Petitioner : Mr.P.Manoharan,

For Dr.S.Manoharan

For Respondents : Mr.S.Ravi,

Additional Public Prosecutor.

ORDER

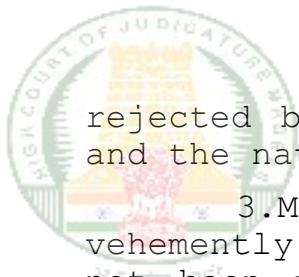
R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The challenge in this Writ Petition is to the order of Government, rejecting the request for premature release of the petitioner's brother, namely, Thangaperumal, S/o.Pilliyar Nadar, who is undergoing life imprisonment for the offence of murder. The prisoner was convicted for the murder of his minor son by beating him with stick and immersing him in water.

2.It is stated that he has committed the offence out of rage, suspecting the fidelity of his wife. Though the prisoner qualifies for premature release under G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, request for premature release has been



rejected by the Government, considering the cruelty and brutality and the nature of the offence committed by the prisoner.

3.Mr.P.Manoharan, learned counsel for the petitioner would vehemently contend that the proven charge against the petitioner has not been properly considered by the Government, while concluding that the offence is brutal in nature. He would also contend that the Advisory Committee and State Level Committee had recommended premature release of the prisoner.

4.Contending contra, Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondents would submit that the said G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, itself provides that the prisoner does not have vested right to premature release and the case of premature release will have to be examined on a case to case basis. The guidelines issued in the said Government Order would only remain as guidelines and the prisoner has no vested right to contend that once he qualifies for premature release under the said Government Order, he should be granted premature release.

5.Considering the submissions of the learned counsel on either side and judicial pronouncements on the subject, we had called for the original files relating to the decision taken by the Government. On perusal of the same, we find that the file was not circulated to the Hon'ble Chief Minister. The office of the Hon'ble Chief Minister had made a note, stating that since the Hon'ble Chief Minister has rejected the similar case earlier, this case may also be rejected, after getting orders of the Hon'ble Law Minister in circulation. The note by the office of the Hon'ble Chief Minister dated 07.09.2018 also adds that such cases shall not be circulated to the Hon'ble Chief Minister in future. We find that this particular aspect may lead to non-application of mind on the part of the Government.

6.It is also noted in the file that the Law Department is not in favour of rejection on the ground of brutality of the offence. The Law Department has opined that such rejection will not stand test of law. The file further states that such proposal shall not be submitted to the Law Department in future and they could be sent by circulation to the Hon'ble Law Minister.

7.We are unable to appreciate this approach of the Government in rejecting the request for premature release, despite the fact that the authorities had recommended it, without examining the case in the proper prospective. While this Court has repeatedly held that it is within the domain of the Government to accept or reject the request of premature release and this Court will not substitute the reasons or go into the sufficiency of the reasons for rejection of the request for premature release, it is incumbent of the authorities to consider the request of the premature release in the proper prospective on a case to case basis. If we find that there is non-application of mind or breach of law on the part of the



authorities in considering the request of premature release, this Court will not have any other option, except to set aside the same and remit back the matter to the Government for its consideration as the law laid down in the case of **Sikkander Vs. State, represented by its Secretary to Government of Tamil Nadu and Others** reported in **2021 SCC Online Madras 6586**.

8.Though the impugned order states that the reason for rejection is brutality of the crime, we find that the said reason has not been considered by either Hon'ble Chief Minister or Hon'ble Law Minister.

9.The learned Additional Public Prosecutor for the respondents would submit that in view of Rule 35(1)(b) of the Tamil Nadu Government Business Rules and Secretariat Instructions, these papers need not be circulated to the Hon'ble Chief Minister.

10.Rule 35(1)(b) of the Tamil Nadu Government Business Rules and Secretariat Instructions (hereinafter referred to as 'the Rules') reads as follows:-

"Cases of routine nature or cases which the circulating officer does not consider to be of sufficient importance need not be circulated to the Chief Minister."

11.Rule 35(2)(i)(a) and (i)(b) of the Rules reads as follows:-

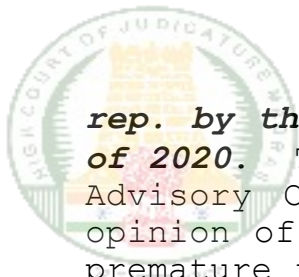
(2)The following classes of cases shall be submitted by the Chief Minister to the Governor before the issue of orders:-

(i)(a) Proposals for the grant of pardon in pursuance of Article 161 of the Constitution.

(i)(b) Proposals to suspend, remit or commute sentences passed on convicted persons in important cases.

12.The very Government Order, namely, G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018 has been issued invoking power under Article 161 of Constitution of India. Therefore, we cannot accept the said submission of the learned Additional Public Prosecutor for the respondents and it is incumbent on the Hon'ble Chief Minister to consider the proposal before submitting it to the Governor.

13.We are, therefore, constrained to conclude that there is non-application of mind on the part of the authorities in rejecting the application for premature release. We, therefore, set aside the order impugned in the Writ Petition. Accordingly, this Writ Petition stands allowed. The impugned order is set aside and the same is remitted back to the Government for its re-consideration in accordance with the law laid down by this Court in the case of **Sikkander** referred supra and in **Dr.Esther Vs. State of Tamil Nadu**,



rep. by the Additional Chief Secretary to Government in W.P.No.8237 of 2020. The Government would do well to consider the report of the Advisory Committee as well as the State Level Committee and the opinion of the Law Department also in deciding of such requests for premature release in future. No costs.

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Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government of Tamil Nadu,
Department of Home, Fort. St. George,
Chennai-600 009.

2.The Superintendent,
Central Prison Palayamkottai,
Palayamkottai.

+1 CC to M/s.S. MANOHARAN, Advocate (SR-19448[F] dated 19/04/2022)

W.P (MD)No.3759 of 2021

18.04.2022

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