



W.P.(MD)No.22805 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 14.11.2022

CORAM

**THE HON'BLE MR JUSTICE M.S. RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

W.P.(MD)No.22805 of 2022
and
W.M.P.(MD)No.16939 of 2022

Ilamayil

... Petitioner

/Vs./

1.State Represented by
The Additional Chief Secretary to Government,
Home (Prison IV) Department,
Secretariat,
Fort St.Geroge,
Chennai – 600 009.

2.The Additional Director General of Prison,
Egmore,
Chennai – 600 008.

3.The Superintendent,
Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned order passed by the 1st Respondent in G.O.(D)



W.P.(MD)No.22805 of 2022

No.563 Home (Prison-IV) Department dated 07.06.2019 and quash the same as illegal and direct the 1st Respondent to release the petitioner's husband namely muthusamy, Son of Karuppan, CP 3828 from the 3rd Respondent prison.

For Petitioner : Mr.K.Navaneetharaja

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

(Order of the Court was made by **N. ANAND VENKATESH, J.**)

The subject matter of challenge in this writ petition pertains to G.O.(D) No.563 Home (Prison-IV) Department dated 07.06.2019, whereby the request made by the petitioner for the premature release of her husband, in the light of the G.O.(MD)No.64, Home (Prison-IV) Department, dated 01.02.2018 was rejected by the first respondent.

2.The husband of the petitioner faced trial along with 16 other accused persons and through judgment dated 10.09.2001, the husband of the petitioner and others were convicted for offence under Section 302 of IPC and Section 25(1-B)(a) r/w. Section 4 of Indian Arms Act. Insofar as the



W.P.(MD)No.22805 of 2022

offence under Section 302 IPC is concerned, he was sentenced to undergo life imprisonment and for the offence under the Arms Act, he was sentenced to undergo six months rigorous imprisonment. The judgment of the trial Court was also confirmed by this Court in CrI.A(MD)No.991 of 2001 through judgment dated 03.03.2006.

3.In view of the above, the husband of the petitioner had undergone 20 years of imprisonment. Therefore, a representation was made to the respondent seeking for premature release by relying upon two Government Orders viz., G.O.(MD)No.1155 Home (Prison-IV) Department, dated 11.09.2008 and G.O.(MD)No.64, Home (Prison-IV) Department, dated 01.02.2018. The representation made by the petitioner was rejected by the first respondent through the impugned Government Order. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The respondents have filed a counter affidavit. The main stand that has been taken by the respondents is that the detenu is not entitled to be considered for premature release under G.O.Ms.No.1155, dated 01.09.2008, since the detenu did not satisfy the eligibility criteria of completing 7 years



W.P.(MD)No.22805 of 2022

of imprisonment as on 15.09.2008. Insofar as G.O.Ms.No.64, dated 01.02.2018 is concerned, the objection raised by the respondents is that the detenu has been convicted under the Arms Act and it is a Central Legislation and hence, the State cannot order for the premature release of the detenu.

5.Heard Mr.K.Navaneetharaja, learned counsel appearing for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents.

6.We carefully considered the submissions made on either side and perused the materials available on record.

7.We carefully went through the Government Order in G.O.Ms.No. 64, dated 01.02.2018. In the said Government Order, there are certain categories of offence where the detenu will not be eligible for being considered for premature release. One such category is where the detenu is convicted and sentenced in a case, which falls within the purview of Section 435 of the Code of Criminal Procedure. Section 435 of Cr.P.C., deals with the cases where the State Government can act only after consultation with



W.P.(MD)No.22805 of 2022

Central Government. This clause is put against the detenu mainly on the ground that apart from the detenu being convicted and sentenced for offence under Section 302 of IPC, he has also been convicted for the offence under the Arms Act. Therefore, the respondents have taken a stand that the premature release of the detenu cannot be considered under G.O.Ms.No.64, dated 01.02.2018, in view of the bar.

8.Insofar as the first ground, we have to consider as to whether there is a total bar for the respondents to consider the premature release in a case, where the detenu has been convicted and sentenced for the offence which has been specified in the relevant Government Order. While dealing with this issue, the Co-ordinate Bench of this Court in ***Roja Venkatesh-vs-State and Ors.***, reported in ***(2021)2 L.W(Cri.) 165***, has held that even for the offences, which are shown to be a bar under the relevant G.O., if the prisoner/detenu has already completed the imprisonment for the relevant offence, the same cannot be put against the detenu. The reason given by the Co-ordinate Bench was that as on the date when the premature release is considered, if the only offence for which the detenu is undergoing sentence is life imprisonment, that alone should be taken into consideration where for



W.P.(MD)No.22805 of 2022

all the other offences, the detenu has already suffered the sentence. While coming to the conclusion, the Co-ordinate Bench had placed reliance upon the following judgments:

(a).Union of India-vs-V.Sriharan @ Murugan[(2016) 7 SCC 1]

(b).State of Tamil Nadu and Others-vs-P.Veera Bhaarithi[(2019) 18 SCC 71]

(c).Sanaboina Sathyanarayana-vs-Government of Andhra Pradesh and others[(2003) 10 SCC 78]

9.In view of the above issue, we are of the considered view that just because the detenu was convicted for the offence under Section 25(1-B)(a) r/w Section 4 of Indian Arms Act, that by itself cannot be a bar for considering the premature release of the detenu, since the detenu was sentenced to undergo 6 months imprisonment for the said offence and he has already suffered the sentence. What remains is only the life imprisonment, which is now being undergone by the detenu for the offence under Section 302 IPC.



10.The next issue that arises for consideration is as to whether

Section 435 of Cr.P.C., is a complete bar for the State to consider for premature release. This issue is also no longer *res integra* and the Co-ordinate Bench of this Court in the case of ***C.Amutha-vs-The Home Secretary, Home Depratment and Ors.,*** reported in ***2018(3)MWN (crl.) 342***, has held as follows:

“6.By way of reply, Mr.Mohamed Saifulla, learned counsel appearing for the petitioner would submit that the Honourable Supreme Court in Rajiv Gandhi's Assassination case in [Union of India Vs.V.Sriharan @ Murugan and others](#) in W.P.(Crl).No.48 of 2014 with Crl.M.P.Nos.6280-6281 of 2017 by order dated 06.09.2018 has held as follows:-

“From the documents filed on 01.09.2018 by the learned counsel, it appears that an application under [Article 161](#) of the Constitution has been filed before the Governor of Tamil Nadu by the respondent-A.G.Perarivalan @ Arivu. Naturally, the authority concerned will be at liberty to decide the said application as deemed fit.”

Therefore, it is clear that the State Government is at liberty to take a decision on this aspect, which can be forwarded to His Excellency The Governor for taking a decision in this regard. Therefore, it is clear that there is no prohibition for the State Government to make recommendation if it deems fit. It is clear from the records that as on date the petitioner's son has been in jail



W.P.(MD)No.22805 of 2022

for the past 14 years 8 months and 4 days. Hence, G.O.Ms.No.64, dated 01.02.2018 is squarely applicable to the facts of the case.

7.Even as per the Judgment of the Honourable Supreme Court, the State Government has got power to decide about the matters, where the offences under Central Government's Act is involved. Therefore, the petitioner's representation for release of her son dated 31.07.2018 has to be considered. It is also seen from the records that the 3rd respondent had already rejected the representation of the petitioner, who is the mother of the convict dated 31.07.2018 as the petitioner's son was involved in the offence under [Arms Act](#).

8.In view of the Judgment of the Honourable Supreme Court in Rajiv Gandhi's Assassination case, the rejection of the petitioner's representation is not sustainable. Therefore, the communication of the 3rd respondent in Letter No.4787/jF.1/2018, dated 25.09.2018 is set aside and the 3rd respondent is directed to reconsider the issue afresh, within a period of six weeks from the date of receipt of a copy of this order as there is no prohibition for the 3rd respondent for making recommendation in view of the offence involved in this case under the [Arms Act](#). To put it in other words, the convict is eligible to get the benefit under G.O.Ms.No.64 as there is no prohibition for the convict to be considered for premature release.”

11.It is clear from the above judgment that even where the offence involved pertains to a Central Legislation, the State Government has got the power to decide on the issue of premature release. While coming to such



W.P.(MD)No.22805 of 2022

conclusion, the Co-ordinate Bench has placed reliance upon the judgment of the Hon'ble Apex Court in *Rajiv Gandhi's Assassination Case*.

12.In the instant case, the impugned G.O was issued only by placing reliance upon Section 435 of Cr.P.C., and the premature release sought for by the petitioner was rejected. In view of the above reasoning, we are inclined to interfere with the impugned G.O., issued by the first respondent and accordingly, the same is hereby set aside.

13.The matter is remanded back to the file of the third respondent and the third respondent is directed to make the recommendation/proposal to the Screening Committee within a period of four weeks from the date of receipt of a copy of this order. On such receipt of the recommendation/proposal, the Screening Committee shall take a decision as per G.O.(MD)No.64, Home (Prison-IV) Department, dated 01.02.2018 keeping in mind the observation made by this Court in this order and place the recommendation before the first respondent, within a period of six weeks thereafter and the first respondent, on receipt of the same, shall pass final orders within a period of eight weeks thereafter.



W.P.(MD)No.22805 of 2022

WEB COPY 14.This Writ Petition is allowed with the above directions. No costs.

Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) (N.A.V.,J.)
14.11.2022

Index : Yes/No
Internet : Yes
Sm



W.P.(MD)No.22805 of 2022

To:

WEB COPY

1. The Additional Chief Secretary to Government,
Home (Prison IV) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
2. The Additional Director General of Prison,
Egmore,
Chennai – 600 008.
3. The Superintendent,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



W.P.(MD)No.22805 of 2022

M.S. RAMESH, J.

and

N. ANAND VENKATESH, J.

Sm

Order made in
W.P.(MD)No.22805 of 2022

Dated
14.11.2022