



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.P(MD)No.24174 of 2019
and
W.M.P(MD)No.20767 of 2019**

Mydeen Beevi

:Petitioner

.vs.

1.State represented by

The Principal Secretary to Government,
Home (Prison IV) Department,
Secretariat,
Fort, St. George,
Chennai-600 009.

2.The Additional Director General of Prison,
Whannels Road,
Egmore,
Chennai-600 008.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O(D) No.686, dated 28.06.2019 passed by the Respondent No.1 and quash the same as illegal, consequently directing the respondents to release the petitioner's son namely Sheik Sintha Mathar @ Jaffar @ Sintha, son of Bava Mohideen in C.P.No.7370 confined at Central Prison, Palayamkottai, Tirunelveli forthwith.

For Petitioner :Mr.G.Prabhu Rajadurai
for Mr.S.M.A.Jinnah

For Respondents :Mr.S.Ravi
Addl. Public Prosecutor



O R D E R

[Order of the Court was made by **R.SUBRAMANIAN., J.**]

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Challenge in this writ petition is to G.O(D)No.686, Home (Prison-IV) Department, dated 28.06.2019 in and by which, the Government had rejected the request of the petitioner for premature release of her son Sheik Sintha Mathar @ Jaffar @ Sintha, Son of Bava Mohideen, who is undergoing life imprisonment at Palayamkottai Central Prison.

2. The petitioner's son has been incarcerated for nearly 20 years now. The petitioner invoking G.O.Ms.No.64, Home (Pri-IV) Department, dated 01.02.2018 seeks premature release of her son.

3. Mr.G.Prabhu Rajadurai, learned counsel for the petitioner would vehemently contend that the Government has not considered the request of premature release under G.O.Ms.No.64, Home (Pri-IV) Department, dated 01.02.2018. According to him, the order impugned in the writ petition has been passed on erroneous grounds invoking G.O.Ms.No.1155, Home (Prison IV) Department, dated 11.09.2008, which also provided for premature release of prisoners on certain conditions. Pointing out the fact that one of the conditions regarding the offence committed on religious prejudices, which were excluded in G.O.Ms.No.1155, Home (Pri-IV) Department, dated 11.09.2008 have not been so excluded in G.O.Ms.No.64, Home (Prison-IV) Department, dated 01.02.2018. Therefore, according to Mr.G.Prabhu Rajadurai, the learned counsel for the petitioner, the order of Government rejecting the request of the petitioner is erroneous and is a result of misapplication of G.O (Ms)No.1155, Home (Pri-IV) Department, dated 11.09.2008 instead of G.O.Ms.No.64, Home (Pri-IV) Department, dated 01.02.2018.

4. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondents would submit that the Government had rejected the request for Premature Release, because premature release of the son of the petitioner, considering the nature of offence for which he has been punished, would lead the communal clash in the area. It is also pointed out that the prisoner has not completed 20 years of incarceration.

5. Refuting the claim of the learned Additional Public Prosecutor, Mr.Prabhu Rajadurai learned counsel would submit that he is not claiming under the category of prisoners, who have completed 20 years of incarceration, but he is claiming under paragraph 5(II) which deals with the prisoners, who have been incarcerated for more than 10 years.



6. We have considered the submission of the learned counsel for the parties and also perused the relevant Government Orders.

7. Though it is stated that the request of the petitioner for premature release of her son cannot be accepted and his case was not considered under G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, the impugned order does not reflect the reasons for not considering it under G.O(Ms)No.64, dated 01.02.2018. It is open to the Government to consider the case of Premature Release under the relevant guidelines and either accept it or reject it. This Court cannot sit in judgment on the sufficiency or the correctness of the reasons that have been assigned by the Government for rejecting or accepting the application for Premature Release.

8. The Division Bench of this Court in ***Sikkander vs. State*** reported in ***2021 SCC Online Mad 6586*** had held that this Court cannot sit the judgment over the discretion upon in matters of Premature Release. After referring to the judgment of the Hon'ble Supreme Court in ***Laxman Naskar v. Union of India***, the Division Bench had held that this Court cannot go into the sufficiency or otherwise of the reason that has been assigned for the rejection of the request. But at the same time, if we find that no reason has been assigned for rejecting the request, it is open to this Court to require the Government to reconsider the question of Premature Release in terms of Government Order or scheme formulated in the Government Order.

9. We find that the order impugned in the writ petition does not assign any specific reason for rejection of the request of the petitioner under G.O.(Ms)No.64, dated 01.12.2018. No doubt, in the counter certain reasons have been supplied. It is common knowledge that the reasons for the rejection must be reflected in the order impugned in the writ petition and the same cannot be introduced by way of counter.

10. Hence, we are satisfied that the order impugned will have to be set aside and it is accordingly set aside. The writ petition is allowed. There will be a direction to the Government to reconsider the request for premature release of the petitioner's son in terms of G.O.(Ms)No.64, dated 01.02.2018. It is needless to say that the Government has to pass a reasoned order adverting to the scheme that has been promulgated under G.O.(MD)No.64, dated 01.02.2018. Such exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CSIII)

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/ /2022

Sub Assistant Registrar(CS)



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To

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

ORDER MADE IN
W.P (MD) No.24174 of 2019
22.02.2022

PKP/03.03.2022/4P/5C