



W.P.No.10409 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P.No.10409 of 2023
and W.M.P. No.10361 of 2023

M.Sumathi

.. Petitioner

Vs

- 1.Union Territory of Puducherry,
Rep. By its Secretary,
Office of the Lieutenant Governor,
Pondicherry.
- 2.Union Territory of Puducherry,
Rep. By its Secretary
Office of the Chief Secretary,
Pondicherry.
- 3.Union Territory of Puducherry,
Rep. By its Secretary,
Office of the Home Department,
Pondicherry.
- 4.The Chief Superintendent of Jails,
Mathur Road, Kalapet
Puducherry – 605 014.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorarified mandamus, calling for
the records of the respondents particularly that of the 4th respondent

Page Nos.1/18



W.P.No.10409 of 2023

vide No.157/JD/SJ/PMR/2022-23 dated 26.01.2023, invoking Rule 870(4) of the Puducherry Prison Rules, 2021 and quash the same as illegal, violative of principles of natural justice and consequently direct the respondents to consider the case of the life convict Karuna @ Manoharan, son of Subramani, is confined to jail vide Con.No.0075, since July, 1997 continuously upto date for nearly 26 years within the time frame to be stipulated by this Court.

For Petitioner : Mr.T.S.Rajamohan
along with Mr.R.Bhaskaran

For Respondents : Mr.M.V.Ramachandramurthy
Additional Deputy Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity).

2. This order has to be read in conjunction with and in continuation of proceedings made in the previous listings particularly proceedings/orders made in the listings on 05.04.2023 and 01.09.2023 which read as follows:

'Proceedings dated 05.04.2023:

Captioned writ petition seeks issue of a writ of certiorarified mandamus. The writ petitioner is the daughter of a lifer i.e., life convict by name



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W.P.No.10409 of 2023

Karuna @ Manoharan, (Convict No.0075), now lodged in Central Prison, Kalapet, Puducherry.

2. *Mr.T.S.Rajamohan, learned counsel for petitioner submits that the 'petitioner's father' who shall hereinafter be referred to as 'convict prisoner' was convicted to undergo life imprisonment vide judgment and sentence dated 01.08.2000 in S.C. No.64 of 1998 on the file of III Additional Sessions Judge, Puducherry. Learned counsel submits that the premature release of convict prisoner was sought but the fourth respondent in and by an 'order dated 26.01.2023' (hereinafter 'impugned order' for the sake of convenience and clarity) negated the request to recommend the case of the convict prisoner. Learned counsel submits that the convict prisoner has served nearly 26 years, he has shown absolute remorse and has adopted reformed character. Learned counsel also submits that this submission is buttressed by the fourth respondent saying that character of the convict prisoner is good.*

3. *Issue notice.*

4. *Mr.K.S.Mohandass, learned Public Prosecutor, Union Territory of Puducherry, who accepts notice for all four respondents requests for some time to get instructions and revert to this Court. Request acceded to.*

5. *List on 21.04.2023.'*

'Proceedings dated 01.09.2023:

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings more particularly, the proceedings made in the first listing on 05.04.2023.

2. *Today Mr.T.S.Rajamohan, learned counsel for petitioner and Mr.M.V.Ramachandra Murthy, learned Additional Public Prosecutor (Union*



WEB COPY



W.P.No.10409 of 2023

Territory of Puducherry) for respondents are before us.

3. When the matter was taken up, it came to light that the applicable Rule qua premature release is Rule 870 captioned 'Guidelines for the Sentence Review Board'. To be noted, this is Rule 870 of 'Puducherry Prison Rules - 2021' hereinafter referred to as 'said Rules' for the sake of convenience and clarity. It is further to be noted that the said Rule is a piece of Subordinate Legislation made by the Executive Arm of Puducherry in exercise of rule making powers conferred on it vide Section 59 of 'The Prisons Act, 1894 (9 of 1984)' [hereinafter referred to as 'said Parent Act' for the sake of convenience].

4. A careful perusal of aforementioned Rule 870 brings to light that decision making qua premature release vests with 'Sentence Review Board' [hereinafter referred to as 'said Board']. To be noted, composition of the said Board is set out in Rule 852 of the said Rules.

5. Be that as it may, sub-rule (3) of Rule 870 says that the Sentence Review Board shall keep in view the 'Guidelines issued by the Union Territory Administration' [hereinafter referred to as 'said Guidelines' for the sake of convenience and brevity]. This Bench wanted to see said Guidelines as the same has not been placed before us.

6. On a web search, we find that National Human Rights Commission (NHRC) has issued a Circular dated 26.09.2003 regarding Guidelines qua premature release but it is not clear as to whether this is said Guidelines qua Rule 870 of said Rules.

7. Learned counsel for petitioner pressed into service **Ram Chander case** being order dated 22.04.2022 made in Writ Petition (Crl) No.49 of 2022 by Hon'ble Supreme Court and drew our attention to paragraphs 17 to 21 as



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W.P.No.10409 of 2023

regards premature release parameters. In the light of the narrative thus far, ideally it would be desirable to look at said Guidelines before continuing further qua legal drill on hand.

8. Faced with the above situation, learned Prosecutor requested for a short accommodation to place the said Guidelines before us. Request of learned Prosecutor acceded to albeit with a caveat that we will continue the legal drill even if learned Prosecutor is unable to place before us.

9. List on Tuesday. List on 05.09.2023.'

3. The aforementioned proceedings/orders give a thumb nail sketch of the facts and therefore we are not embarking upon the exercise of setting out facts again though we will be adding some more essential facts infra. The aforementioned proceedings/orders shall now be read as an integral part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the aforementioned earlier proceedings/orders shall continue to be used in this final order also obviously for the sake of convenience and clarity.

4. Today, in the Final Hearing Board, Mr.T.S.Rajamohan R.Bhaskaran, learned counsel for petitioner and Mr.M.V.Ramachandra Murthy, learned Additional Public Prosecutor, Union Territory of Puducherry for all the four respondents are before us.



W.P.No.10409 of 2023

WEB COPY

5. Adverting to our earlier proceedings dated 01.09.2023, learned Prosecutor submitted that 'there are no separate guidelines' (to be noted guidelines adverted in paragraph 5 of 01.09.2023 proceedings) and they only go by 'said Rules'. To be noted, 'said Rules' is a piece of subordinate legislation having been made pursuant to rule making powers vested in the Executive Arm vide Section 59 of said Parent Act. Learned Prosecutor submitted that Rule 297 of said Rules talks about certain reports which are placed before the said Board constituted vide Rule 852 of said Rules. Learned Prosecutor also drew our attention to Advisory Board constituted under Rule 278 of said Rules. Learned Prosecutor submitted that this Advisory Board takes a call on premature release pleas and placed before us minutes of a meeting of the Advisory Board held on 20.10.2022. To be noted, Agenda Item No.26 in this meeting pertains to the captioned matter and the agenda is **Premature Release of Life Convict Prisoner Karuna @ Manogaran, S/o. Subramani (0075)**.

6. We find that the minutes of the meeting qua Agenda Item No.26 consists of 12 points and these 12 points have been repeated ad



W.P.No.10409 of 2023

verbatim in the impugned order. To be noted, contents of the impugned order is as follows:

'ORDER

As provided in Rule No.870(4) of the Puducherry Prison Rules 2021, the undersigned has been directed to inform that, the Sentence Review Board which was held on 20.10.2022 for considering the pre-mature release of 27 life convict inmates has rejected your premature release on the following grounds.

(i) The Board considered the case of the life convict prisoner Karuna @ Manogaran S/o.Subramani who has been convicted on 01.08.2000 and sentenced to undergo life imprisonment in the S.C.No.64/1998 of Hon'ble III Additional Sessions Judge, Puducherry in Crime No.201/1997 of Orleanpet Police Station, Puducherry U/s 148, 449 r/w 149, 302 r/w 149 IPC.

(ii) The charges of against the prisoner is that on 10.07.1997 at about 22.10 hours at the lane behind the Fridge Company, Nellithope, Karuna @ Manogaran life convict along with associates into an unlawful assembly armed with deadly weapons like aruvals and iron pipe with the common object of murdering one Selvam due to previous enmity and chased the deceased Selvam and committed house trespass and by cutting him with aruval and beating him with iron pipe with such knowledge to cause or would be sufficient to cause his death and further caused simple injuries to the witness Baby, Samuvel and thereby liable to punishment u/s 148, 449 r/w 149 IPC, 302 r/w 149 IPC. The life imprisonment was confirmed by the Hon'ble High



WEB COPY



W.P.No.10409 of 2023

Court, Madras in Criminal Appeal No.1011 of 2000, dated 16.08.2004.

(iii) The said prisoner has been undergoing life imprisonment from the date of conviction from 01.08.2000 to till date. He has availed parole leave (148 days) during his imprisonment period. He has completed 14 years (10.09.2014) in the Central Prison, Kalapet, Puducherry.

(iv) The board perused the reports from the Superintendent of Police Puducherry, the Probation Officer, Puducherry, the Chief Judicial Magistrate, Puducherry, the Superintendent of Jail, Puducherry and the Medical Officer, Central Prison, Puducherry.

(v) According to the Police report of the SHO, Mudaliarpur Police Station, through SP (South) has stated that, the life convict prisoner Karuna @ Manoharan S/o.Subramani has involved in many heinous crimes. During his parole leave period, he had not involved in any criminal offences & breach of conditions. The life convict is facing life threat from opponents and his rivalry group may take revenge on him. The premature release of the accused will cause breath of peace which will create law and order problem in the area.

(vi) The Hon'ble Chief Judicial Magistrate, Puducherry in his report No.850/CJM/JUD/PDY/2022 dated 30.08.2022 wherein it is stated that the Police report disclose adverse remarks about the life convict for premature release. But the report of Superintendent of Jail and report of Probationary Officer does not disclose any adverse remarks about the abovementioned life convict nor does it show that release of the said life convict will be detrimental either to himself or to his neighbours, nor will it create any Law and Order problem. In



WEB COPY



W.P.No.10409 of 2023

view of the above facts and circumstances, in my considered opinion the life convict Karuna @ Manoharan S/o.Subramani is a fit person to be considered for premature release.

(vii) According to the Probation report received from the Probation Officer, it is stated that, enquiry has been conducted with the area people of Mudaliarpet and with the Station House Officer of Mudaliarpet Police Station, Puducherry in respect of the life convict inmate Karuna @ Manoharan S/o.Subramani who is undergoing life imprisonment in the Central Prison, Puducherry for the involvement in Cr.No.201/97 of Orleanpet Police Station, Puducherry u/s 302 r/w 34 IPC. The Station House Officer of Mudaliarpet Police Station, Puducherry was enquired and wherein stated that from the year 1991 to 2016, the convict inmate has involved in many heinous crime cases, in that cases some cases were convicted and some cases were acquitted. At present three cases are pending trial and one cases are under investigation. Hence, the release of the convict inmate will create Law and Order problem in the area. Further he has stated that, during the enquiry with the area people and family members, the area people assured that the arrival of Karuna @ Manoharan S/o Subramani to Mudaliarpet area will not create any problem in their locality and the safety of the prisoner will be taken care by his family members. The family members has stated that, previously Karuna @ Manoharan S/o Subramani has involved in Political activities, hence cases were filed against him, but only fine amount were imposed for those cases and all the cases which were against him were acquitted. During further enquiry with the family members, they have stated that, the four cases which are said to be pending case by the Police were acquitted and they have submitted the Judgment copies for the four cases.



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W.P.No.10409 of 2023

(viii) Further he has stated that, previously the above said convict prisoner Karuna @ Manoharan S/o Subramani was released on Emergency Parole and Ordinary Parole leave for many times without Police escort and surrendered himself in the Central Prison Kalapet without any remarks. And after the year of 2016, the Police Department has not filed any criminal cases against him. The prisoner has involved in many reformation activities in the Prison. On the basis of above mentioned reasons, the release of the prisoner on premature **may be considered.**

(ix) In his report the Superintendent of Jail, Central Prison, Kalapet, Puducherry, has informed that the inmate has availed 27 times (148 days) of Parole leave, he has surrendered in the Prison after the completion of his parole leave period without any remarks. During his confinement in this prison his behaviour and character are good and recommended for premature release of Karuna @ Manogaran S/o. Subramani.

(x) The Prison Medical Officer in his report certified that the life convict is mentally and physically fit and no evidence of any communicable disease.

(xi) During the course of meeting, the ADGP & SSP (L & O) has objected the premature release of the inmate by stating that he is having pending case in Yanam Police Station, Puducherry. The Law Secretary, Puducherry objected to his release on the ground that the activities carried out by him in the Prison is part of prison labour and discipline which cannot be a ground for premature release.

(xii) The board has examined the case of the life convict Karuna @ Manogaran S/o. Subramani,



with reference to all the above mentioned reports and after detailed deliberations and taking cognizance of all the facts and circumstances of the crime committed, the Board decided not to recommend the premature release of life convict Karuna @ Manogaran S/o Subramani.'

Therefore, the campaign against the impugned order is effectively a campaign against the minutes of the Advisory Board qua Agenda Item No.26 in the meeting held on 20.10.2022.

7. Before we proceed further, we deem it appropriate to set out legal provisions and case laws on premature release jurisprudence.

7.1 Section 433A of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] deals with premature release of those prisoners who have completed 14 years of sentence;

7.2 under Section 432 (2) Cr.P.C, the Executive has the discretion to seek the opinion of the Sentencing Court;

7.3 While Executive is bound to seek the opinion of the Sentencing Court under Section 432(2) Cr.P.C, it is not bound by the opinion itself. This principle was laid down in **Sriharan @ Murugan's** case [**Union of India**



W.P.No.10409 of 2023

Vs. V.Sriharan @ Murugan reported in **(2016) 7 SCC 1**;

7.4 Much earlier, in **Mohinder Singh's** case [**State of Haryana Vs. Mohinder Singh** reported in **(2000) 3 SCC 394**], Hon'ble Supreme Court held that the power of remission cannot be exercised arbitrarily and the premature release pleas have to be dealt with in a manner that is fair and reasonable;

7.5 The Executive can seek police report but what the police report should advert to has been elucidatively adumbrated in the oft quoted **Laxman Naskar's** case [**Laxman Naskar vs Union of India** reported in **(2000) 7 SCC 626:2000 SCC OnLine SC 1245**] and the five factors to be considered in a police report are as follows:-

- '(i) Whether the offence is an individual act of crime without affecting the society;*
- (ii) Whether there is a chance of the crime being repeated in future;*
- (iii) Whether the convict has lost the potentiality to commit crime;*
- (iv) Whether any purpose is being served in keeping the convict in prison; and*
- (v) Socio-economic conditions of the convict's family.'*

8. In the aforesaid backdrop, on a careful consideration of the minutes of the Advisory Board as well as the impugned order which is a replication of the minutes of the Advisory Board, we find that the



W.P.No.10409 of 2023

minutes of the Advisory Board dated 20.10.2022 as regards Agenda Item No.26 require reconsideration and the reasons are as follows:

8.1 *Except the report of the police (Additional Director General of Police, Puducherry) all other reports favour premature release of the convict prisoner;*

8.2 *Even as regards police report, the Station House officer (SHO) of the police station concerned viz., Mudaliarpur Police Station has said that during enquiry of the area people, they assured that arrival of the convict prisoner will not create any problem in their locality and family members also said so;*

8.3 *As regards the report of the Additional Director General of Police, the only point mentioned therein is the pendency of one case for trial viz., S.C. No.64 of 2008 pertaining to Crime No.90 of 2023 in Yanam Police Station, Union Territory of Puducherry;*



W.P.No.10409 of 2023

WEB COPY

8.4 The health of the prison inmate i.e., convict prisoner has also been brought to our notice and the following is highlighted:

The Prison inmate Mr.Karuna @ Manoharan S/o Subramani was suffering from S/P Covid SEQUAE and Type 2 DM more than 10 years

- Diabetic Neuropathy
- OA/Knee B/L knees on treatment
- No Covid related illness at present
- At present his BP 130/70 MMHG
- GMR 217 Mg.

To be noted, there is no disputation or contestation about the above as the above is part of the Prison Medical Officer's report dated 04.09.2023;

8.5 Hon'ble Supreme Court in a recently rendered judgment pertaining to premature release ie., judgment dated 22.04.2022 in **Ram Chander vs. The State of Chattisgarh & Anr vide Writ Petition (Crl) No. 49 of 2022 dated 22.04.2022, authored by Hon'ble Dr.D.Y.Chandrachud., J**, has made a survey of the case law jurisprudence on premature release and has held that



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W.P.No.10409 of 2023

*the statements which are bald without indication as to how law and order is likely to be adversely affected by release cannot form the basis qua premature release pleas and it also held that direction to the Executive to reconsider is an option. This **Ram Chander's** case principle is instructive and we respectfully follow the same.*

9. In the light of the narrative, discussion and dispositive reasoning, the following order is made:

9.1 The impugned order being order dated 26.01.2023 bearing reference No.157/JD/SJ/PMR/2022-23 made by the fourth respondent is set aside;

*9.2 The Advisory Board is requested to reconsider its minutes as regards Agenda Item No.26 being minutes of the meeting held on 20.10.2022 in the light of our aforementioned observations and in the light of the principles laid down by Hon'ble Supreme Court in **Ram Chander's** case.*



WEB COPY



W.P.No.10409 of 2023

9.3 *As this Court is informed that the next meeting of the Advisory Board is to be held in October 2023, we direct that the decision shall be taken as expeditiously as the business of the respondents and the members of the Advisory Board would permit but in any event on or before 31.10.2023 and the decision shall be communicated to the writ petitioner under due acknowledgement within five working days from the date of the decision.*

10. Captioned writ petition is disposed of on above terms. Consequently, aforementioned W.M.P.No.10361 of 2023 is closed. There shall be no order as to costs.

(M.S.,J.) **(R.S.V.,J.)**
19.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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W.P.No.10409 of 2023

To

WEB COPY

- 1.The Secretary,
Union Territory of Puducherry,
Office of the Lieutenant Governor,
Pondicherry.
- 2.The Secretary
Union Territory of Puducherry,
Office of the Chief Secretary,
Pondicherry.
- 3.The Secretary,
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WEB COPY



W.P.No.10409 of 2023

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

W.P.No.10409 of 2023

19.09.2023

Page Nos.18/18