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W.P.No.20772 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.20772 of 2023

Mehar Nisha
W/o.Rifayudheen

.. Petitioner

Vs.

1. The Principal Secretary to Government
O/o. The Principal Secretary to Government
Home (Prison IV) Department
Secretariat
St.George Fort, Chennai.
2. The Additional Director General of Prison
O/o. The Additional Director General of Prison
Whannels Road,
Egmore, Chennai.
3. The Superintendent of Central Prison
Puzhal Central Prison
Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying
writ of mandamus directing the respondents to release the petitioner's

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husband prematurely by considering the representation dated 25.04.2023.

Since the petitioner's husband convicted by the Sri Lankan Court to life sentence, thereafter the petitioner's husband was brought to India and jailed him in Puzhal Central Prison. Under the Joint declaration between India and Sri Lanka, he was transferred to India. But in Indian Act, the alleged offence are maximum sentenced only to 10 years. Now the petitioner's husband languishing in Prison for more than 10 years inside the prison which cause severe injustice to the petitioner's husband.

For Petitioner	:	Mr.S.M.A.Jinnah
For Respondents	:	Mr.E.Raj Thilak

ORDER

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

In the captioned writ petition, Mr.S.M.A.Jinnah, learned counsel on record for writ petitioner on a videoconferencing platform and Mr.Rawthar Nainar, learned counsel in the physical Court (to be noted, this is hybrid hearing) are before us.

2. Learned counsel draws our attention to a 'representation dated 25.04.2023' [hereinafter 'said representation' for the sake of convenience and clarity] seeking adaptation of sentence of punishment in the nature of premature release for her spouse Mr.Rifayudheen [hereinafter 'convict

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prisoner' for the sake of convenience and clarity], who remains incarcerated for over 10 years in Puzhal Central Prison, Chennai. To be noted, convict prisoner has been handed down life sentence in Srilanka and therefore, 'the Repatriation of Prisoners Act, 2003 (49 of 2003)' [hereinafter 'said Act' for the sake of convenience and clarity] comes into play.

3. Learned counsel for writ petitioner drew our attention to an order dated 02.05.2019 made by Hon'ble Division Bench of Bombay High Court in Criminal Writ Petition No.3975 of 2018 [Shaikh Istiyaq Ahmed Vs. Union of India and four others] in support of his plea qua said representation.

4. Issue notice.

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all the three respondents and draws our attention to Section 13(6) together with proviso of said Act which reads as follows:

'13. Determination of prison and issue of warrant for



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receiving transfer in India -

(1)

(2)

(3)

(4)

(5)

(6) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both relating to the sentence imposed in the contracting State.'

6. Learned counsel advertent to Section 13(6) of said Act submits that the Central Government is statutorily vested with powers to consider said representation.

7. In the case on hand, said representation has not been sent to



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Central Government.

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8. Faced with the above situation, learned counsel for writ petitioner submitted that he would now send a representation to the Central Government and keep his fingers crossed. Let the needful be done.

9. For the present, we drop the curtains on the captioned writ petition but make it clear that all the rights and contentions of the writ petitioner, convict prisoner and / or anyone concerned for convict prisoner are preserved and this order will not impact such rights in any manner.

10. Captioned Writ Petition disposed of as closed albeit preserving all rights in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

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Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

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and
R.SAKTHIVEL, J.,

mk

To

1. The Principal Secretary to Government
O/o. The Principal Secretary to Government
Home (Prison IV) Department
Secretariat
St.George Fort, Chennai.
2. The Additional Director General of Prison
O/o. The Additional Director General of Prison
Whannels Road,
Egmore, Chennai.
3. The Superintendent of Central Prison
Puzhal Central Prison
Chennai.
4. The Public Prosecutor
High Court, Madras.

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