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W.P.No.19604 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.19604 of 2020

Ranganathan

.. Petitioner

Vs.

The State represented by its

1. The Secretary to Government of Tamilnadu,
Department of Home,
Fort St. George,
Chennai – 600 009.
2. The Deputy Inspector of General of Prison,
Kovai Zone,
Central Prison Coimbatore,
Coimbatore – 641 018.
3. The Superintendent,
Central Prison,
Coimbatore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to consider as per the provisions of Tamil Nadu Prison Manual Volume-2, under Suspension of

Page Nos.1/16



W.P.No.19604 of 2020

Sentence Rules Nos.632, 633 and 634 and as per the G.O.(Ms).No.64, in Para (IV) dated 01.02.2018, release the life convict prisoner, the detenue, Balasubramaniam, S/o.Duraisamy, life Convict No.11286, the detenu, detained at Central Prison, Coimbatore, prematurely.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

ORDER

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

This order will now dispose of the captioned Writ Petition.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 13.10.2022, 19.12.2022 and 24.02.2023, which read as follows:

'Proceedings made on 13.10.2022

As directed by this Court on 12.09.2022, the Inspector of Police, E2 Peelamedu Police Station [L&O], has filed a status report dated 13.10.2022, wherein it is stated that the health condition of the convict prisoner D.Balasubramaniam



W.P.No.19604 of 2020

[C.T.No.11286/2008] has not improved and he is still under treatment.

2. The Medical Report dated 11.10.2022 given by G.Kuppuswamy Naidu Memorial Hospital, Coimbatore, reads as follows:

*"This is to certify that Mr.Balasubramaniam D, OP.No.1058808, is a case of Carcinoma prostate with bone metastasis - stage IV. He received Palliative Radiation therapy to skull and cervical spine 20Gy/5fractions. He was on Inj.Lupride Depot, Tab. Enzalutamide and three monthly Inj. Zoledronic acid. His PSMA PET revealed disease progression. Hence he is planned for Palliative chemotherapy with Docetaxel + PDN + Zoledronic acid + 3 monthly Inj. Lupride * 6 cycles. He received 5th cycle palliative chemotherapy as inpatient on 11.10.2022. His condition was stable on his last visit. He is advised to come for review on 31.10.2022 for next cycle chemotherapy."*

3. In view of the same, leave granted by this Court, which has been extended from time to time, is extended till 20.12.2022.

Call on 20.12.2022.'

Proceedings dated 19.12.2022

This convict prisoner viz., D.Balasubramaniam (Convict No.11286) has been diagnosed for cancer, on



W.P.No.19604 of 2020

account of which, his ordinary leave is being extended from time to time. The last of such extension was on 13.10.2022 till 20.12.2022.

2. The medical report dated 15.11.2022 issued by G.Kuppuswamy Naidu Memorial Hospital, Coimbatore, reads as under :

*“This is to certify that Mr.Balasubramaniam D, OP.No.1058808, is a case of carcinoma prostate with bone metastasis-stage IV. He received Palliative Radiation therapy to skull and cervical spine 20Gy/5fractions. He was on Inj.Lupride Depot, Tab. Enzalutamide and three monthly Inj.Zoledronic acid. His PSMA PET revealed disease progression. Hence he is planned for palliative chemotherapy with Docetaxel + PDN + Zoledronic acid + 3 monthly Inj.Lupride * 6 cycles. He received 6th cycle palliative chemotherapy as inpatient on 14.11.2022. His condition was stable on his last visit. He is advised to come for review on 05.12.2022 with PSA report.”*

3. In view of the above, the leave that was granted by this Court, which has been extended from time to time, is further extended till 27.02.2023.

Post this matter on 28.02.2023.'



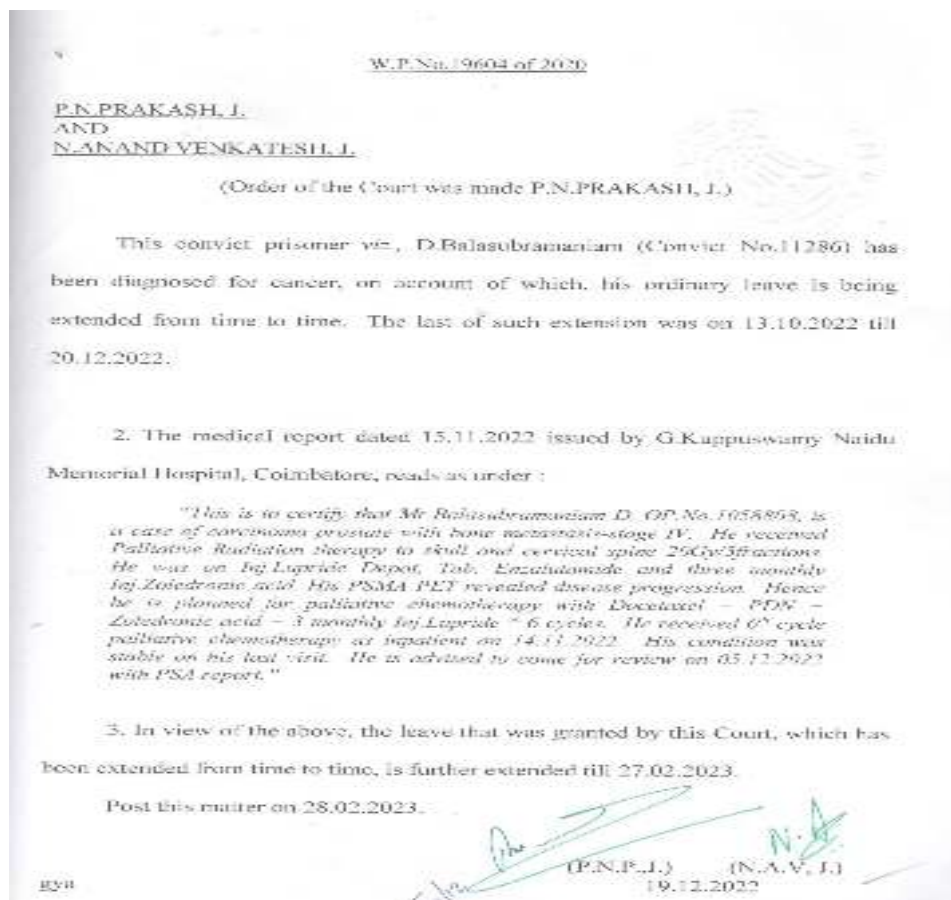
WEB COPY



W.P.No.19604 of 2020

Proceedings dated 24.02.2023

Read this in conjunction with and in continuation of earlier proceedings made by Hon'ble predecessor Bench in the previous listing on 19.12.2022. A scanned reproduction of the same reads as follows:





W.P.No.19604 of 2020

2. Today, Mr.S.Manoharan, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the three respondents are before us.

3. The main writ petition seeks premature release inter-alia under the Tamil Nadu Prison Rules, 1983 ('said Rules' for the sake of brevity). To be noted, the premature release is predicated on G.O.(Ms).No.64 Home (Prison-IV) Department, dated 01.02.2018 (said G.O.) and more particularly Para (IV) thereat.

4. Today, Mr.T.Vijay, learned counsel, who is before us, submits that an impleading application vide SR No.24280 of 2023 dated 21.02.2023 has been filed by one Somasundram and Gopalsamy saying that the convict prisoner is interfering with their possession, which is a civil dispute. We find that earlier, the same two persons sought to implead themselves vide W.M.P.Nos.13800 and 23432 of 2022. The prayer in these two miscellaneous petitions came to be negated by Hon'ble predecessor Bench in and by a common order dated 13.10.2022. A scanned reproduction of the same reads as follows:



WEB COPY



W.P.No.19604 of 2020



Order dated - 13.09.2022
W.M.P.Nos.13800 & 23432 of 2022
In W.P.No.19604 of 2020

W.M.P.Nos.13800 & 23432 of 2022

in

W.P.No.19604 of 2020

P.N.PRAKASH, J.
and
RMT. TEEKAA RAMAN, J.

[Made by **P.N.PRAKASH, J.**]

The detenu in this case is one D.Balasubramaniam, who is a convict prisoner [C.T.No.11286] and whose conviction and sentence have also been confirmed by the High Court as well by the Supreme Court. Since he was diagnosed with cancer, he was released on leave by the orders of this Court in H.C.P.No.214 of 2020 dated 20.02.2020 and W.M.P.No.1279 of 2021 in W.P.No.19604 of 2020 dated 19.01.2021, pursuant to which, he is now outside the prison and is taking treatment for his ailments. It is seen that the leave is being extended from time to time by this Court. The last of the extension was on 12.09.2022 upto 13.10.2022. Medical report dated 22.09.2022 submitted by the Medical Board shows that the convict prisoner is suffering from prostate cancer-stage IV and the same is likely to move to the next stage.



W.P.No.19604 of 2020

WEB COPY



Created: 12/09/2020
Web Copy: 12/09/2020
Page: 24 of 201

WEB COPY

2. In the mean while, one Sarasundaram and Gopalsamy have filed two petitions in W.M.P.No.12800 and 53432 of 2012 respectively for impleading themselves as respondents in W.P.No. 19604 of 2020 in order to oppose the extension of leave on the ground that the convict prisoner is not reporting before the police in compliance with the conditions imposed by this Court as well, he is harassing them by initiating various litigations.

3. We called for a report from the Inspector of Police, P3 Peelamedu Police Station (L&O), Coimbatore City and the report shows that there is a long standing dispute in respect of a property, over which, Sarasundaram and Gopalsamy are claiming ownership.

4. In our opinion, leave is purely a matter between this Court and the State. On the grounds urged by Sarasundaram and Gopalsamy, they cannot be impleaded as respondents in W.P.No. 19604 of 2020.



W.P.No.19604 of 2020

WEB COPY



5. However, it is open to learned counsel to process his impleading petition and bring it up, which will be dealt with on its own merits and in accordance with law.

Page Nos.9/16



WEB COPY



W.P.No.19604 of 2020

6. *Be that as it may, learned counsel for the petitioner submits that convict prisoner is under stage-IV of cancer and it is unfortunately likely to aggravate. There is not much disputation or contestation qua this medical condition of the convict prisoner as far as the prosecution is concerned. However, prosecution requests for further time to get further instructions and revert to this Court.*

7. *In the light of the narrative thus far, the leave granted by Hon'ble predecessor Bench and extended from time to time [last extended in and by earlier proceedings dated 19.12.2022 (extracted and reproduced supra)] will now stand extended by a further period of four weeks, i.e. upto 24.03.2023.*

8. *List the captioned matter before this Court on 21.03.2023.'*

3. Today, Dr.S.Manoharan, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

4. Learned Additional Public Prosecutor submits that the convict prisoner has since been released, i.e., premature release prayer has been acceded to vide G.O.(Ms).No.129 dated 20.03.2023 made by the first



W.P.No.19604 of 2020

respondent. A copy of this order of premature release has been placed before us and a scanned reproduction of the same is as follows:


ABSTRACT

Prisons and Correctional Services – Premature release of the Life Convict Prisoner No.1286, Balasubramanyam, son of Duraisamy confined in Central Prison, Coimbatore on Medical grounds – Orders – Issued.

HOME (PRISON-IV) DEPARTMENT

G.O.(Ms)No.129 Dated: 20.03.2023.

சென்னை, 20.03.2023
தமிழகப் பேரரசு

Re: /

1. G.O (Ms) No.54, Home (Prison-IV) Department, dated 01.02.2018 as amended in G.O.(Ms) No.102, Home (Prison-IV) Department, dated 21.03.2018.
2. From the Director General of Police/Director General of Prisons and Correctional Services letter No.DP61/P21/2022, dated 21.04.2021, 07.03.2022 and 17.06.2022.
3. Orders of the Hon'ble High Court of Madras, dated 13.07.2021 and 13.07.2022 in W.P.No.19604 of 2020.
4. Government Order No.15062/Prison-IV/2022, dated 17.06.2022.
5. From the Sessions Judge, Madurai North mandam (Madurai Court), Coimbatore letter No.1044/2022, dated 20.06.2022.

ORDER:

The Life Convict Prisoner No.1286, Balasubramanyam, son of Duraisamy was involved in the offense of kidnapping and rape of a 17 years old minor girl. He was convicted in Pezhanthi Police Station Crime No 504 of 2006 and was convicted and sentenced to undergo imprisonment for 7 years under section 376 of Indian Penal Code and a fine of Rs.1,000/- in default simple imprisonment for 3 months and to undergo rigorous imprisonment for ten years with a fine of Rs.1,000/- in default simple imprisonment for 6 months under section 368 of the Indian Penal Code by the Sessions Judge, Madurai Court, Coimbatore on 07.04.2008 in Session Case No.11 of 2006. The appeal filed by the prisoner against the conviction and sentence before the Hon'ble High Court was dismissed in Criminal Appeal No.310 of 2008 on 09.01.2010. The appeal before the Hon'ble Supreme Court of India was dismissed in Criminal Appeal No.109/2010 on 26.01.2010.



WEB COPY



W.P.No.19604 of 2020

2. The Director General of Police / Director General of Prisons and Correctional Services has stated that the Life Convict Prisoner No.11286, Balasubramaniam, son of Duraisamy is suffering from Carcinoma Prostate with bone metastasis stage-IV and has received palliative radiotherapy to skull and cervical spine from 16.04.2020 to 21.04.2020. The prisoner is also suffering from vocal cord palsy and left arm and leg weakness and hence he was referred to Coimbatore Medical College Hospital and admitted as inpatient from 06.02.2020 to 18.02.2020. Further the prisoner was released on emergency leave for taking treatment for 3 weeks from 21.02.2020 as per the orders of the Honourable High Court of Madras in MCP No.214/2020, dated 20.02.2020 and thereafter the said leave has been extended continuously from time to time by the Hon'ble Court.

3. Subsequently, Thiru.Kanganathan, brother of the Life Convict Prisoner has filed a W.P.No.19604 of 2020 before the High Court Madras with prayer to issue a mandamus or any other order or direction directing the respondents to consider as per the provisions of Tamil Nadu Prison Manual Volume I, under Suspension of Sentence Rules Nos.632, 633 and 634 and as per para 5(IV) of G.O.(Ms) No.54, Home (Prison-IV) Department, dated 01.02.2018, release the life convict prisoner i.e. detainee, Balasubramaniam, son of Duraisamy life Convict No.11286 the detainee, detained at Central Prison, Coimbatore, prematurely. In the above case, the Government have filed a detailed Counter Affidavit and the case is pending before the Hon'ble High Court Madras.

4. The Director General of Police / Director General of Prisons and Correctional Services has further stated that,

a) The Medical Board, Coimbatore in their report has stated as follows:-

"In our opinion the patient has grave illness (Cancer of prostate Stage IV) and its metastatic complications and received radiotherapy and on 3rd line of Chemotherapy at G.Kodandaram Naidu Memorial Hospital, Coimbatore. He has Progressive disease but still with mobility and does not have intolerable pain over metastatic sites. He is recommended to continue treatment under frequent medical supervision.

In our opinion the disease is progressive in nature. He may develop complications at any point of time.

We the constituted committee of Medical Board, Coimbatore Medical College Hospital, Coimbatore certify that the convict prisoner No.11286, Balasubramaniam, son of Duraisamy who is in danger of death from sickness not due to infectious disease. There appears to be no evidence of his recovery either within or outside the prison".



W.P.No.19604 of 2020

WEB COPY

2

- h) The Prison Medical Officer of Coimbatore Central Prison has also recommended for the premature release of the Life Convict Prisoner No.11286, Balasubramaniam, son of Duraisamy under Rule 633 of Tamil Nadu Prison Rules, Volume II.
- i) The District Collector, Coimbatore District has recommended for premature release of the Life Convict Prisoner No.11286, Balasubramaniam, son of Duraisamy.
- j) The Probation Officer, Coimbatore has recommended for premature release of the said life convict.
- k) The above life convict prisoner has completed 68 years and 14 days of actual imprisonment as on 31.01.2022 and has no pending cases against him.
- l) His behaviour and conduct is satisfactory in Prison.
- m) The Superintendent of Coimbatore Central Prison has recommended for premature release on medical grounds as per rule 632 and 633 of the Tamil Nadu Prison Rules, 1983.
- n) The Superintendent of Prison, Central Prison, Coimbatore has recommended for the premature release of the Life Convict Prisoner No.11286, Balasubramaniam, son of Duraisamy, confined in Central Prison, Coimbatore as per rule 633 of Tamil Nadu Prison Rules, 1983.

5. The Government have considered the case of the Life Convict Prisoner No.11286, Balasubramaniam, son of Duraisamy confined in Central Prison, Coimbatore on Medical grounds, as per rule 633 of Tamil Nadu Prison Rules, 1983 and decided to obtain the opinion of the Sessions Judge, Madurai Neelamondram, (Madrasi Court), Coimbatore under section 432(2) of Code of Civil Procedure. In her opinion filed above, the Session Judge, (Madrasi Court), Coimbatore has stated as follows:-

"I had issued notice to Central Prison, Coimbatore for making arrange to be seen life convict prisoner No.11286, Balasubramaniam, son of Duraisamy in connected with S.C.No.317/2006 on the file of this Court, in the presence of Medical Officer, Prison. Then, I was informed that the above said Prisoner is on leave. Further, Jail Authority assured that they will produce Prisoner and Medical Officer in my Chamber. As assured by Jail Authority, on 26.08.2022 at 5.15 pm, the above life convict prisoner No.11286, Balasubramaniam, son of Duraisamy had been produced by Tr.R.Muthukumar, Chief Head Warden of Central Prison, Coimbatore. Prisoner was identified by above Jail Personnel. Prisoner's Aadhar card was verified by me. During my interaction with Life Convict Prisoner Balasubramaniam, Medical Officer, Prison was also present. Looking appearance of Balasubramaniam, son of Duraisamy. He was feeble, pale, thin and was not able to stand without other help. Medical Officer has given certificate as to present health condition of Prisoner Balasubramaniam. I am satisfied that this is a fit case for suspension of



W.P.No.19604 of 2020

WEB COPY

4

maintaining sentence of Prisoner-Balasubramanian on medical ground under section 432(2) Cr.P.C.

6. The Government have examined the proposal of the Director General of Police/Director General of Prisons and Correctional Services for premature release of the Life Convict Prisoner No.11286, Balasubramanian, son of Duraisamy confined in Central Prison, Coimbatore on medical grounds as per rule 633 of the Tamil Nadu Prison Rules, 1983 and the opinion of the Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore under section 432(2) of Code of Civil Procedure and considering the request of Thiru.Ranganathan, brother of the Life Convict Prisoner and have decided to release the Life Convict Prisoner No.11286, Balasubramanian, son of Duraisamy now confined in Central Prison, Coimbatore prematurely on medical grounds as per para 5(IV) of G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018 invoking the power conferred by Article 161 of the Constitution of India.

7. Now therefore, in exercise of power conferred under Article 161 of the Constitution of India, the Governor of Tamil Nadu hereby remits the unexpired portion of sentence of imprisonment for life imposed on the Life Convict Prisoner No.11286, Balasubramanian, son of Duraisamy confined in Central Prison, Coimbatore. Accordingly the Government direct that the Life Convict Prisoner No.11286, Balasubramanian, son of Duraisamy now confined in Central Prison, Coimbatore be released prematurely on medical grounds as per para 5(IV) of G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, subject to the condition that he will execute the bonds as per usual terms and conditions and unless his presence is required in any other case.

(BY ORDER OF THE GOVERNOR)

K.PHANINDRA REDDY

ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

To

The Director General of Police/

Director General of Prisons and Correctional Services, Chennai-8.

The Superintendent of Central Prison, Coimbatore.

The District Collector, Coimbatore.

The Registrar General, High Court of Madras, Chennai-104.

The Director General of Police/Head of Police Force, Chennai-4.

Copy to:

The Office of the Chief Minister, Chennai-9.

The Special Personal Assistant to Minister for Law, Chennai-9.

The Private Secretary to Additional Chief Secretary to Government,

Home, P&C Department, Chennai-9.

Souk File / Spare Copy.

// FORWARDED BY ORDER //

SECTION OFFICER



W.P.No.19604 of 2020

5. In the light of the narrative thus far, captioned Writ Petition is

disposed of as closed.

(M.S.,J.)

(N.A.V.,J.)

23.03.2023

(1/2)

Index : Yes / No

Internet : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

1. The Secretary to Government of Tamilnadu,
Department of Home,
Fort St. George,
Chennai – 600 009.
2. The Deputy Inspector of General of Prison,
Kovai Zone,
Central Prison Coimbatore,
Coimbatore – 641 018.
3. The Superintendent,
Central Prison,
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High Court, Madras.



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W.P.No.19604 of 2020

M.SUNDAR, J.
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rsi

W.P.No.19604 of 2020

23.03.2023
(1/2)