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W.P.No.22085 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

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

W.P.No.22085 of 2023

Ramesh

.. Petitioner

Vs

1.The State Rep. By its
The Home Secretary to Government,
Home Department – Prison IV,
Secretariat, Chennai – 600 009.

2.The Director General of Prisons,
No.02, Whannels Road, Egmore,
Chennai – 600 008.

3.The Superintendent of Prison,
Central Prison at Puzhal,
Thiruvallur District – 600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records in Impugned order in No. 24893/§l.1/2023 dated 20.06.2023 passed by the 2nd respondent and quash the same and direct the third respondent to release the petitioner / convict Ramesh, S/o.Arumugam (CT No.2844) forthwith and set him at liberty.



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For Petitioner : Mr.M.Mohamed Saifulla
For Respondents : Mr.E.Raj Thilak,
Additional 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. Captioned WP has been filed with a certiorarified mandamus prayer assailing an 'order dated 20.06.2023 bearing reference No. 24893/ஈ.ஓ.1/2023' (hereinafter 'impugned order' for the sake of convenience and clarity) made by the second respondent rejecting the 'petitioner's representation/application dated 13.06.2023' (hereinafter 'said application' for the sake of convenience and clarity) seeking premature release of her spouse one Ramesh, Son of Arumugam (Convict Prisoner No.2844), now lodged in Central Prison, Puzhal, Chennai – 66.

3. To be noted, petitioner's spouse, who is a convict prisoner is a lifer i.e., he is serving life sentence.

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4. Mr.M.Mohamed Saifulla, learned counsel for petitioner advertng to the impugned order submitted that the said application has been rejected in and by the impugned order primarily on the ground that there was one pending case. Learned counsel drew our attention to 'G.O.(Ms) No.488 Home (Prison IV) Department dated 15.11.2021' (hereinafter 'said G.O.' for the sake of convenience and clarity) which applies to the case of the convict prisoner qua premature release in the case on hand. Learned counsel drew our attention to paragraph 17 of said G.O. which reads as follows:

'(17) Prisoners who have pending cases (other than their criminal appeals pending against their conviction).'

5. Learned counsel submitted that only one case was pending as against the convict prisoner which is Crime No.457 of 2019 on the file of third respondent Puzhal Police Station, Chennai for alleged offence under Section 42 of Indian Prisons Act, 1894 but that has already been closed under Section 468 Cr.P.C. and therefore as of today there are no pending cases as against the convict prisoner.

6. Issue notice.



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7. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepted notice for all three respondents.

8. Owing to the limited perimeter within which the captioned WP perambulates or in other words considering the limited scope of the captioned WP, main writ petition was taken up in the Admission Board with the consent of both sides.

9. Learned Prosecutor on instructions submitted that closure of aforementioned case was on 28.09.2022 and therefore as of/as on the date of the impugned order (20.06.2023), the case was pending.

10. We noticed that it is nobody's case that there is any pending case as of today and therefore paragraph 17 of said G.O. will not apply to the case on hand.

11. In the light of the narrative thus far, we deem it appropriate to send the matter back to the respondents for considering said application afresh in the light of closure of the sole pending case qua convict prisoner. Therefore, the following order is made :



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11.1 The impugned order dated 20.06.2023 bearing reference No. 24893/ஈ.பி.1/2023 is set aside;

11.2 The impugned order is set aside solely to facilitate de novo consideration of said application and therefore we make it clear that we have not expressed any view or opinion on the merits of the matter;

11.3 Said application shall now be considered by the respondents and the first respondent shall make an order on the same as expeditiously as the official business of the respondents would permit and in any event within twelve weeks from today i.e., on or before 18.10.2023;

11.4 Order/disposal of the said application made by the first respondent shall be duly communicated to the writ petitioner (convict prisoner's wife) under due acknowledgement within seven working days from the date of disposal;

11.5 If the disposal is not in favour of the writ petitioner/convict prisoner, we make it clear that all the rights and contentions of the writ petitioner/convict prisoner and any one else concerned for the convict prisoner are preserved for assailing the same in a manner



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known to law;

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11.6 Axiomatically we make it clear that the respondents shall now do de novo consideration of said application exercise by taking up the said application and considering the same on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of facilitating the de novo exercise.

12. Captioned WP is disposed of in the aforesaid manner with the aforementioned directives/observations and time line. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
26.07.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

P.S.: Though captioned WP has been disposed of by this order, list the captioned matter under the cause list caption 'FOR REPORTING COMPLIANCE' on 01.11.2023.

To

1.The Home Secretary to Government,

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Home Department – Prison IV,
Secretariat, Chennai – 600 009.

2.The Director General of Prisons,
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Chennai – 600 008.

3.The Superintendent of Prison,
Central Prison at Puzhal,
Thiruvallur District – 600 066.

4.The Public Prosecutor,
High Court, Madras.



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

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