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W.P.No.25602 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

W.P.No.25602 of 2022
and
W.M.P.No.24604 of 2022 in W.P.No.25602 of 2022

S.Ponmuthu

.. Petitioner

Vs

The State of Tamil Nadu
Represented by its Principal Secretary,
Home Prison (IV) Department,
Fort St.George,
Chennai – 600 009.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondent to consider the representation of the petitioner dated 11.05.2022 in accordance with law by releasing the detenu Shankar, son of Thiagarajan, now confined in Central Prison, Madurai forthwith.

For Petitioner	:	Mr.R.Sankarasubbu
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John

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ORDER

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

This order will now dispose of captioned writ petition and the captioned 'Writ Miscellaneous Petition' (hereinafter 'WMP' for the sake of convenience and clarity) therein.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 15.03.2023 and 23.03.2023 which read as follows:

'15.03.2023

Mr.R.Sankarasubbu, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondent are before us. Learned State Additional Public Prosecutor requests for further time for filing counter affidavit. Request acceded to. 2. List one week hence. List on 23.03.2023.

23.03.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 15.03.2023.



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2. Today, Mr.R.Sankarasubbu, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned Advocate for respondent are before us.

3. On instructions learned State Additional Public Prosecutor submits that the plea is under active consideration and sought for three weeks time saying that a decision is likely to be taken on the same before next listing. Request of learned State Additional Public Prosecutor is acceded to.

4. List three weeks hence. List on 13.04.2023.'

3. Today, Mr.R.Sankarasubbu, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondents are before us.

4. Adverting to the aforementioned earlier proceedings made in the listing on 23.03.2023, learned Prosecutor submits that the premature release prayer has since been acceded to by remitting the unexpired or unserved period of sentence and ordering release of the convict prisoner. This is vide G.O.(Ms).No.155 Home (Prison-IV) Department dated 05.04.2023 is learned Prosecutor's say and a scanned reproduction of the G.O. as placed before us is as follows:



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ABSTRACT

Prisons and Correctional Services – Advisory Board Scheme –
Premature release of the Life Convict Prisoner No.4012, Sankar, son
of Thiagarajan, confined in Central Prison, Madurai under Section
432(1) of the Code of Criminal Procedure – Orders – Issued.

HOME (PRISON-IV) DEPARTMENT

G.O.(Ms)No.155

Dated: 05.04.2023

சபாநிதிக்கு பங்குதலி 22ம் தேதி,
திருவாரூர்தான் ஆண்டு 2054

Read:

1. From the Director General of Police / Director
General of Prisons and Correctional Services
letter No.04307/PS1/2020, dated.19.05.2020.
2. Government Letter No.19964/Prison-IV/
2020-21, dated 08.02.2023
3. From the Presiding Judge / IV-Additional
District Judge, Madurai Letter D.No.160/2023,
dated.14.03.2023.

ORDER:

The Life Convict Prisoner No.4012, Sankar son of Thiagarajan
aged 46 years/2020 along with 3 others was involved in the murder
of one Chinna Solaiappan and robbed Rs.250/- and a wrist watch
from him. He was concerned in Sellur Police Station Crime
No.1543/1995. He was convicted and sentenced in Sessions Case
No.10/2000 of the Additional District and Sessions Judge (Fast
Track Court-1), Madurai on 30.10.2002 as follows:-

Sl. No.	Section	Sentence awarded
1.	302 read with 34 of Indian Penal Code	Imprisonment for life and a fine of Rs.2000/- in default Rigorous imprisonment for 3 months.
2.	398 read with 34 of Indian Penal Code	Rigorous imprisonment for seven years and a fine of Rs.1000/- in default Rigorous imprisonment for 3 months.



3.	392 read with 397 read with 34 of Indian Penal Code	Rigorous imprisonment for seven years and a fine of Rs.1000/- in default Rigorous imprisonment for 3 months.
	All the above sentences were ordered to run concurrently.	

On appeal, the above conviction and sentences were confirmed by the Honourable High Court of Madras in Criminal Appeal No.1697/2002, dated.14.07.2006.

2. The Life Convict Prisoner No.4012, Sankar, son of Thiagarajan has completed 14 years of actual imprisonment on 26.07.2016, hence his case was placed before the Advisory Board on 12.07.2019. The following members have attended the meeting for considering the premature release of the Life Convict Prisoner No.4012, Sankar, son of Thiagarajan, confined in Central Prison, Madurai.

- (i) The District Collector, Madurai.
- (ii) The Principal Sessions Judge, Madurai.
- (iii) The Chief Judicial Magistrate, Madurai.
- (iv) The Superintendent of Prison, Central Prison, Madurai.
- (v) The Regional Probation Officer, Madurai.

5. As per Rule 335 (2) of the Tamil Nadu Prison Rules, 1983 the quorum for the meeting of the Advisory Board is three members including the Chairman. Since all the six members have attended the meeting of the Advisory Board on 12.07.2019, the meeting is valid as per the existing rules. The District Collector, Madurai in his report dated.11.07.2019 has recommended for the premature release of Life Convict Prisoner No.4012, Sankar, son of Thiagarajan. The Probation Officer, Madurai in his report dated.16.05.2017 has stated that there is life security for the convict by the family members of the convict and there is no enmity by the family members of the deceased towards the convict and hence he has recommended for the premature release of the above life convict. The Advisory Board under the Chairmanship of the District Collector, Madurai has recommended the premature release of the Life Convict Prisoner No.4012, Sankar, son of Thiagarajan after perusing the report of Probation Officer, Madurai and the Superintendent, Central Prison, Madurai. The Principal Sessions Judge, Madurai has also recommended for the premature release of the life convict. Based on the recommendation of the District Collector, Madurai and the Probation Officer, Madurai, the Superintendent, Central Prison, Madurai has also recommended for his premature release.



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6. The Director General of Police / Director General of Prisons and Correctional Services in his letter first read above has forwarded connected records under Rule 341(2) of Tamil Nadu Prison Rules, 1983 and concurred with the views / recommendation of the Advisory Board and also requested appropriate orders of the Government in this regard.

7. In the Government letter second read above, the opinion of the Presiding Judge of the Trial Court concerned was called for under Section 432(2) of Cr.P.C., regarding the premature release of the Life Convict Prisoner No.4012, Sankar, son of Thiagarajan, confined in Central Prison, Madurai based on the recommendation of the Advisory Board to this effect.

8. The Presiding Judge i.e., IV-Additional District Judge, Madurai in her considered opinion 5th read above has opined as follows:-

- a) The Inspector of Police, Sellur Police Station registered a case against the accused Sankar(A1), Jayakumar(A2), Sundaravel @ Mookkaruva Muruga (A3) and Sekar (A4) in Crime No.1543/1995, u/s.392, 397, 398, 302 r/w 34 IPC. The case of the prosecution in gist is that one Chinna Solalappan (the deceased) was murdered and robbed an amount of Rs.250/- and a wrist watch from the deceased.
- b) After full-fledged trial, all the above said accused were convicted by the trial court and sentenced to undergo Imprisonment for LIFE each and imposed a fine of Rs.2,000/- In default, to undergo R.I. for 3 months each for the offence u/s 302 r/w 34 IPC and also sentenced to undergo seven years R.I. each and a fine of Rs.1,000/- in default to undergo R.I. for 3 months each for the offence u/s 398 r/w 34 IPC and further sentenced to undergo 7 years R.I. each and a fine of Rs.1,000/- in default to undergo R.I. for 3 months each for the offence u/s 392 r/w 397 r/w 34 IPC as per the judgement of the IV Additional District Sessions Court, Madurai in S.C.No.10/2000, dated.30.10.2002.
- c) The above said conviction and sentence was confirmed by the Honourable Madurai Bench of Madras High Court, Madurai as per its orders dated.14.07.2006 in Criminal Appeal No.1697 of 2002.
- d) After perusal of the Government letter dated.08.02.2023 along with the enclosures, it is found that in the present case, the application has been placed before the Advisory Board meeting



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convened consisting of the District Collector of Madurai, the Sessions Judge, the Chief Judicial Magistrate, the Superintendent of the Central Prison, Madurai and the Regional Probation Officer and they recommended for the premature release of the said life convict prisoner Sankar(A1).

- e) The District Collector, Madurai has given a report by accepting the report of the Probation Officer and the Prison Superintendent and recommended premature release of the life convict prisoner Sankar (A1).
- f) The Probation Officer, Division-I, Madurai in his report dated.16.05.2017 stated that there will be no threat to the peace of the society, the prisoner's life will be safe and there will be no enmity against the prisoner after his premature release and his family members are ready to accept him. After perusal of records, the members of the Advisory Board is of the opinion that premature release of the said life convict prisoner is being recommended.
- g) Under these circumstances, without going into the merit of the case and considering the following facts that the period of conviction already undergone by the accused (more than 20 years), age of the life convict, conduct of the life convict, to take care of his wife, two daughters and other family members, no consequential vengeance prevailed in his residential place, ability to survive in the society along with his family members and completion of academic programmes such as B.A. and M.A. in I Class and also vocational courses during his imprisonment exhibits that he changed in character, behavior, attitude by heart as prison life of more than 20 years has reformed him.
- h) Therefore, the Presiding Judge i.e., IV Additional District Judge, Madurai has opined that "the case of the life convict No.4012, Sankar, Son of Thiagarajan needs consideration for the remission or premature release".

9. The Government after careful examination of the recommendations of the Advisory Board under rule 341 of the Tamil Nadu Prison Rules, 1983 with connected records in respect of the premature release of the Life Convict Prisoner No.4012, Sankar, son of Thiagarajan, confined in Central Prison, Madurai and the considered opinion of the Presiding Judge / IV-Additional District Judge, Madurai Bench of Madras High Court given under section 432(2) of Cr.P.C., have decided to release the Life Convict Prisoner No.4012, Sankar, son of Thiagarajan, confined in Central Prison, Madurai prematurely by granting remission of the unexpired portion of the life sentence now he is undergoing, under section 432(1) of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).



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10. Now, therefore, under sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Tamil Nadu hereby remits the unexpired portion of the sentence of imprisonment for life, imposed on the Life Convict Prisoner No.4012, Sankar, son of Thiyagarajan, confined in Central Prison, Madurai. Accordingly, the Government direct that the Life Convict Prisoner No.4012, Sankar, son of Thiyagarajan, confined in Central Prison, Madurai be released prematurely, 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 Prisons, Central Prison, Madurai.
The District Collector, Madurai.
The Registrar General, Madurai Bench of Madras High Court, Madurai.
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&E) Department, Chennai-9.
Stock File / Spare Copy.

//Forwarded/ By Order//

S. Sankar
SECTION OFFICER
10/10/2023
Per
10/10/2023



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5. Learned counsel for writ petitioner confirms that the convict prisoner has since been released from Central Prison, Madurai and he is now a free bird.

6. In the light of the narrative thus far, captioned writ petition is disposed of as closed. Consequently, captioned WMP is also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
13.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1.The Principal Secretary,
Home Prison (IV) Department,
Fort St.George,
Chennai – 600 009.

2.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR , J.,**

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