



W.P.No.28512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

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

W.P.No.28512 of 2023

Peer Mohamed

.. Petitioner

Vs

- 1.The State Rep. By its
Principal Secretary,
Home (Prison IV) Department,
Secretariat, Fort St.George,
Chennai – 09.
- 2.The Director General of Prisons,
Gandhi Irwin Road, CMDA Building,
2nd Tower, Egmore, Chennai - 08.
- 3.The Chief Probation Officer,
Probation Section, Gandhi Irwin Road,
CMDA Building, 2nd Tower,
Egmore, Chennai – 600 008.
- 4.The Superintendent of Prison,
Central Prison at Palayamkottai,
Tirunelveli District – 627 002.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorarified mandamus directing the



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1st respondent to call for the records pertains to the impugned order in No.G.O.(D).No.1016 dated 24.08.2023 passed by the 1st respondent and quash the same and direct the 4th respondent to release the convict / petitioner's son namely Mr.Nagoor Pitchai @ Badhusha (CT.No.6437) who is confined at Central Prison, Palayamkottai forthwith and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity) has been filed in this Court on 21.09.2023 (as is evident from the seal, to be noted different dates have been filled in vide coding sheet).

2. Factual matrix in a nutshell is that the writ petitioner's son Thiru.Nagoor Pitchai @ Badhusha (CT.No.6437), lodged in Central Prison, Palayamkottai is a prison inmate; that the writ petitioner sent a



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representation seeking premature release by predicating the premature release plea on G.O.(Ms)No.488 Home (Prison-IV) Department dated 15.11.2021; that premature release was sought primarily on the ground that the prison inmate has completed ten years of actual imprisonment as of 15.09.2021; that it is to be noted that this is vide paragraph 2(A) of G.O.(Ms)No.488 Home (Prison-IV) Department dated 15.11.2021; that the premature release plea came to be negated by the first respondent vide 'G.O.(D) No.1016 Home (Prison-IV) Department dated 24.08.2023' (hereinafter 'impugned G.O.' for the sake of brevity, convenience and clarity); that it is the case of the writ petitioner that impugned G.O. has been made by saying that prison inmate has not served 14 years in prison; that it is the case of the writ petitioner that serving at least 14 years of imprisonment is a condition vide another Government Order viz., G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 but in the case on hand, premature release was not sought on the basis of G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 and it was sought on the basis of G.O.(Ms)No.488 Home (Prison-IV) Department dated 15.11.2021 as alluded to in the earlier part of this narrative.



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3. Mr.M.Mohamed Saifulla, learned counsel for writ petitioner advertng to the aforementioned factual matrix submitted that the impugned G.O. deserves to be interfered with as it clearly has proceeded on the basis that premature release has been sought on the basis of G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 whereas it has been sought vide G.O.(Ms) No.488 dated 15.11.2021.

4. To be noted, Condition No.2(I) in G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 reads as follows:

'2.....

(I) Section 433-A of the Code of Criminal Procedure which is deals with Restriction on powers of remission or commutation in certain cases reads as follows:-

'Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.'

whereas condition No.2(A) in G.O.(Ms)No.488 Home (Prison-IV)



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Department dated 15.11.2021 reads as follows:

'2.....

(A) *The life convicts who have completed 10 years of actual imprisonment as on 15.09.2021 including those who were originally sentenced to death by the Trial Court and modified to life imprisonment by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to the satisfaction of the following conditions:-*

(i) *The prisoner's behaviour should be satisfactory.*

(ii) *Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offences, namely:-*

- (1) Rape (Section 376 of IPC)*
- (2) Forgery (Sections 467, 471 of IPC)*
- (3) Robbery (Sections 397, 398 of IPC)*
- (4) Dacoity (Sections 396, 397, 398, 399, 400, 402 of IPC)*
- (5) Terrorist crimes*
- (6) Offences against the State*
- (7) Offences under sections 153-A, 153-AA and 153-B of IPC*
- (8) Escape or attempting to escape from lawful custody under section 224 of IPC (except over stayal of emergency/ordinary leave only)*
- (9) Forgery/Counterfeit of currency notes or bank notes/Making or possessing instruments or materials for forging or counterfeiting currency notes (or) bank notes (sections 472, 474, 489A, 489B and 489D of IPC)*
- (10) Cruelty against Women (Section 498A of IPC) / Dowry death (Section 304 B of IPC)*



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- (11) *Economic offences, black-marketing, smuggling or misuse of power and authority*
- (12) *Selling illicit arrack mixed with poisonous substances.*
- (13) *Habitual Forest offenders who are responsible for disturbing the ecological balance.*
- (14) *Prisoners convicted for more than one murder and their Life sentences ordered to run concurrently.*
- (15) *Violence on Communal/Religious basis.*
- (16) *Prisoners convicted and sentenced under the following Central Acts of offences, which relates to matters to which the executive power of the Union of India extends, namely:-*
 - (a) *The Prevention of Corruption Act, 1988 (Central Act 49 of 1988);*
 - (b) *The Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956);*
 - (c) *The Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940); The Drugs (Control) Act, 1949 (Tamil Nadu Act XXX of 1949); the Dangerous Drugs Act, 1930 (Central Act II of 1930); The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Central Act 21 of 1954); the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).*
- (17) *Prisoners who have pending cases (other than their criminal appeals pending against their conviction).*
 - (iii) *That their cases should not come under section 435 of the Code of Criminal Procedure;*
 - (iv) *That there is safety for the prisoner's life, if released;*
 - (v) *That the prisoner will be accepted by the*



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*members of their family;
(vi) That there is safety of life of the family
which was affected by the prison, if
released.'*

5. Learned counsel drew our attention to the concluding paragraph in the impugned G.O. viz., paragraph 7, which reads as follows:

'7. In pursuance of the orders of Hon'ble High Court of Madras third read above, the Government have examined the request of the petitioner Thiru.Peer Mohamed seeking premature release of his son/Life Convict Prisoner No.6437, Nagoor Pitchai @ Bathusha, son of Peer Mohamed, confined in Central Prison, Palayamkottai, based on the proposal of the Director General of Police/ Director General of Prisons and Correctional Services second and fourth read above along with the connected records and in terms of the guidelines framed in the Government orders first read above. Accordingly, the Government have decided to reject the same in view of the condition prescribed in para 2 (G) of G.O.(Ms) No.488, Home (Prison.IV) Department, dated 15.11.2021 and for the reasons that the convict committed pre-meditated murder and his remission would be premature as he has not yet served atleast 14 years in prison. (underlining made for ease of reference and for emphasis.)

6. Issue notice.

7. Mr.E.Raj Thilak, learned State Additional Public Prosecutor



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accepts notice for all four respondents.

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8. Owing to short point on which captioned WP turns, with the consent of both sides, main WP itself was taken up and heard out.

9. We carefully considered the aforementioned two Government Orders as well as paragraph 7 of the impugned G.O. It is clear as day light that impugned G.O. has been made on the basis that prison inmate has not completed 14 years whereas completion of ten years will suffice as regards G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 vide paragraph 2(A) which has been extracted and reproduced supra. In other words, the impugned G.O. has been made on the erroneous assumption that premature release plea is predicated on G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 which prescribes minimum 14 years of sentence as the requirement to be eligible for being considered for premature release.

10. In the light of the narrative thus far, without expressing any opinion or view on the merits of the matter i.e., on the premature



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release plea we make the following order:

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10.1 The impugned G.O. being G.O.(D) No.1016 Home (Prison-IV) Department dated 24.08.2023 made by the first respondent is set aside;

10.2 The premature release plea of the writ petitioner (writ petitioner's premature release plea for his son Thiru.Nagoor Pitchai @ Badhusa (CT.No.6437)) is remitted back to the first respondent for reconsideration on merits by applying G.O.(Ms) No.488, Home (Prison.IV) Department, dated 15.11.2021;

10.3 The aforementioned exercise shall be completed by the first respondent as expeditiously as his business would permit but in any event within six weeks from today i.e., by 21.11.2023;

10.4 If any corrigendum has been issued qua



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impugned G.O., it is open to the first respondent to communicate the same to the writ petitioner as well as the writ petitioner's son who is prison inmate under due acknowledgement forthwith;

10.5 If there is no corrigendum and if the aforementioned exercise is embarked upon, the culmination of exercise by way of an order qua premature release plea shall be communicated to the writ petitioner as well as writ petitioner's son/prison inmate under due acknowledgement within seven working days from the date of disposal.

11. Captioned WP is disposed of with the aforesaid directive.

There shall be no order as to costs.

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

29.09.2023

(1/2)

Index : Yes/No

Neutral Citation : Yes/No

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P.S.: Though the captioned WP has been disposed of, Registry

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is directed to list the matter under the cause list caption 'FOR REPORTING COMPLIANCE' on 28.11.2023.

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To

- 1.The Principal Secretary to Government,
Home (Prison IV) Department,
Secretariat, Fort St.George,
Chennai – 09.
- 2.The Director General of Prisons,
Gandhi Irwin Road, CMDA Building,
2nd Tower, Egmore, Chennai - 08.
- 3.The Chief Probation Officer,
Probation Section, Gandhi Irwin Road,
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- 5.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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