



W.P.(MD).No.26313 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.P.(MD).No.26313 of 2022

N.Perumalammal

.. Petitioner

Vs.

- 1.The State represented by
The Principal Secretary to Government,
Home (Prison IV) Department,
Secretariat,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Prisons,
C.M.D.A Towers II,
No.1, Gandhi Irwin Road,
Egmore,
Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Central Prison,
Madurai – 625 016.
- 4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the first respondent to, grant the benefit of G.O Ms.No.488 Home (Prison-IV) department, dated 15.11.2021 to the petitioner's son Mr.Vijayakandeepan presently confined at 4th respondent prison for 20 years and release him prematurely by considering the petitioner's representation dated 20.12.2021 within the time stipulated by this Court.

For Petitioner : Mr.P.Karthick

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner's son, namely, Vijayakandeepan, is a life convict, who has been sentenced under Section 302 IPC on two counts, among other offences. By relying upon G.O.(Ms)No.488, Home (Prison-IV) Department dated 15.11.2021, the petitioner now seeks for premature release of her son, who, according to her, has completed 20 years of imprisonment.

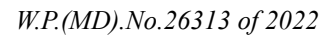


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2. In the counter affidavit filed by the respondents, it is stated that the petitioner's son had undergone 15 years 7 months and 13 days of imprisonment as on 25.02.2018. As per G.O.(Ms)No.488, a life convict prisoner, who has committed double murder, would be considered for premature release, if he has completed 20 years of imprisonment as on 15.09.2021. Apparently, the petitioner's son has not completed 20 years of imprisonment and therefore, he cannot seek for the benefits of G.O.(Ms)No.488.

3. However, as per G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018 (as amended under G.O(Ms)No.302, Home (Prison-IV) Department, dated 03.05.2018), a life convict would be entitled for premature release, if he had completed 10 years of imprisonment, subject to the restrictions mentioned therein. One of the restrictions under G.O. (Ms)No.64 is that a prisoner, who has been convicted and sentenced under certain Central Acts, will come under Section 435 of Cr.P.C and therefore, will be disentitled for seeking premature release.



“10.The next issue that arises for consideration is as to whether Section 435 of Cr.P.C., is a complete bar for the State to consider for premature release. This issue is also no longer res integra and the Co-ordinate Bench of this Court in the case of C.Amutha-vs-The Home Secretary, Home Department and Ors., reported in 2018(3)MWN (crl.) 342, has held as follows:

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case in Union of India Vs.V.Sriharan @ Murugan and others in W.P.(Crl).No.48 of 2014 with Crl.M.P.Nos.6280-6281 of 2017 by order dated 06.09.2018 has held as follows:-

“From the documents filed on 01.09.2018 by the learned counsel, it appears that an application under Article 161 of the Constitution has been filed before the Governor of Tamil Nadu by the respondent-A.G.Perarivalan @ Arivu. Naturally, the authority concerned will be at liberty to decide the said application as deemed fit.”

Therefore, it is clear that the State Government is at liberty to take a decision on this aspect, which can be forwarded to His Excellency The Governor for taking a decision in this regard. Therefore, it is clear that there is no prohibition for the State Government to make recommendation if it deems fit. It is clear from the records that as on date the petitioner's son has been in jail for the past 14 years 8 months and 4 days. Hence, G.O.Ms.No.64, dated 01.02.2018 is squarely applicable to the facts of the case.

7.Even as per the Judgment of the Honourable Supreme Court, the State Government has got power to decide about the matters, where the offences under Central Government's Act is involved. Therefore, the petitioner's representation for release of her son dated 31.07.2018 has to be considered. It is also seen from the records that the 3rd respondent had already rejected the representation of the petitioner, who is the mother of the convict dated 31.07.2018



as the petitioner's son was involved in the offence under Arms Act.

8.In view of the Judgment of the Honourable Supreme Court in Rajiv Gandhi's Assassination case, the rejection of the petitioner's representation is not sustainable. Therefore, the communication of the 3rd respondent in Letter No. 4787/jF.1/2018, dated 25.09.2018 is set aside and the 3rd respondent is directed to reconsider the issue afresh, within a period of six weeks from the date of receipt of a copy of this order as there is no prohibition for the 3rd respondent for making recommendation in view of the offence involved in this case under the Arms Act. To put it in other words, the convict is eligible to get the benefit under G.O.Ms.No.64 as there is no prohibition for the convict to be considered for premature release.

11.It is clear from the above judgment that even where the offence involved pertains to a Central Legislation, the State Government has got the power to decide on the issue of premature release. While coming to such conclusion, the Co-ordinate Bench has placed reliance upon the judgment of the Hon'ble Apex Court in Rajiv Gandhi's Assassination Case.”

The aforesaid extract is self-explanatory. As such quoting Section 435 Cr.P.C as a bar for premature release cannot be sustained.



5. There is yet another aspect in this matter. The petitioner's son was convicted and sentenced to rigorous imprisonment of three years with fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of one year for the offence under Section 25(1-b)(a) of Arms Act, 1959 and rigorous imprisonment for a period of seven years with fine of Rs.15,000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 4(b) of Explosive Substances Act, 1908. Apparently, the petitioner's son had already completed his period of sentence for the offences under the Arms Act as well as the Explosive Substances Act. When the life convict had already suffered the sentences for these two offences under the two Central Acts, the earlier decisions of this Court are to the effect that the convict would be entitled for premature release in view of the sentence having already undergone by him for these offences. In *Annalakshmi's* case (cited supra), this aspect was dealt with in the following manner:

*“8.Insofar as the first ground, we have to consider as to whether there is a total bar for the respondents to consider the premature release in a case where the detenu has been convicted and sentenced for the offence which has been specified in the relevant Government Order. While dealing with this issue, the Co-ordinate Bench of this Court in **Roja***



Venkatesh-vs-State and Ors., reported in (2021)2 L.W(Cri.) 165, has held that even for the offences, which are shown to be a bar under the relevant G.O., if the prisoner/detenu has already completed the imprisonment for the relevant offence, the same cannot be put against the detenu. The reason given by the Co-ordinate Bench was that as on the date when the premature release is considered, if the only offence for which the detenu is undergoing sentence is life imprisonment, that alone should be taken into consideration where for all the other offences, the detenu has already suffered the sentence. While coming to the conclusion, the Co-ordinate Bench had placed reliance upon the following judgments:

(a).Union of India-vs-V.Sriharan @ Murugan[(2016) 7 SCC 1]

(b).State of Tamil Nadu and Others-vs-P.Veera Bhaarathi[(2019) 18 SCC 71

(c).Sanaboina Sathyanarayana-vs-Government of Andhra Pradesh and others[(2003) 10 SCC 78]

9.In view of the above issue, we are of the considered view that just because the detenu was convicted for the offence under Section 25(1-B)(a) r/w Section 4 of Indian Arms Act, that by itself cannot be a bar for considering the premature release of the detenu, since the detenu was sentenced to undergo 6 months imprisonment for the said offence and he has already suffered the sentence. What remains is only the life



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imprisonment which is now being undergone by the detenu for the offence under Section 302 IPC.”

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On this ground also, the petitioner's son would be entitled for premature release.

6. Now that we have found that the petitioner's son, namely, Vijayakandeepan, is eligible for premature release, the first respondent herein shall follow the guidelines formulated under G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018 for passing orders of premature release in favour of the petitioner's son.

7. Accordingly, the petitioner is granted liberty to make an appropriate application before the first respondent herein seeking for premature release of her son, namely, Vijayakandeepan, as expeditiously as possible. On receipt of such an application, the first respondent herein shall consider the same and pass appropriate orders for premature release in accordance with the guidelines stipulated under G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018, within a period of twelve (12) weeks from the date of receipt of the application.



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8. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
25.08.2023

NCC : Yes / No
Index : Yes / No
Lm

To

1. The Principal Secretary to Government,
The State,
Home (Prison IV) Department,
Secretariat,
Fort St.George, Chennai – 600 009.
2. The Director General of Prisons,
C.M.D.A Towers II,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
3. The Deputy Inspector General of Prisons,
Madurai Range,
Central Prison,
Madurai – 625 016.
4. The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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