



W.P(MD)No.28202 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2023

CORAM :

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

W.P(MD)No.28202 of 2023

Pandiyammal

... Petitioner

vs.

1.The State of Tamil Nadu, Rep. By
The Principal Secretary to Government,
Home (Prison – IV) Department,
State of Tamil Nadu,
Secretariat, St. George Fort,
Chennai – 9.

2.The Director General of Police / Director
General of Prisons and Correctional Services,
Office of the Director General of Police,
Egmore, Chennai – 8.

3.The Deputy Inspector General of Prison,
Madurai Range,
Madurai Central Prison Campus,
Madurai.

4.The Superintendent of Prison,
Madurai Special Prison for Women,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a Writ of Mandamus, to direct the respondent No.4 to



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send proposal relating to the Premature Release of the petitioner to the Respondent No.2 in the commemoration of the 115th birthday of Dr.Perarignar Anna on the basis of the communication in No. 33476/PS1/2023 dated 11.08.2023 issued by the Respondent No.2 in accordance with law and consequently to direct the respondent No.1 to consider the Premature Release of the petitioner by considering the representation of the petitioner dated 23.10.2023 in accordance with law within the time stipulated by this Honble Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

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

Captioned 'Writ Petition' ('WP' for the sake of brevity) has been filed in this Court on 22.11.2023 and it pertains to premature release of WP petitioner, who is a life convict.

2. Factual matrix in a nutshell is that WP petitioner was convicted and imposed life sentence in and by a judgment and sentence dated 04.11.2004 in S.C.No.542 of 2003 on the file of Additional District Sessions Judge's Court (Fast Track Court I, Madurai); that this judgment



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and conviction was carried in an appeal to this Court and the appeal came to be dismissed by this Court in and by a judgment dated 20.03.2007 in CrI.A.(MD)No.358 of 2005; that WP petitioner as of 30.11.2023 had undergone imprisonment or in other words, served a sentence of 19 years 8 months and 9 days (to be noted, this becomes 19 years 9 months and 9 days as of today); that earlier efforts of WP petitioner for premature release under various executive fiats ie., Government orders were not successful; that captioned WP has now been filed in the light of latest executive fiat which has been put in place ie., G.O.Ms.No.430, Home (Prison IV) Department, dated 11.08.2023; that captioned HCP has been filed with a mandamus prayer for proposing the case of WP petitioner (proposal to be sent by fourth respondent) for consideration at various tiers and ultimately by first respondent.

3. Issue notice.

4. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepts notice for all the respondents.



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WEB COPY 5. Learned Additional Public Prosecutor advertent to G.O.Ms.No.

430, Home (Prison IV) Department, dated 11.08.2023 which is an executive fiat prescribing guidelines for considering the cases of life convicts for premature release in commemoration of 115th Birthday of Dr.Perarignar Anna, submitted that the said Government Order would apply to WP petitioner (hereinafter 'prison inmate' for the sake of convenience). Learned Additional Public Prosecutor very fairly submitted that notwithstanding earlier executive fiats and notwithstanding efforts for premature release under earlier executive fiats being unsuccessful, the case of prison inmate (WP petitioner) will now be taken under aforementioned 'G.O.Ms.No.430, Home (Prison IV) Department, dated 11.08.2023' (hereinafter 'said new GO' for the sake of convenience and clarity).

6. The narrative above means that first limb of the prayer of WP petitioner is now answered. To be noted, first limb is proposal that is to emanate from fourth respondent. As regards second limb, the process has to go through various tiers and considering the nature of the drill that is required in cases of this nature, we are of the view that five months from today would be a reasonable time frame. To be noted, we have taken into



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account the facts and circumstances of the case including the fact that WP petitioner ie., said prison inmate is 60 years of age even as of today.

7. In the light of the narrative thus far and taking into account the stated position of the respondents as articulated by learned Additional Public Prosecutor, we deem it appropriate to direct the respondents to ensure that the case of WP petitioner for premature release is taken up under said new GO ie., G.O.Ms.No.430, Home (Prison IV) Department, dated 11.08.2023 and the premature release plea be processed in accordance with applicable parameters/guidelines and conclude the process as expeditiously as the business of the respondents would permit but in any event by 30.04.2024. This means that second limb of the prayer of WP petitioner also is acceded to as the second limb is very fairly couched in a language where the request is for consideration for premature release.

8. Before concluding, we deem it appropriate to extract and reproduce the said new GO and the same is as follows:



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ABSTRACT

Prisons and Correctional Services - Guidelines for considering the cases of Life Convicts for their Premature Release in commemoration of the 115th Birthday of Dr.Perarignar Anna on 15.09.2023- Orders - Issued.

HOME (PRISON-IV) DEPARTMENT

G.O.(Ms).No.430

Dated:11.08.2023.

செய்திக் குடும்ப, ஆடி 26

தருவதற்குத் தகுண்டு 2054

Read:

- 1) G.O.(Ms).No.488, Home (Prison-IV) Department, dated 15.11.2021;
- 2) G.O.(Ms) No. 508, Home (Prison-IV) Department, dated 18.11.2021
- 3) G.O.(Ms).No. 589, Home (Prison-IV) Department, dated 22.12.2021
- 4) G.O.(Ms).No.24, Home (Prison-IV) Department, dated 11.01.2022
- 5) From the Director General of Police / Director General of Prisons and Correctional Services, letter No.44973/PS1/2023, dated 17.04.2023,

ORDER:-

In the Government order first and second read-above, orders were issued framing guidelines for the premature release of life convicts, who had completed 10/20 years of actual imprisonment as on 15.09.2021, under Article 161 of the Constitution of India in commemoration of the 113th Birthday of Dr.Perarignar Anna, subject to the satisfaction of the conditions laid down therein.

2. After the issuance of the above said orders, representations were received from various quarters requesting to consider cases of life convicts who have completed 10/20 years of imprisonment for premature release on acute, chronic health and mental ailments and disabilities. Hence, orders were issued in the Government orders third and fourth read



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above, constituting a Committee under the Chairmanship of Hon'ble Justice Thiru.N.Authinathan, Retired Judge of the Hon'ble High Court of Madras. The Committee consists of the following members:-

1)	Hon'ble Justice Thiru. N. Authinathan, Retired Judge of High Court, Madras	Chairman
2)	Director of Institute of Mental Health, Kilpeuk	Member
3)	Director of Medical Education, Chennai	Member
4)	Tr.R.Kanagaraj, Deputy Inspector General of Prisons and Correctional Services, Chennai Range	Member - Secretary
5)	Chief Probation Superintendent, Chennai	Member
6)	Dr. Tmt.Laveriya, M.A., Ph.D, Professor and Head, Department of Psychology, University of Madras, Chennai as an Eminent Psychologist	Member
7)	Tr.S.Ashok Kumar, Senior Advocate, High Court, Chennai, who is eminent in Criminal Law	Member

The Committee was requested to make its recommendations to the Government after duly considering the prevailing legal provisions in the State and also orders of the Hon'ble Supreme Court of India and Hon'ble High Court of Madras on this issue including the guidelines, if any, issued by the Ministry of Home Affairs, Government of India in this regard.

3. The said Committee duly considered cases of 466 life convicts and submitted its report to the Government. The Director General of Police / Director General of Prisons and Correctional Services after duly considering the report of the said Committee has sent proposal to the Government for framing of guidelines for consideration of the premature release of life convicts in his letter fifth read above.

4. The recommendation of Hon'ble Justice Thiru.N.Authinathan Committee and the proposal of the Director General of Police / Director General of Prisons and Correctional Services thereon have been examined in detail by the Government.



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5. Accordingly, after due consideration of the report of Hon'ble Justice Thiru.N.Authinathan Committee and the proposal of the Director General of Police / Director General of Prisons and Correctional Services thereon and in commemoration of the 115th Birthday of Dr.Perarignar Anna on 15.09.2023, the Government have decided to frame the following guidelines for considering the cases of life convicts for their premature release under Article 161 of the Constitution of India:-

- I) Life convicts who have completed 14 years of actual imprisonment as on 15.09.2023, including those who were originally sentenced to death by the Trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted) may be considered for premature release subject to satisfaction of the conditions mentioned in para II below. However, if any, applications / requests received from life convict prisoners under earlier guidelines vide G.O.(Ms)No.488, Home (Prison IV) Department, dated 15.11.2021 are still under consideration, they may be considered and processed under these guidelines, after obtaining further particulars and remarks from Prison Authorities at the District Level and State Level Committee.
- II)
 - a) The Prisoner's behaviour should be satisfactory
 - b) The prisoners convicted and sentenced for the following offences along with life imprisonment are ineligible for consideration for premature release irrespective of the nature and tenure of the said sentence and irrespective of the fact as to whether or not they have undergone the said sentence in respect of the said offences, namely:-
 - (i) Rape (Section 376 of IPC), If sentenced to life imprisonment for rape.
 - (ii) Offences punishable for imprisonment for death or life under the Protection of Children from Sexual Offences Act, 2012(Central Act 32 of 2012).
 - (iii) Dacoity (Section 396 of IPC).
 - (iv) Offence of Terrorist Acts under Terrorist and Disruptive Activities (Prevention) Act, 1967 (Central Act 28 of 1967 or Prevention of Terrorist Activities Act, 2002 (Central Act 15 of 2002) or Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967).



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- (v) Offences punishable for imprisonment for death or life under the Narcotic Drugs and Psychotropic Substances Act, 1985(Central Act 61 of 1985).
- (vi) Offences against State (Sections 121 to 130 of IPC).
- (vii) Offences under sections 153-A, 153-AA and 153-B of IPC.
- (viii) Offence under section 224 of IPC for the act of escape or attempt to escape from lawful custody (except overstayal of emergency/ordinary leave).
- c) Prisoners convicted for more than two murders are not eligible.
- d) Prisoners should not have pending cases except their criminal appeals, if any, pending against their conviction as on 15.09.2023.
- e) That their cases should not come under section 435(1) of Code of Criminal Procedure, 1973.
- f) The cases of prisoners whose conviction and sentence comes under the purview of section 435(2) of Cr.P.C. can be considered for premature release, if the period of such sentence has been undergone by the prisoners.
- g) Prisoners convicted and sentenced for murder of Uniformed Service personnel for discharging their official duty will be ineligible for premature release.
- h) That there is safety for the prisoner's life, if released.
- i) That the prisoner will be accepted by the members of their family.
- j) That there is safety for the life of the family of the victim, if the convict is released.

III) **MEDICAL INFIRMITIES:-**

- a) The cases of life convict prisoners with severe mental illness certified by the Director, Institute of Mental Health, Chennai may be considered for premature release irrespective of the eligibility conditions mentioned above provided they have undergone 14 years of imprisonment as on 15.09.2023.
- b) The cases of life convict prisoners with benchmark disability as per section 2(r) of Rights of Persons with Disabilities Act, 2016(Central Act 49 of 2016) certified by the Medical



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Board may be considered for premature release irrespective of the eligibility conditions mentioned above provided they have undergone 14 years of sentence as on 15.09.2023.

- c) Life convicts who are sick with multiple co-morbidity i.e., with two or more chronic medical / Psychiatric conditions which may or may not directly interact with each other as certified by Medical Board constituted by the Government may be considered for premature release irrespective of the eligibility conditions mentioned above provided they have undergone 20 years of imprisonment. (These conditions should be present at the same time and may have an adverse effect on the health status and quality of life of these convicts).
- d) Life convicts who have Terminal illness and cannot be cured as certified by Medical Board constituted by the Government may be prematurely released irrespective of the eligibility, if they have completed 14 years of imprisonment.

(V) **AGEING**

The cases of life convict prisoners, whose age is 60 years and above as on 15.09.2023 may be considered for premature release irrespective of the eligibility conditions mentioned above provided they have undergone 20 years of sentence.

(V) The cases shall be examined with reference to the above guidelines on a case to case basis.

(VI) The life convict prisoners cannot claim premature release as a matter of right.

(VII) The premature release is also applicable to the life convicts who have been convicted by the Court of Criminal Jurisdiction of the State of Tamil Nadu and are now undergoing their imprisonment in the prisons of other States / Union Territories on reciprocal basis. However, this order shall not be applicable to those prisoners who have been convicted by the Court of Criminal Jurisdiction of other States / Union Territories / Other Countries but



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- undergoing imprisonment in this State.
- VII) The above guidelines pertain to the eligibility of life convicts for consideration of the Government as on 15.09.2023 and mere fulfillment of the conditions prescribed in the guidelines does not confer any right for the premature release of life convicts and it is the sole discretion and prerogative of the Government to take into account other factors like the nature of offence and its effect on society, fitness for rehabilitation into society, law and order implications and public interest, etc.
- IX) The granting of premature release is a onetime affair and it is applicable to those who are eligible as on 15.09.2023 and it shall not be extended later on to the persons who fulfill all the conditions stipulated in this Government order on a later date.
- X) The prisoner shall execute Bonds as per usual terms and conditions.
- XI) For the purpose of examining the premature release of the life convicts under these guidelines, on a case to case basis, the Government constitute the following committees:-
- a) The State Level Committee headed by the Director General of Police / Director General of Prisons and Correctional Services, the Deputy Inspector General of Prisons (Headquarters), Senior Administrative Officer, Legal Advisor and Administrative Officer (Headquarters) shall be members of the Committee.
 - b) The District Level Committee wherein the Central Prisons / Special Prisons for Women located, headed by the Superintendent of Prisons of the concerned Prison and the Additional Superintendent of Prison, Jailor, Administrative Officer and Probation Officer shall be members of the Committee.
 - c) The Superintendent of Prison shall forward the report of the District Level Committee to the Range Deputy Inspector General of Prisons, who shall in turn forward the same with his



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remarks to the State Level Committee for necessary further action.

6. The Director General of Prisons and Correctional Services, Chennai is requested to examine the cases of life convict prisoners on a case to case basis as per the above guidelines and send the same in full form to Government for consideration with the recommendation of Additional Director-General of Police (Law & Order).

(BY ORDER OF THE GOVERNOR)

**P.AMUDHA
PRINCIPAL SECRETARY TO GOVERNMENT**

To

The Director General of Police /

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

All Range Deputy Inspector General of Prisons, Tamil Nadu

All Superintendents of Central Prisons, Tamil Nadu

All Superintendents of Special Prisons for Women, Tamil Nadu

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 Principal Secretary to Government,

Home, Prohibition and Excise Department, Chennai-9.

Stock File / Spare Copy.

//Forwarded/ By Order//

SECTION OFFICER



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

(M.S., J.) (R.S.V., J.)
30.11.2023

Index : Yes
Neutral Citation : Yes
vsm

Post Script:

(i) Upload forthwith

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Home (Prison – IV) Department,
State of Tamil Nadu, Secretariat, St. George Fort,
Chennai – 9.
2. The Director General of Police / Director
General of Prisons and Correctional Services,
Office of the Director General of Police,
Egmore, Chennai – 8.
3. The Deputy Inspector General of Prison,
Madurai Range, Madurai Central Prison Campus,
Madurai.
4. The Superintendent of Prison,
Madurai Special Prison for Women,
Madurai District.



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

vsm

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
W.P(MD)No.28202 of 2023

DATED : 30.11.2023