



W.P.No.2037 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.2037 of 2024

Geetha Malar

...Petitioner

VS.

1.The State rep. by its,
The Home Secretary (Prison),
St. George Fort, Chennai – 600 009.

2.The Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Egmore, Chennai – 600 008.

3.The Superintendent of Prison,
Special Prison for Women, Puzhal,
Thiruvallur District – 066.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to prematurely release the mother of the petitioner namely Mrs.Rajammal, W/o.late.Bose, aged about 70 years, who is confining at 3rd respondent in pursuance of the petitioner's representation dated 01.12.2023.



W.P.No.2037 of 2024

For Petitioner : Mr.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.S.RAMESH,J.)

The present writ petition has been filed to direct the respondents to prematurely release the mother of the petitioner, who is confined at the Special Prison for Women, Puzhal.

2. The petitioner's mother, who was convicted for the offences under Section 498(A) of the Indian Penal Code (IPC) and Section 306 IPC and sentenced to undergo one year and five years imprisonment respectively, which sentences were ordered to run concurrently, through a judgment dated 15.02.2021 passed in S.C.No.277/2016, seeks for premature release under the Azadi Ka Amrit Mahotsav (AKAM), which is a special remission scheme for prisoners extended on 15.08.2022, 26.01.2023 and 15.08.2023.



W.P.No.2037 of 2024

The petitioner's representation in this regard was not acted upon within a reasonable time, which had prompted her to file the present Writ Petition.

3. The respondents, in their counter affidavit, have stated that for a prisoner to seek for premature release under the AKAM Scheme, he/she must have completed 2½ years of sentence as on 14.08.2023 and since the prisoner had completed only 2 years, 5 months and 29 days, she is ineligible for the claim. As per Clause 3(i) of the Guidelines for granting Special Remission to Prisoners, the women convicts of 50 years of age and above, who have completed 50% of their total sentence period [without counting the period of general remission earned], may be eligible for the special remission under the AKAM Scheme. In the counter affidavit, the period of sentence has been computed from 15.02.2021, which is the date on which the convict prisoner was admitted to the prison and had accordingly come to the conclusion that she had completed only 2 years, 5 months and 29 days as on 14.08.2023. In other words, she has become ineligible for premature release, owing to shortage of one day.



W.P.No.2037 of 2024

4. The convict prisoner was sentenced to five years of imprisonment through a judgment dated 15.02.2021. In order to avail the benefit of the AKAM Scheme, she ought to have completed 50%, i.e., 2½ years of her total sentence period of five years, as on 14.08.2023. While computing this period of 2½ years, the respondents seem to have excluded the date on which she was admitted to the prison, i.e., 15.02.2021 and would now state that she is short by one day for completion of the required period. This mode of computation by exclusion of 15.02.2021, which is the date of her admission to the prison, is flawed.

5. When the convict prisoner was admitted into the prison on 15.02.2021, prudence requires that the date on which she was in the prison also requires to be taken into account for the purpose of calculation of the sentence period.

6. In the case of ***Enforcement Directorate, Government of India Vs. Kapil Wadhawan and Another*** reported in ***2023 LiveLaw (SC) 249***, the Hon'ble Supreme Court, while dealing with a claim for grant of default bail



W.P.No.2037 of 2024

under Section 167 of the Code of Criminal Procedure (Cr.P.C.), had observed that, for the purpose of calculating the stipulated 60/90 days remand period under Section 167, the date of remand is to be “included” for computation of the period.

7. Drawing inspiration from the aforesaid decision and also by taking into account that the convict prisoner was admitted into the prison on 15.02.2021 itself, we are of the affirmed view that the respondents have erred in excluding the date on which she was admitted into the prison. If her date of admission into prison is also taken into account, she would have completed 2 years and 6 months as on 14.08.2023, which is 50% of her total sentence period of five years and would have thus been rendered eligible for premature release under AKAM Scheme.

8. Apart from the claim that the convict prisoner has not completed 2½ years of sentence, no other infirmity or ineligibility has been pointed out to the claim for premature release.



W.P.No.2037 of 2024

9. In the light of the above observations, there shall be a direction to the respondents herein to prematurely release the mother of the petitioner, namely, Mrs.Rajammal, W/o late Bose, confined at the 3rd respondent Prison, on 08.03.2024.

10. With the above direction, the Writ Petition stands allowed. No costs.

(M.S.R.,J.) (S.M.,J.)
07.03.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
hvk

Note: Issue order copy on 08.03.2024



W.P.No.2037 of 2024

WEB COPY To

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High Court of Madras



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W.P.No.2037 of 2024

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