



WEB COPY

W.P.No.2068 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.07.2024
Pronounced on	02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.2068 of 2024
and
W.M.P.Nos.2223 & 2225 of 2024

Manikandan

...Petitioner

Vs.

1.The State represented by its
 The Secretary to the Government,
 Home Department,
 Fort St. George, Chennai – 600 009.

2.The Superintendent,
 Central Prison Puzhal,
 Special Prison for Women,
 Puzhal, Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order G.O.(D) No.1165, dated 06.10.2023 issued by the 1st respondent and quash the same and consequently release the



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detenue, Poovarasi, D/o.Sambanthan, aged about 38 years, life convict prisoner, bearing Convict No.355, detained at Central Prison, Puzhal-I, Puzhal, Chennai, prematurely, as per G.O.(Ms.)No.488, dated 15.11.2021.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

M.S.RAMESH,J.

The petitioner is the husband of Poovarasi, who is a life convict prisoner No.355, confined at Central Prison, Puzhal – I, Chennai. Through a judgment dated 15.02.2011 passed in Sessions Case No.491/2010 on the file of the VIth Additional Sessions Judge, Chennai, she was convicted and sentenced as follows:-

U/s 364 IPC	R.I. For 7 years and fine of Rs.50,000/- in default Simple Imprisonment for 6 months
U/s 302 r/w 201 IPC	Life Imprisonment and a fine of Rs.50,000/- in default Simple Imprisonment for 6 months
	A sum of Rs.90,000/- out of the sum of Rs.1,00,000/- was ordered to be given to the mother of the victim, after the appeal time is over. Further, the above sentences were ordered to run concurrently.



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2. On appeal, the conviction was modified by the Hon'ble Co-ordinate

Bench of this Court in CrI.A.No.226 of 2013, dated 08.06.2016, as follows:-

(i) The conviction of the accused under Section 364 of the Indian Penal Code and sentence for Rigorous Imprisonment for seven years on her is confirmed. However, the fine of Rs.50,000/- imposed by the trial court is reduced to Rs.10,000/- and in default to undergo simple imprisonment for four weeks.

(ii) The conviction of the accused under Section 302 of the Indian Penal Code read with Section 201 of the Indian Penal Code is set aside and instead the accused is convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- in default to undergo rigorous imprisonment for six weeks.

3. Through G.O.(Ms.) No.488, Home (Prison-IV) Department, dated 15.11.2021, the Government had ordered for premature release of life convict prisoners who have completed 10 years of actual imprisonment as on 15.09.2021, subject to certain conditions. Since the petitioner's wife had completed 10 years of actual imprisonment for the offence under Section



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302 IPC has on 15.09.2021, he had given a representation on 08.12.2022, seeking for premature release of his wife. This Court, through orders passed in W.P.No.12402 of 2023, dated 24.04.2023, had directed the Government to consider the petitioner's representation dated 08.12.2022 within a stipulated time. In compliance with such orders, the Government had passed a Government Order in G.O.(D) No.1165, Home (Prison-IV) Department, dated 06.10.2023, wherein the claim of the petitioner was rejected, on the following reasons:-

“i) The Life Convict Prisoner No.355, Poovarasi, D/o.Sambanthan was involved in the heinous crime of murder of a 3½ years old child.

ii) The Case of the above Life Convict Prisoner was not recommended by the State Level Committee for consideration under G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 as amended in G.O.(Ms) No.508, Home (Prison-IV) Department, dated 18.11.2021. Further, as per para 2 (H) of the above Government Order granting for premature release is a onetime measure in commemoration of the 113th Birthday of former Chief Minister of Tamil Nadu Dr.Perarignar Anna and it is applicable to those who are eligible as on 15.09.2021 and it shall not be



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extended later on to the persons who fulfill all the conditions stipulated in the Government orders on a later date. Hence, in the case of above life convict prisoner, her premature release could not be reconsidered at this stage.”

4. Challenging the said Government Order, the present Writ Petition has been filed.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

6. G.O.(Ms.) No.488, dated 15.11.2021, has issued certain guidelines for considering the cases of life convict prisoners for premature release. One of the main conditions for availing the benefit is that the life convict should have completed ten years of imprisonment as on 15.09.2021.

7. The petitioner's wife has been convicted and sentenced to seven years of rigorous imprisonment, together with a fine of Rs.50,000/- for the offence under Section 364 IPC and life imprisonment, together with a fine of



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Rs.50,000/- for the offences under Section 302 read with Section 201 IPC, with default sentences for default in payment of fines. Both sentences were ordered to run concurrently. On appeal, the sentences for imprisonment for both these offences were confirmed by this Court in Crl.A.No.226 of 2013 dated 08.06.2016 and the fine amount alone had been reduced.

8. The fact that the petitioner's wife had completed her sentence of seven years of imprisonment for the offence under Section 364 IPC, is not disputed. Insofar as the sentence of life imprisonment for the offence under Section 302 read with Section 201 IPC is concerned, she had completed ten years of imprisonment as on 15.09.2021 and this fact is also not under dispute.

9. The first reason assigned by the Government for rejecting the petitioner's claim for premature release is that his wife was involved in a heinous crime, wherein she had strangled and murdered a 3½ years old child. In the impugned order of rejection, a reference has been made to the proceedings of the Director General of Police/Director General of Prisons



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and Correctional Services, wherein the case of the life convict prisoner has not been recommended, since she was involved in a heinous crime and that the Probation Officer, in his report dated 26.11.2021, has also not recommended her case. In the light of this proceedings of Director General of Prisons, the Government had also reiterated the life convict prisoner's involvement in the heinous crime as the main reason and rejected her claim.

10. Since the earlier Probation Officer's report was made on 26.11.2021 and in order to ascertain the present conduct of the prisoner, we had called for the latest report from the Probation Officer. Accordingly, in the report dated 19.07.2024 of the Probation Officer of Chennai Region, Zone-5, Egmore, Chennai – 600 008, a favourable recommendation has been made for her release. The Probation Officer has also stated in the present report that if the life convict prisoner is prematurely released, there is no threat or danger to the life of the prisoner or to any other person from the prisoner.

11. In this background, the only ground to be determined is as to whether the Government shall be justified in quoting the prisoner's earlier



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involvement in a heinous crime, for which she was already punished, as a reason for rejection.

12. In Clause 2(G) of G.O.(Ms.) No.488, Home (Prison-IV) Department, dated 15.11.2021, it is provided as follows:-

“(G) The above guidelines framed deals with the eligibility of the life convict prisoners for consideration of the Government and mere fulfillment of the above condition prescribed in the guidelines does not confer any right for premature release for the life convict prisoners and it is the sole discretion and prerogative of the Government taking into account the other factors like the nature of offence and its effect on society, fitness for rehabilitation into society and public interest, etc.”

13. A perusal of the aforesaid clause in the Government Order indicates that it would be the prerogative of the Government to take into account the nature of offence of a life convict prisoner at the time of consideration of premature release also. However, our Constitutional Courts have time and again held that such discretionary privileges are subject to



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reasonable restrictions and such discretions cannot be exercised in an arbitrary manner.

14. In the case of *Shor Vs. State of Uttar Pradesh and Another* reported in **2020 SCC OnLine SC 626**, the Hon'ble Supreme Court, while dealing with the grant of premature release of a life convict prisoner, had held that, merely repeating the fact that the crime is heinous and that the release of such prisoner would send a negative message against the justice system in the society, will not alone be a factor for rejection. On the other hand, the prisoner's conduct in prison, the long period of incarceration, the remorse after imprisonment, their age and the possibility of the prisoner to reintegrate with the society and lead a peaceful and normal life, would also have to be cumulatively assessed.

15. In the instant case, the Government had placed reliance on the proceedings of the Director General of Prisons, who in turn had relied upon the negative report of the Probation Officer dated 26.11.2021. However, after passage of three years, the prisoner was once again assessed by the



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Probation Officer and in his report dated 19.07.2024, a favourable recommendation has been made, stating that there is no threat to the life of the prisoner or to any other persons from the prisoner and that she was capable of getting a decent job after her release, since she was already employed as a financial consultant in a Private Company before committing the crime and that her husband/petitioner herein was also ready to give her the necessary care and protection after her release.

16. As on date, the petitioner's wife had undergone approximately 14 years of imprisonment. Thus, on an overall appreciation of the Probation Officer's report dated 19.07.2024, we are of the view that the premature release of the petitioner's wife will not have any adverse effect on the society nor would endanger anyone's life or liberty.

17. The main reason assigned by the respondents in the impugned order of rejection is that the life convict prisoner was involved in a heinous crime. In view of the decision in *Shor's case (supra)*, as well as the subsequent conduct of the prisoner, as reflected in the Probation Officer's



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report dated 19.07.2024, the main reason assigned in the impugned order cannot be sustained.

18. The other reason assigned in the impugned order is that the grant of premature release, as defined under G.O.(Ms) No.488, dated 15.11.2021, is a one time measure and cannot be extended to the prisoners, who fulfill the condition after 15.09.2021. When it is not disputed that as on 15.09.2021, the petitioner's wife had completed 10 years of imprisonment, the second reason assigned in the impugned order seems to be a factual mistake and cannot be legally sustained.

19. For all the foregoing reasons, the impugned Government Order issued by the 1st respondent herein in G.O.(D) No.1165, Home (Prison-IV) Department, dated 06.10.2023, stands quashed. Consequently, there shall be a direction to the respondents herein to forthwith release the petitioner's wife/life convict prisoner, namely, Poovarasi, D/o.Sambanthan, aged about 38 years, bearing Life Convict Prisoner No.355, who is detained at Central Prison, Puzhal-I, Chennai, prematurely, as per G.O.(Ms.)No.488, dated



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15.11.2021, in any event, within a period of two (2) days from the date of receipt of a copy of this order.

20. Accordingly, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

[M.S.R.,J.] [S.M.,J.]
02.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order

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Note: Issue order copy on 02.08.2024



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To
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- 1.The Secretary to the Government,
Home Department,
Fort St. George, Chennai – 600 009.
- 2.The Superintendent,
Central Prison Puzhal,
Special Prison for Women,
Puzhal, Chennai.
- 3.The Public Prosecutor,
High Court of Madras.



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Pre-delivery order made in
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