



W.P.No.7542 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.7542 of 2024

Saravanan

... Petitioner

Vs.

1. The State represented by its;
The Additional Chief Secretary to Government,
Home (Prison-IV) Department, Secretariat,
Fort St. George, Chennai – 600 009.
2. The Director General of Prisons,
Gandhi Irwin Road, CMDA Building,
2nd Tower, Egmore, Chennai – 600 008.
3. The District Collector,
Office of the District Collector, Salem.
4. The Superintendent of Prison,
Central Prison at Salem,
Hasthampatty, Salem – 7

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorified mandamus to call for the records pertaining in the impugned order in G.O.(D) No.1106, dated 02.10.2021 passed by the 1st respondent and quash the same and directing the 4th respondent to release the petitioner/convict namely Mr.Saravanan S/o. Sundaram(CT No.7584) who is confining at Central Prison, Salem.

For Petitioner : Mr. V. Parthiban,
for Mr M. Mohamed Saifulla

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The order of the Government issued in G.O.(D)No.1106, Home(Prison-IV) Department, dated 02.10.2021 rejecting the request of the petitioner/life convict prisoner No.7584/, Saravanan, S/o. Sundaram, seeking premature release, confined in Central Prison, Salem, at present is under challenge in the present writ proceedings.



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2. The petitioner, who is the life convict, had submitted an application for premature release. The application was considered by following due process under the Scheme. The Government passed the impugned order in G.O.(D).No.1106 Home (Prison-IV) Department, dated 02.10.2021 stating that the prison behaviour of the life convict prisoner is not good. The Government, while examining the request of the writ petitioner/life convict seeking premature release, made a finding that he was concerned in Omalur Police Station Crime No.1350 of 1997 and was convicted and sentenced to undergo life imprisonment under Section 302(5 counts) of the Indian Penal Code and to undergo one year Rigorous Imprisonment under Section 3 of the Indian Explosive Act and to undergo one year Rigorous Imprisonment under Section 148 of the Indian Penal Code and to undergo simple imprisonment for one month under Section 341 of Indian Penal Code by the 1 Additional Sessions Court, Salem in Session Case No.34 of 1999 dated 20.10.2004. Pertinently, the Government found that the prison behaviour of the above life convict prisoner is not good and he was punished more than once for the prison offences during his incarceration and the prevailing situation in the area is not conducive for his premature release. Both the life of the convict and the



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victims family is in danger if he is set on larger. Thus, the application for premature release was rejected by the Government.

3.The learned counsel for the petitioner would vehemently contend that the relevant records were not considered by the Government. He relied on the judgment of the *Hon'ble Supreme Court of India* in *Crl.A.No.144 of 2020* in the case of *the Home Secretary (Prison) and others /vs/ Nilofer Nisha*, wherein in paragraph 32, the Hon'ble Supreme Court made an observation that the authorities must pass a reasoned order in case they refused to grant benefit under the scheme for premature release. Once a reasoned order is passed, then obviously, the detainee has a right to challenge that order but that again would not be a Writ of Habeas Corpus, but would be more in the nature of Writ of Certiorari. In such cases, where reasoned orders have been passed the High Court may call for the record of the case, examine the same and after examining the same in the context of the parameters of the scheme decide whether the order rejecting the prayer for premature release is justified or not. In the context of the said observation, the learned counsel for the petitioner would urge this Court that the entire records sought to be called for by this court.



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4. We found such an exercise may not be required in view of the clear findings made in the impugned, where, it is stated that the life convict prisoner /petitioner has completed 14 years of actual imprisonment as on 08.08.2015. Therefore, his case was placed before Advisory Board meeting held on 29.11.2017 and the Advisory Board has rejected his premature release application and the relevant portion runs as follows:

“ The probation Officer, Omalur vide his letter dated 31.08.2016 stated that the life convict prisoner No.7584, Saravanan, son of Sundaram is a history sheeter. There will be danger to the life of witness in the case by the prisoner if released and he may create law and order problem in the area and hence, he has not recommended for his premature release. The District Collector, Salem vide letter dated 23.10.2017 has not recommended for his premature release. The Superintendent of Police in his report dated 19.07.2016 has stated that the life of the convict will be in danger by the victims and also living of the victims family will be in danger by the convict. Hence, the Superintendent of Police has objected for his premature release. The Advisory Board has not recommended for his premature release based on the reports of Probation Officer and Police. Further, his conduct in Prison is not good and punished for more than once for the prison offences. Further, it is clear from the Probation Officer



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report that the prevailing situation in the area is not conducive for his premature release. The Superintendent, Central Prison, Salem has also concurred with the views of the Advisory Board.”

5.The contention of the petitioner in paragraph 3 of the affidavit that he had completed nearly 21 years of imprisonment in Central Prison is not true. Based on the orders of the Honourable Supreme Court of India, dated 08.09.2016 in Criminal Appeal No.865 of 2016 and orders rendered in Epuru Sudhakar & Another Vs. Government of A.P. & Others, dated 11.10.2006, Maru Ram & Others Vs Union of India & Another, dated 11.11.1980 and Union of India Vs Srihararan @ Murugan and others, the Government of Tamil Nadu in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018 as amended in G.O. (Ms) No.302, Home (Prison-IV) Department, dated 03.05.2018 have framed certain guidelines for the consideration of grant of remission to the life convict prisoners, who have completed 10/20 years of actual imprisonment under Article 161 of the Constitution of India in commemoration of the birth centenary celebration of former Chief Minister of Tamil Nadu Dr.M.G.Ramachandran and among others stipulated various conditions for examining the cases of eligible life convicts for premature release on a case to case basis.

6.The case of petitioner was not considered for premature release and



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rejected the same as per the above Government order and the Honourable Supreme

WEB COURT of India in W.P. (Criminal) No. 321 of 2018, dated 25.04.2019 in the case

of Rajan Vs The Home Secretary, Home Department of Tamil Nadu & Others held as follows:-

“ 17..... In the present case however, the petitioner has been convicted for offence under section 302(3 counts) and section 307(4 counts) and has been sentenced to life imprisonment on each count. The question as to whether the petitioner should be granted remission and premature release in respect of all the counts at one stroke, is a matter to be considered by the appropriate Government in exercise of power under sections 432 and 433 of Cr.P.c. We do not wish to dilate on that aspect”

7.The respondents would submit that because of the brutal nature of offence committed by the prisoner and his unsatisfactory conduct in prison, he is found not eligible for premature release as per the conditions stipulated in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018 as amended in G.O.(Ms.)No.302 Home (Prison-IV) Department, dated 03.05.2018. The Government Order issued in G.O.Ms.No. 64, stipulates that the prisoner's behaviour should be satisfactory. Further, the 1st respondent passed a Government



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order regarding prematurely release of the life convict prisoners on occasion of

113th Birthday of Peraringnar Anna, as per the G.O.(Ms) No.488, Home (Pri-IV)

Dept. Dated 15.11.2021. The relevant portion of the said G.O. runs 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 sentence by the Appellate Court (other than those whose convicts have been commuted), may be considered for premature release subject to satisfaction of the following conditions.”

In view of the abovesaid G.O., several convicts were released. But the petitioner could not be released since he was convicted under Explosive Substances Act & Arms Act. That provisions comes under the ineligible category in the abovesaid G.O. Though the said period for ineligible sections had completed, benefit of the above Government Orders has not extended.

8. The application seeking premature release was considered and rejected by the Government in G.O.(D).No.1106 dated 02.10.2021 and the writ petition was filed after a lapse of nearly 5 years, in the year 2024. Thus, the writ petition itself is hit by the principles of laches.

9. The subjective satisfaction of the State Level Committee and the



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Government arrived need not be interfered by the High Court by exercise of the Powers of the Judicial Review under Article 226 in the absence of any materials on record to rebut the said findings. Therefore, the Power of Judicial Review need not be exercised in such cases, where the subjective satisfaction of the authorities are unambiguous clear and in accordance with the procedures as contemplated under the Scheme and the Government Orders. In the present case, the petitioner could not able to establish that the findings of the Government in the impugned order of the year 2021 is perverse and that being the factum, we are not inclined to interfere with the said order. However, the petitioner is at liberty to make a fresh representation, if he is otherwise eligible, based on his subsequent conduct or under any other Scheme, which is available to the petitioner.

With these liberty this writ petition is dismissed.

[S.M.S., J.]

[V.S.G., J.]

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
mrp

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