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W.P.No.8087 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.8087 of 2024

Theepori Perumal

... Petitioner

Vs.

1. The Principal Secretary To Government,
Home, Prohibition And Excise Department,
Secretariat, Chennai -600 009.

2. The Director General Of Police And
Director General Of Prisons And Correctional Service,
Whannels Road, Egmore,
Chennai -600 008.

3. The Superintendent Of Prison,
Central Prison, Vellore -2.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No. in with order in G.O.(D) No. 72 Home (Prison-IVA) Department dated 23.1.2024 passed by respondent no. 1 and quash the same and directing the respondents to release the petitioner



W.P.No.8087 of 2024

immediately under G.O.Ms.No. 488 Home (Prison-IV) Department dated

15.11.2021.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor.

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The writ on hand has been instituted challenging the order in G.O.(D) No.72 Home (Prison-IVA) Department, dated 23.01.2024, rejecting the applications submitted by the petitioner for premature release of convict prisoner Theepori Perumal, S/o.Govindasamy, Ct.No. 19892.

2. The convict has been confined in Central Prison, Vellore-2, and the petitioner submitted an application for premature release based on the government order issued in G.O.(Ms)No.488 Home (Prison-IV) Department, dated 15.11.2021. The application submitted for premature release was considered and the committee recommended the case of the convict prisoner since the conditions stipulated in G.O.(Ms)No.488 are to be complied with. Despite the fact that the committee made recommendation for premature



W.P.No.8087 of 2024

release of the convict, the Government issued the impugned G.O.(D) No.72 Home (Prison-IVA) Department dated 23.01.2024, stating that the remission would be premature and prejudicial to justice.

3. In order to know the reasons for the findings, we have called for the files. The learned Additional Public Prosecutor produced file which would reveal that the committee has recommended for premature release of the convict prisoner. However, in the file, it is stated that the premature release would be prejudicial to justice. Except the finding, no reasons are assigned for arriving at the said conclusion. Reasons for arriving at a decision is live link and therefore, we are not satisfied with the findings made in the impugned order that the premature release of the convict prisoner would be prejudicial to justice. While making such a reason, the Government is bound to provide adequate reasons which must be candid and convincing.

4. When the application has been submitted based on the Government order issued in G.O.(Ms)No.488 dated 15.11.2021 and the committee also recommended the case of the prisoner on the ground that he satisfies all the conditions stipulated in the said G.O., it is to be considered on merits and in accordance with law. If at all, any reason beyond the Government order is



W.P.No.8087 of 2024

made available, such reasons are to be expressly stated while rejecting the application. Even in the counter affidavit filed on behalf of the respondents, no reason has been stated for arriving at such a conclusion. That being so, we are inclined to remand the matter back to the Government for recirculation and take a decision afresh based on merits and in accordance with law.

5. Premature release cannot be claimed as an absolute right. The guidelines provide that it is the sole discretion and prerogative of the Government, taking into account the factors like nature of offence and its effect on society, fitness for rehabilitation into society and public interest e.t.c. Therefore, the overall consideration of the Government would be of paramount importance. Though premature release is not a ground when the government order permits a convict prisoner to be prematurely released, the application, if any submitted, must be disposed of by assigning reasons. Though premature release is not a right, consideration being a right conferred under the Government order, the prisoner should know the reasons for rejection.

6. In view of the facts and circumstances, the impugned order issued in G.O.(D) No.72 Home (Prison-IVA) Department, dated 23.01.2024, is set



W.P.No.8087 of 2024

aside and the first respondent is directed to recirculate the files to the appropriate authority and thereafter, pass final orders on merits and in accordance with law afresh within a period of four (4) weeks from the date of receipt of a copy of this order.

7. With the above directions, the writ petition stands allowed.

However, there shall be no order as to costs.

(S.M.S.J.,)

(V.S.G.,J.)

02.09.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



W.P.No.8087 of 2024

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W.P.No.8087 of 2024

S.M.SUBRAMANIAM, J.

and

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