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W.P.No.10487 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

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

**W.P.No.10487 of 2020
and
W.M.P.No.12745 of 2020**

P.Kaliammal

...Petitioner

VS.

1.State represented by
The Additional Chief Secretary,
Government of Tamil Nadu,
Home (Prison-IV) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Additional Director General of Police,
and Inspector General of Prisons,
No.1, Gandhi Irwin Road, Egmore,
Chennai – 600 008.

3.The Superintendent of Prisons,
Central Prison Puzhal – I,
Chennai – 600 066.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the 1st



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respondent in G.O.(D) No.663, Home (Prison-IV) Department, dated 27.05.2020 and quash the same and further direct the respondents to extend the benefit of G.O.(Ms) No.64, dated 01.02.2018 and release the petitioner's son Sakthivel, Life Convict CT.No.7189, S/o Palanisamy, who is confined in Central Prison, Puzhal, Chennai – 66, prematurely.

For Petitioner : Mr.M.Mohamed Saifulla

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

ORDER

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

Heard Mr.M.Mohamed Saifulla, learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondents.

2. The petitioner is the mother of Sakthivel, S/o Palanisamy, who is the life convict prisoner No.7189, sentenced to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code (IPC); rigorous imprisonment for 1 year for the offence under Section 148 IPC; rigorous imprisonment for 6 months for the offence under Section 324 IPC; and rigorous imprisonment for 10 years under Section 3 of the



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Explosive Substance Act, 1908, which were ordered to run concurrently, through the judgement passed in S.C.No.303/2004, dated 23.06.2005 on the file of the learned Principal Sessions Judge, Coimbatore. The appeal preferred by the life convict before this Court in C.A.No.573 of 2006 was dismissed on 24.01.2007. So also, the further appeal before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) Crl.M.P.No.11464 of 2011, dated 23.09.2011.

3. On the ground that the life convict had already undergone sentence for the offence under Section 3 of the Explosive Substance Act, the petitioner had made a representation on 13.02.2018 to the Government, seeking for premature release of her son, in terms of G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018. Consequently, she had also sought for the same prayer before this Court in H.C.P.No.1320 of 2018 and by an order dated 25.01.2019, a Coordinate Bench of this Court had ordered for the prisoner's premature release under G.O.(Ms) No.64, dated 01.02.2018, on the ground that he had already undergone the sentence for the offence under Section 3 of the Explosive Substance Act.



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4. When the Government had challenged this order before the Hon'ble Supreme Court in Crl.A.No.166 of 2020, the order of premature release granted by this Court was quashed. However, it was observed therein that since the petitioner's son had undergone imprisonment for about 16 years at that point of time, he may be entitled for the benefit of remission under the Remission Rules of the State of Tamil Nadu and thereby, directed the Government to consider any application filed by the prisoner in this regard, within 3 months.

5. In compliance of the direction of the Hon'ble Supreme Court, the petitioner's representation dated 13.02.2018, which was pending before the Government, was considered and rejected, through the impugned order in G.O.(D) No.663, Home (Prison-IV) Department, dated 27.05.2020, in the following manner:-

“5. Accordingly, the Government have examined the representation of the petitioner Tmt.Kaliammal, in second read above seeking premature release of her son/Life Convict Prisoner No.7189 Sakthivel, son of Palanisamy, in consultation with the Director General of Police/Inspector General of Prison, Chennai-8 and



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in terms of the guidelines framed in G.O. first read above along with connected records and decided to reject the same for the reason that the prison behavior of the Life Convict Prisoner No.7189 Sakthivel, son of Palanisamy, Central Prison-I, Puzhal during his confinement in prison is not satisfactory on the crucial date i.e., 25.02.2018 due to the violation of prison rules committed by him during his confinement and thereby, his case did not fulfill the guidelines prescribed for the premature release of life convict prisoners laid down in para 5(ii)(i) of G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018 that the prisoner's behavior should be satisfactory and order accordingly.”

6. Challenging the said Government Order, the petitioner has preferred the present Writ Petition.

7. The learned counsel for the petitioner submitted that the life convict has already completed 20 years of imprisonment and therefore, he would be entitled for the benefit of premature release, in terms of G.O.(Ms) No.64, dated 01.02.2018.



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8. Per contra, the learned Additional Public Prosecutor submitted that during the life convict's confinement in the prison, his behavior, as on the crucial date i.e., 25.02.2018, was not satisfactory and in view of Clause 5(II)(i) of G.O.(Ms) No.64, dated 01.02.2018, he was not entitled for the remission.

9. It is not in dispute that the life convict has completed 20 years of imprisonment, out of his entire sentence. As per G.O.(Ms) No.64, dated 01.02.2018, he would be entitled for premature release, subject to the conditions and guidelines stipulated in the said Government Order. Among various conditions prescribed therein, Clause 5(II)(i) stipulates that the prisoner's behavior should be satisfactory. By quoting this condition and making a reference to the unsatisfactory behavior of the life convict prisoner during his confinement in the prison, his request for premature released has now been rejected.

10. To our specific query as to under what circumstances did the Government come to the conclusion that the prisoner's behavior under confinement was not satisfactory, the respondents have filed a counter



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affidavit, wherein they had referred to 7 instances, where the prisoner had committed prison offences prior to the crucial date of consideration of his premature release, i.e., 25.02.2018. The prison offences referred to in the counter affidavit are as follows:-

S.No.	Date	Details of offence	Action taken
1	18.07.2013	CP, Salem – When the prisoner was asked to leave his footwear outside when he came to meet his lawyer, the prisoner picked up a quarrel with the warder stating that he is been treated in a biased manner on community basis	Interview privileges suspended for 1 month
2	05.12.2013	CP, Salem – When the prisoner came for Advocate interview to meet his lawyer, the warder at the main gate tried to search him to which the prisoner had opposed the same and had shouted at him and had obstructed him from doing his duty	The petitioner was given a severe warning
3	19.12.2013	CP, Salem – When the prisoner came for Advocate interview to meet his lawyer, the warder at the main gate tried to search him to which the prisoner had opposed the same and had obstructed him from doing his duty	The petitioner was given a severe warning
4	18.04.2015	CP, Coimbatore – The prisoner had gathered up fellow prisoners and had refused to take breakfast stating that they are not able to sleep at night and so they have to be provided with narcotic tablets and they also indulged in a quarrel with the prison warders	They were severely warned. Referred to proper Psychological Counselling
5	16.05.2015	CP, Coimbatore – The prisoner had gathered fellow prisoners and went on hunger strike demanding that they be allowed freely to go to all the blocks in the prison as they wish	Prison privileges suspended for 20 days
6	20.05.2015	CP, Coimbatore – The prisoner is still	Advised to keep them



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<i>S.No.</i>	<i>Date</i>	<i>Details of offence</i>	<i>Action taken</i>
		continuing the hunger strike along with other prisoners demanding that they be allowed freely to go to all the blocks in the prison as they wish	under observation
7	26.06.2015	CP, Coimbatore – When the TSP personnel at the main gate tried to frisk the prisoner while the prisoner was on his way back from meeting his lawyer, the prisoner had resisted and picked up a quarrel with the TSP personnel	Interview privileges suspended for 1 month

11. When we raised another query to the learned Additional Public Prosecutor that apart from the aforesaid prison offences, was the prisoner involved in any other conduct, which could be of dissatisfaction to the Prison Authorities, he replied in the negative. In other words, apart from the aforesaid instance of 7 prison offences, for which action was also taken against him in the manner referred above, he had not indulged in any other act to the dissatisfaction of the respondents. The impugned order also does not refer to any other specific adverse behavior on the part of prisoner.

12. Whenever a prisoner indulges in any offence while in confinement, he is liable to be subjected to criminal action. In cases where



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the commission of such an offence attracts Section 224 IPC, he is liable to be prosecuted for the said criminal offence also. This apart, the Prison Authorities are also empowered to initiate such other actions for the adverse conduct of a prisoner like suspension of the privileges, which a prisoner may be entitled to, warning, subject to close surveillance, etc. These kind of actions by the Prison Authorities themselves, would also amount to punishment to the prisoner. Likewise, when a prisoner is eligible for being considered under a scheme for premature release or is eligible to seek for ordinary or emergency leave under the Tamil Nadu Suspension of Sentence Rules, refusal to extend the benefits of premature release or leave, is also a form of punishment.

13. In the instant case, when the prisoner had indulged in 7 offences between 18.07.2013 and 26.06.2015, he was imposed with various forms of punishments of suspension of privileges and warning. When the petitioner requested for release of her son prematurely, her request has been rejected on the ground that he was involved in 7 prison offences, which relates to the years 2013 and 2015. When the prisoner was already punished for all these 7 offences, the present rejection of his request for premature release, which is also a punishment as stated above,



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would amount to punishing the prisoner for the second time for the same offences, which action would be opposed to Article 20(2) of the Constitution of India, thereby amounting to double jeopardy. This ratio was reiterated by a Coordinate Bench of this Court in the case of ***Kaliammal Vs. State rep. by The Secretary, Department of Home (Prison) and Others*** reported in ***2019 SCC OnLine Mad 6434***, in the following manner:-

“6. The petitioner already has undergone to sentence for offence u/s. 3 of the Explosive Substances Act. It is understandable if authorities were to deny relief to the prisoner on the ground that he is undergoing the sentence for an offence, commission of which disentitles him to relief under a Government Order for premature release. Visiting a prisoner with denial of relief on the ground that he stands convicted for an offence the sentence for which already he has undergone, in effect amounts to imposing a dual punishment in respect of one and the same offence. Such is impermissible in law.”

14. This apart, the offences for which the prisoner was already punished are stale offences, relating to the years 2013 and 2015. Thus, by



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quoting these stale offences as an impediment for consideration of his otherwise eligible premature release, is not only unjustifiable, but also opposed to his fundamental right to personal liberty under Article 21. In the case of ***T.P.Gopalakrishnan Vs. State of Kerala*** reported in (2022) **14 SC 323**, the Hon'ble Supreme Court had held that the protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India and hence, prosecuting a person for the same offence, for which he was previously convicted and suffered the punishment, affects the person's right to live with dignity.

15. Thus, the life prisoner, having completed 20 years of imprisonment and is not otherwise disqualified from seeking the benefits under the scheme of premature release, would be entitled for premature release under G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, without reference to his earlier prison behavior. Consequently, the impugned rejection order cannot be sustained.

16. For all the foregoing reasons, the impugned order passed by the 1st respondent in G.O.(D) No.663, Home (Prison-IV) Department, dated 27.05.2020, is quashed and the Life Convict Prisoner No.7189, namely



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Sakthivel, son of Palanisamy, is ordered to be released prematurely forthwith. Accordingly, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) (S.M.,J.)
04.07.2024

Index:Yes

Neutral Citation:Yes

Speaking order

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Note: Issue order copy on 08.07.2024



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To
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- 1.The Additional Chief Secretary,
Government of Tamil Nadu,
Home (Prison-IV) Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Additional Director General of Police,
and Inspector General of Prisons,
No.1, Gandhi Irwin Road, Egmore,
Chennai – 600 008.
- 3.The Superintendent of Prisons,
Central Prison Puzhal – I,
Chennai – 600 066.
- 4.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.

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