



WEB COPY



W.P.No.20538 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.20538 of 2024

and

W.M.P.No.22483 of 2024

S.S.Mekala

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by 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,
Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3.The Superintendent of Prison,
Central Prison,
Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records in the order bearing No. in with order in G.O.(D).No.271 Home



W.P.No.20538 of 2024

(Prison-IV) Department, dated 06.03.2024 passed by respondent no.1 and quash the same and directing the respondents to release the petitioner namely, Shajin S/o Selvaraj @ Saraiadithan aged 40 years, now confined in the Central Prison-1, Puzhal, Chennai – 66 under the scheme of G.O.(Ms) No.271 dated 06.03.2024 for premature release of life convicts.

For Petitioner : Mrs.S.Nadhiya

For Respondents : Mr.R.Munniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The order of rejection seeking premature release of prisoner Convict No.8758, Mr.Shajin S/o.Selvaraj issued in G.O.(D).No.271 Home (Prison-IV) Department dated 06.03.2024 is sought to be quashed in the present writ proceedings and consequential direction to the respondents to release the prisoner, who is presently confined in Central Prison, Salem.

2. The petitioner is the sister of the prisoner. The prisoner was convicted under Sections 449 and 302 of Indian Penal Code (IPC) and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- in



W.P.No.20538 of 2024

default to undergo simple imprisonment for 1 year for the offence under Section 449 IPC and to undergo imprisonment for life and to pay fine of Rs.10,000/- in default to to undergo simple imprisonment for 1 year for the offence under Section 302 IPC. The conviction was confirmed by the High Court in CrI.A.(MD).No.149 of 2011. The prisoner is in actual imprisonment for about 14 years.

3. An application was submitted under the scheme for remission issued by the Government in G.O.(Ms).No.488, Home (Prison-IV) Department dated 15.11.2021. Since the prisoner had completed 10 years of actual imprisonment, the application was placed before the State Level Committee for consideration.

4. Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of the respondents produced the original file relating to the impugned order. The State Level Committee constituted pursuant to the scheme issued in G.O.(Ms).No.488 dated 15.11.2021 examined the records of the prisoner and not recommended his case for premature release. Since the State Committee itself has not recommended the case of the prisoner for premature release, the Government issued the impugned order of rejection in



W.P.No.20538 of 2024

G.O.(D).No.271 dated 06.03.2024.

WEB COPY

5. The petitioner would submit that the prisoner is in actual imprisonment for 14 years and his case would squarely falls under the scheme framed under G.O.(Ms).No.488 dated 15.11.2021, and non-consideration of the case of the prisoner for premature release under the scheme is improper and therefore, the present writ is to be considered.

6. However, premature release cannot be claimed as an absolute right by the prisoner. Premature release / remission are made pursuant to the scheme and the condition stipulated thereunder. Mere fulfilling the conditions stipulated under the remission scheme does not entitle a prisoner to seek premature release in a writ petition filed under Article 226 of the Constitution of India.

7. The Government order in G.O.(Ms).No.488, Home (Prison-IV) Department dated 15.11.2021 outlines an approved scheme and the guidelines for considering the case of the life convicts are issued. Specifically, Guideline (G) in the Government order stipulates that “The above guidelines framed deals with the eligibility of the life convict prisoners for consideration of the



W.P.No.20538 of 2024

Government and mere fulfilment 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”.

8. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision has been taken by the competent authorities in consonance with the Statutes and Rules in force, but not the decision itself. Thus, the scope of the judicial review cannot be expanded for the purpose of releasing a convict prisoner prematurely, when the Government has taken a decision by following the due process as contemplated under the scheme for remission / premature release.

9. In the present case, the State Committee did not recommended the case of the prisoner for premature release. The Government order impugned states that the victim's family opposes the premature release of the prisoner, citing concerns about the safety of the life convict and safety of others if released. The report of the Inspector of Police, Arumanai Police Station also indicates that prisoner's release may lead to law and order problems in that



W.P.No.20538 of 2024

locality, as the prisoner was convicted of murdering a 24 year old girl namely Sharmi, an M.E. Graduate working at an Engineering College. The convict killed her by cutting her neck with an Aruval after she rejected his marriage proposal. Therefore, the report of the Police plays pivotal role with reference to their observation that there is a likelihood of public disorder in the event of premature release of the convict prisoner in the present case.

10. In view of the fact that premature release cannot be claimed as an absolute right under the scheme for remission, and the State Level Committee has not recommended the case of the prisoner in the present case, the High Court, in exercise of its powers of judicial review, cannot grant the relief as such sought for in the present writ petition for the release of the convict prisoner prematurely. The competent authorities have followed the procedures as contemplated under the scheme.



W.P.No.20538 of 2024

11. Thus, the Writ Petition is devoid of merits and stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [M.J.R., J.]
20.11.2024

Index : Yes
Speaking order / Non-speaking order
Neutral Citation : Yes

Jeni

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Director General of Police and
Director General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 3.The Superintendent of Prison,
Central Prison,
Salem.
- 4.The Additional Public Prosecutor,
High Court of Madras.



WEB COPY



W.P.No.20538 of 2024

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

Jeni

W.P.No.20538 of 2024

20.11.2024