



W.P.No.36867 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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Radhakrishnan

... Petitioner

Vs.

State of Tamil Nadu Rep by
Principal Secretary to the Government,
Home, Excise and Prohibition Department,
Secretariat, Fort St.George,
Chennai.

2. The Superintendent of Prisons,
Central Prison, Madurai, Madurai.

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the first respondent to process the representation given me (Radhakrishnan s/o.Vellapan Nair Life Convict Prisoner No.5863) dated 19.08.2024 to prematurely release me within such time frame.

For Petitioner : Mr.G.Sriram

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

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

This writ petition has been instituted to direct the first respondent to process the representation given by the petitioner dated 19.08.2024 seeking premature release.

2. The learned Counsel for the petitioner would submit that multiple mercy petition is entertainable and condition imposed while commuting the death sentence also may be reconsidered either by his Excellency the President of India or by the Governor by entertaining further mercy petition. The powers conferred under Article 161 to pardon is wider enough to entertain such mercy petition. Therefore, direction as such sought for is to be considered.

3. The learned Additional Public Prosecutor appearing on behalf of the respondents produced the original file relating to the petitioner, who is the life convict prisoner. The life convict prisoner *viz.*, Radhakrishnan s/o.Vellappan Nair was convicted in SC.No.392 of 1997 under section 302 IPC and sentenced to death.



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4. The death sentence was ordered as per the Judgment dated 05.10.1998 in SC.No.392 of 1997. The death sentence awarded to the life convict prisoner was confirmed on appeal as per the order of the High Court of Madras in RT.No.4 of 1998 dated 13.04.1999. The Hon'ble Supreme Court of India also confirmed the death sentence in Spl.(Crl.).A.No.1990 of 1999 dated 30.04.1999.

5. The life Convict prisoner preferred Mercy Petition to his Excellency the President of India through the Government of Tamil Nadu. The Mercy Petition was considered and the death sentence was commuted to life imprisonment with the condition that *"the prisoner shall remain in prison for the whole of remainder of his natural life and there shall be no remission of the term of imprisonment."* The decision of his Excellency the President of India was communicated *vide* letter dated 17.02.2012.

6. Thereafter, further mercy petition was submitted by the convict prisoner before the Hon'ble Governor on 19.08.2024. Since the petition was kept pending, the present writ petition came to be instituted, seeking a direction to dispose of the same.



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7. Entertainability of mercy petition itself is questionable and to be decided by the Hon'ble Governor, in view of the specific condition imposed by his Excellency the President of India, while commuting the death sentence to life imprisonment. The condition imposed by his Excellency the President of India while commuting death sentence, cannot be readjudicated by the Courts in a writ proceedings under Article 226 of Constitution of India. The death penalty awarded by the Sessions Court was confirmed by the High Court and the Hon'ble Supreme Court of India. His Excellency the President of India commuted the death sentence to life imprisonment by imposing conditions. Therefore, entertainability of the petition itself is doubtful and further, the High Court cannot entertain any such writ petition seeking a direction to dispose of such representation, in view of the facts as stated above.

8. Accordingly, the Writ Petition stands **dismissed**. No costs.

[S.M.S., J.]

[M.J.R., J.]

04.12.2024

Index: Yes/No
Speaking/Non-speaking order
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To

State of Tamil Nadu Rep by
Principal Secretary to the Government,
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Chennai.

2. The Superintendent of Prisons,
Central Prison, Madurai, Madurai.

3. The Public Prosecutor,
High Court, Madras.



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