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W.P.No.35049 of 2023

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.Nos.35049 of 2023

Bhuvaneshvari

... Petitioner

Vs.

1. The State represented by its;
The Secretary to Government,
Home Department,
Fort St.George,
Chennai 600 009.

2. The Superintendent,
Salem Central Prison,
Salem – 636 007

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records pertaining to the impugned order G.O.(D) No.739/2019, dated 05.07.2019 issued by the 1st



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respondent and quash the same and consecutively release the detenue, Nagarajan,

S/o. Mariappan, life convict prisoner, bearing Convict No.8161 detained at Central

Prison, Salem, prematurely, as per the G.O.(Ms) No.64, dated 01.02.2018.

For Petitioner : Dr.S.Manoharan

For Respondents : 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.739, Home(Prison-IV) Department, dated 05.07.2019 rejecting the request of the petitioner seeking premature release of her husband/life convict prisoner No.8161/, Nagarajan @ Kozhai Nagarajan S/o. Mariappan, confined in Central Prison, Salem, at present is under challenge in the present writ proceedings.



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2. The petitioner is the wife of the life convict. An application was submitted for premature release of the life convict. The application was considered by following due process under the Scheme and the Government passed the impugned order in G.O.(D).No.739 Home (Prison-IV) Department, dated 05.07.2019 stating that the crime committed by the prisoner is heinous in nature. The Government, while examining the request of the writ petitioner seeking premature release of her husband/life convict, made a finding that the convict is concerned in Mettur Police Station, Crime No.105/2011 and having a case pending against him in the Court of Assistant Sessions Judge, Mettur in Sessions Case No.303 of 2015 under Sections 302, 148, 341, & 120(B) IPC. He was convicted and sentenced to one year Rigorous Imprisonment under Section 3 of the Indian Explosive Act, 1908. Pertinently, the Government found that the release of the prisoner would create law and order problems in that area. He has been involved in 11 prison offences. His conduct in prison is not satisfactory. Thus, as per the guidelines issued in G.O.(Ms).No.64 Home(Prison IV) Department, dated 01.02.2018, the application for premature release was rejected.



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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 detenu 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 order and in view of the counter affidavit.

5. As per the respondents, the application for premature release of the husband of the petitioner was rejected under Advisory Board Scheme, vide G.O.(D) No.30, Home (Prison-IV) Department, dated 06.01.2022 for the following reasons:

“ (i) The Advisory Board has not recommended for premature release of the above life convict.

(ii) Both the Probation Officer and the Police Have objected to his premature release.

(iii) His conduct in the prison is not good and he was punished for more than once for prison offences committed by him and that the prevailing situation in the area is not conducive for his premature release. ”

The petitioner's husband has completed 22 years, 4 months and 25 days of imprisonment as on 29.02.2024 as tabled below :



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Calculation table as on 29.02.2024

<i>Description</i>	<i>Date</i>	<i>Month</i>	<i>Year</i>
Date taken up for calculation	29	02	2024
Date of conviction	20	10	2004
	09	04	19
Add set off 1187 days(+)	02	03	03
	11	07	22
Leave period 76 days (-)	16	02	00
Actual incarceration period	25	04	22

6. Hence, the contention of the petitioner in paragraph 6 of the Affidavit, that her husband had completed nearly 25 years of imprisonment as on 29.02.2024 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



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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.

7. The petitioner's husband has completed 16 years, 06 months and 16 days as on 25.02.2018 as tabled below:-

Calculation table as on 25.02.2018

<i>Description</i>	<i>Date</i>	<i>Month</i>	<i>Year</i>
Date taken up for calculation	25	02	2018
Date of conviction	20	10	2004
	05	04	13
Add set off 1187 days(+)	02	03	03
	07	07	16
Leave period 76 days (-)	21	00	00
Actual incarceration period	16	06	16

8. The case of the petitioner's husband was not considered for premature release as per the above Government order for the following reasons:-

(1) He was convicted and sentenced to one year of Rigorous Imprisonment under section 3 of the Explosive Substances Act, 1908. As per the conditions stipulated in para 5(II) (3) of the



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above Government Order, prisoners whose cases come under section 435 of Code of Criminal Procedure are not eligible for consideration of premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence. Since, the prisoner was convicted under section 3 of the Explosive Substances Act, 1908, his case falls under section 435(2) of Cr.P.C which made him ineligible for consideration for premature release.

(2) During his incarceration in prison, he has been awarded prison punishment, ie forfeiture of the prison privilege of interview for 3 months twice as per rule no 302 of the Tamil Nadu Prison Rules, 1983 for illegal possession of cellphone, which is a known contraband inside prison. This shows that the character of life convict prisoner No.8161, Koola Nagarajan is not satisfactory.

(3) The above life convict along with 17 others involved in the brutal murder of 5 remand prisoners and caused injury to 4 police personnel in the incident as mentioned in para 4 supra and thus he had been convicted and sentenced to life imprisonment under section 302 of the Indian Penal Code (5 counts).

The Honourable Supreme Court of India in W.P. (Criminal) No. 321 of 2018,



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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”

9. The respondent 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. In the present case, the learned counsel for the petitioner would rely on the Conduct Certificate issued by the Superintendent of Prison, Central Prison, Salem, dated 30.10.2023. Therefore, the current conduct of



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the prisoner has been assessed by the Superintendent of Prison, Central Prison, Salem in the year 2023. However, the impugned order of rejection of application was made by the Government on 05.07.2019, 4 years prior to the certificate issued by the Jail Superintendent, Central Prison, Salem. Therefore, the said Conduct Certificate is of no assistance to the petitioner for the purpose of seeking any relief in the present writ petition.

10. The application seeking premature release was considered and rejected by the Government in G.O.(D).No.739 dated 05.07.2019 and the writ petition was filed after a lapse of 4 years, in the year 2023. Thus, the writ petition itself is hit by the principles of laches.

11. The subjective satisfaction of the State Level Committee and the 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 and in accordance with the procedures as contemplated under the



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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 2019 is perverse and that being the factum, we are not inclined to interfere with the said order. However, the petitioners are at liberty to make a fresh representation, if they are otherwise eligible, based on their subsequent conduct or under any other Scheme, which is available to the petitioner.

12. 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

(½)

mrp

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai 600 009.

2. The Superintendent,
Salem Central Prison,
Salem – 636 007

3. The Additional Chief Secretary to Government,



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Home (Prison-IV) Department, Secretariat,
Fort St. George, Chennai – 600 009.

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4. The Director General of Prisons,
Gandhi Irwin Road, CMDA Building,
2nd Tower, Egmore, Chennai – 600 008.
5. The District Collector,
Office of the District Collector, Salem.
6. The Superintendent of Prison,
Central Prison at Salem,
Hasthampatty, Salem – 7



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AND
V.SIVAGNANAM, J.

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