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W.P.No.35829 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

W.P.No.35829 of 2023

Mr.Sabeer Ahamed

.. Petitioner

v.

1. The State represented by its
The Principal Secretary (Prison-IV)
Home Department, Secretariat
Fort St.George, Chennai 600 009

2. The Director General of Prisons
Gandhi Irwin Road, CMDA Building
2nd Tower, Egmore, Chennai 600 008

3. The Superintendent of Prison
Central Prison at Palayamkottai
Tirunelveli District 627 002

.. Respondents

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 impugned order in G.O.(D)No.1121 dated 25.09.2023 passed by the 1st respondent and quash the same and directing the 3rd respondent to



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release the petitioner/convict namely Mr.Sabeer Ahamed, S/o Sheikh Oli (CT No.4117) who is confining at Central Prison, Palayamkottai, who is arrayed as 3rd respondent herein.

For Petitioner :: Mr.M.Mohamed Saifulla

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

ORDER

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

The rejection of an application seeking premature release of convict prisoner issued in G.O.(D)No.1121, Home (Prison-IV) Department dated 25.09.2023, is sought to be assailed in the present proceedings. The conviction imposed on the prisoner was confirmed by the Hon'ble Supreme Court of India. Since the convict prisoner completed ten years, submitted an application under the Government policy for premature release issued in G.O.(Ms)No.488, Home (Prison-IV) Department dated 15.11.2021 as amended in G.O.(Ms)No.508, Home (Prison-IV) Department dated 18.11.2021.



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2. The case of the petitioner is that the application seeking premature release in pursuance of the G.O.(Ms)No.488, Home (Prison-IV) Department dated 15.11.2021, was processed by following the due procedures. The State Committee recommended the case of the prisoner on the ground that the prisoner comply with the requirements as contemplated under the said G.O.(Ms)No.488. Recommendation was placed before the Government for taking an appropriate decision. The Government rejected the application mainly on the ground that the nature of offence committed by the life convict prisoner was cruel and brutal.

3. The learned counsel for petitioner Mr.M.Mohamed Saifulla would contend that the said blanket reason would not satisfy the directives issued by the Hon'ble Supreme Court of India. The reason assigned in the impugned Government Order would be insufficient to sustain the order and thus this Court has to interfere.

4. The learned Additional Public Prosecutor Mr.Raj Thilak would oppose by stating that the Government is empowered to exercise its



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discretion to release a prisoner prematurely. The Government considered the recommendations of the State Committee and arrived at a conclusion that it is not desirable to release the convict prisoner in the present case, since the nature of offence committed by the life convict prisoner was cruel and brutal. Such reason satisfies the condition prescribed in para 2(G) of G.O.Ms.No.488 dated 15.11.2021. Thus, the writ petition is to be rejected.

5. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which the decision has been taken by the competent authorities in consonance with the statutes and rules in force, but not the decision itself. We are not in the process of testing the nature of policy of the Government for premature release of convict prisoners. However, in exercise of the powers of judicial review, the High Court has to scrutinize whether the power of discretion has been exercised diligently in compliance with the rules of natural justice or otherwise.

6. No doubt the impugned rejection order, despite the



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recommendations of the State Committee, states that the application for premature release was rejected on the ground that the nature of offence committed by the convict prisoner is cruel and brutal. Whether such reasonings are warranted or not with reference to other similarly placed cases where premature release were considered, are to be looked into by the Government. While considering similar cases, the Government is expected to exercise its discretion uniformly, consistently and without causing any discrimination amongst the life convict prisoners. Therefore, while assigning reasons, if any similar cases are noticed, then the Government has to look into the nature of those offence and its seriousness or heinousness and thereafter take a decision. Mere rejection on the ground that the offence is cruel and brutal, would be insufficient for rejection of the application. While exercising the powers of discretion, the reasonings are to be given. The reasons are lifeline for the decision taken administratively and therefore the Government, while considering the applications along with the recommendations of the State Committee, has to assign proper reasons in each and every case, since the Scheme provides for premature release of convict prisoners on completion of ten years of imprisonment.



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7. It is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of *Joseph v. State of Kerala* reported in *MANU/SC/1049/2023* dated 21.09.2023, wherein the following observations are made:-

“28. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former) and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this Court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this Court's majority judgment in *Sriharan* (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous,



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but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – especially by way of executive instruction, take on such a role, for crimes as it deems fit.”

8. In view of the fact that the case of the convict prisoner in the present case has been recommended by the State Committee and the reasons assigned in the impugned order would be insufficient to satisfy the exercise of the powers of discretion conferred in the Government Order, more specifically in para 2(G) of G.O.(Ms)No.488, we are inclined to remand the matter back to the Government for recirculation and to take a decision by assigning reasons which must be consistent and uniform in the matter of deciding the application seeking premature release by the life convict prisoners. Accordingly, the impugned order in G.O.(D)No.1121, Home (Prison-IV) Department dated 25.09.2023 is quashed and the case is remanded back to the first respondent for the purpose of reconsideration and recirculation and pass appropriate orders on merits and as per the Scheme, as expeditiously as possible and preferably within a period of eight weeks



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from the date of receipt of a copy of this order. The writ petition stands

allowed. No costs.

Index : yes

(S.M.S.,J.)

(V.S.G.,J.)

Neutral citation : yes

09.09.2024

SS

To

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