



W.P(MD) No.13468 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 06.11.2024

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MS.JUSTICE R.POORNIMA**

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Murugan @ Thirumalai Murugan

... Petitioner

Vs.

1.State of Tamil Nadu
Rep. by the Principal Secretary to
Government,
Home (Prison-IV) Department,
Secretariat, Fort St.George,
Chennai-600009.

2.The Director General of Police,
Director General of Prison and
Correctional Service,
Egmore, Chennai-600008.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai-625 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in No.1249, Home (Prison-IV) Department, dated 30.10.2023 and quash the same as illegal and consequently, direct the



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first respondent to treat the petitioner, namely, Murugan @ Thirumalai Murugan S/o.Madasamy (C.P.No.5415) as having become eligible for the premature release by G.O.Ms.No.488, Home (Prison-IV) Department, dated 15.11.2021 and set him liberty forthwith.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The writ petitioner is a life convict incarcerated in Central Prison, Madurai. He applied for premature release in terms of G.O (Ms) No. 488, Home (Prison – IV) Department dated 15.11.2021. His case was recommended by the State Level Committee as he had completed ten years of actual imprisonment as on 15.09.2021. However, rejection order was passed vide G.O (D) No.1249, Home (Prison – IV) Department dated 30.10.2023. Questioning the same, this writ petition has been filed.

2.The learned counsel for the petitioner submitted that the only issue raised in this writ petition is whether the Hon'ble Governor in



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exercise of his power of remission under Article 161 of the Constitution of India can act according to his discretion or whether he is bound by the recommendation made by the State Cabinet. He pointed out that this issue is no longer res integra and is covered by the decision of the Hon'ble Supreme Court reported in **(2023) 8 SCC 257 (A.G.Perarivalan v. State through Superintendent of Police, CBI/SIT/MMDA, Chennai)** and the order dated 17.10.2024 made in **WP No.14908 of 2024 (Veera Bharathi v. the State of Tamil Nadu and ors)** passed by the Hon'ble Division Bench of Madras High Court. It has been held therein that the recommendation made by the council of ministers is binding on the Hon'ble Governor. Since the impugned rejection order runs counter to the ratio laid down in the aforesaid decisions, he called upon this Court to set aside the same.

3.The respondents have filed a detailed counter affidavit and the learned Additional Public Prosecutor took us through its contents. The stand of the respondents is that the facts that led to the conviction of the petitioner cannot be lost sight of.

4.We carefully considered the rival contentions and went through the materials on record. The case against the petitioner was that he



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trespassed into the house of one Ramasamy on 18.11.2010 at 07.45 P.M and inflicted multiple stab injuries on the wife of Ramasamy (Annalakshmi) ; he hit her with a grinder stone and killed her ; he then robbed the gold chain weighing six sovereigns worn by the deceased. In this regard, Crime No.453 of 2010 was registered on the file of the Thalavaipuram Police Station, Virudhunagar District for the offences under Sections 450, 302 and 392 of IPC. Charge sheet was laid and taken on file in P.R.C No.11 of 2011 on the file of the Judicial Magistrate, Rajapalayam. The petitioner was found guilty of the offences with which he was charged vide judgment dated 23.06.2014 in S.C.No.48 of 2011 on the file of the Principal District and Sessions Judge, Virudhunagar, Srivilliputhur and sentenced to undergo life imprisonment for the offence under Section 302 of IPC and 7 years rigorous imprisonment for the offence under Section 392 of IPC. Questioning the same, the petitioner filed CrI.A.(MD) No.21 of 2016 before this Court. The appeal was dismissed on 22.11.2016 and the Judgment of conviction and sentence passed by the trial Court was confirmed.

5. Though the petitioner was convicted for the offences under Sections 392 and 302 of IPC, actually he should have been charged and



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convicted rather for the offences under Sections 392 r/w.397 and 302 of IPC. Section 390 of IPC deals with robbery. Section 391 defines dacoity. Section 392 sets out the punishment for robbery while Section 395 sets out the punishment for dacoity. Section 397 dealing with robbery or dacoity would come into play if the offender uses any deadly weapon. In other words, use of deadly weapon would be an aggravating circumstance and bring the offence of robbery/dacoity simpliciter under Section 397 of IPC. In the case on hand, the petitioner had used knife and inflicted multiple stab injuries on the victim. He had also used the grinder stone to hit her head. It is thus obvious that the petitioner should have been charged not only under Section 392 of IPC but also under Section 397 of IPC along with Sections 450 and 302 of IPC.

6.G.O (Ms) No.488, Home (Prison – IV) Department dated 15.11.2021 clearly states that prisoners convicted for robbery (Sections 397, 398 of IPC) will not be eligible for consideration for premature release. Since in this case the petitioner had been convicted under Section 392 of IPC, the authorities going by the bare provision with which he was charged and eventually convicted, recommended his case for premature release. But the facts obtaining in this case had not



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escaped the vigilant eye of the Office of the Hon'ble Governor. The facts that led to the petitioner's conviction were taken note of. The recommendation made by the council of ministers was not acted upon. The question that calls for consideration is whether the office of the Hon'ble Governor was entitled to do so.

7.In ***A.G.Perarivalan v. State through Superintendent of Police, CBI/SIT/MMDA, Chennai (2023) 8 SCC 257***, it was held that the advice of the State Cabinet is binding on the Governor in exercise of his powers under Article 161 of the Constitution. ***Perarivalan*** was rendered by a three Judges Bench. An earlier five Judges Constitution Bench in ***M.P Special Police Establishment vs. State of M.P (2004) 8 SCC 788*** had held that on those rare occasions where on facts, bias becomes apparent and / or the decision of the council of ministers is shown to be irrational and based on non-consideration of relevant factors, the Governor would be right on the facts of that case, to act in his own discretion. In ***Perarivalan***, the aforesaid Constitution Bench Judgement was held inapplicable because no attempt was made to make out a case of apparent bias of the State Cabinet or the State Cabinet having based its decision on irrelevant considerations.



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8.Veera Bharathi rests on the indisputable premise that the eligibility for premature release of the petitioner therein was not in dispute. The case on hand is different. It is well settled that no prisoner has any absolute right to demand premature release. He can plead his case only with reference to the guidelines formulated by the government. While applying or interpreting the guidelines, one has to go by their spirit and not the apparent tenor of the language. Certain categories of prisoners are declared as ineligible for premature release. It is court's duty to ensure that such ineligible persons do not sneak their way through. In this case, the jurisdictional police erred in not invoking Section 397 of IPC. The same error was carried forward while filing final report. The committal Magistrate as well as the trial Judge could have noted the omission and altered the charge. This failure on the part of the prosecution cannot be taken advantage by the petitioner. That the petitioner used a deadly weapon while committing robbery was a relevant factor which was not taken note of when his case for premature release was recommended and placed before the office of the Hon'ble Governor for orders. The Hon'ble Constitution Bench of the Supreme Court permits the Governor to act in his own discretion when on facts it is apparent that the decision of the council of ministers is based on



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non-consideration of relevant factors. The case on hand is governed by the ratio laid down in ***M.P Special Police Establishment*** and not the one laid down in ***A.G.Perarivalan***.

9.The petitioner has invoked the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. Since we are satisfied that the offence committed by the petitioner falls under the ineligible category for premature release, we sustain the impugned order. We dismiss the writ petition accordingly. No costs.

(G.R.S., J.) & (R.P., J.)
06.11.2024

Index : Yes / No
Internet : Yes / No
SKM

To

- 1.The Principal Secretary to Government,
Home (Prison-IV) Department,
Secretariat, Fort St.George, Chennai-600009.
- 2.The Director General of Police,
Director General of Prison and Correctional Service,
Egmore, Chennai-600008.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai-625 016.



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