



W.P.(MD)No.13237 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
26.02.2024	29.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

W.P.(MD)No.13237 of 2023

L.Omana

... Petitioner

vs.

1.State Rep. by
The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.

2.The Additional Director General of Prison,
CMDA Towers,
Egmore,
Chennai – 600 008.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Mandamus, directing the respondents to effect the premature release of the petitioner's husband, namely, T.Babu, S/o.Thangappan (Convict No.LCVT 8442), aged about 64 years, under the control of the third respondent herein, based on the petitioner's representation, dated 08.02.2023, within the time frame stipulated by this Court.

For Petitioner : Mr.P.Krishnasamy

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

The petitioner herein is the wife of the life convict by name, T.Babu. At present, he is confined at Open Prison and Correctional Home, Nettukaltheri, Kerala State, as LCVT 8442. The grievance of the petitioner, which is exposed in this Writ Petition, seeking Mandamus is in short, her request for premature release of her husband through the representation dated 08.02.2023 addressed to the third respondent not been considered, despite the fact that her husband had served the sentence of more than 19 years and while similarly placed convicts

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were released prematurely based on G.O.Ms.No.1155, Home (Prison - IV) Department, dated 11.09.2008 and G.O.Ms.No.64, Home (Prison - IV) Department, dated 01.02.2018.

2. The respondents through the Deputy Secretary to the Government, Home, Prohibition and Excise Department had filed a counter affidavit narrating the reason why the petitioner's husband not found eligible to get the benefit of the Government Orders issued time to time. Particularly, it is brought out in the counter affidavit that the life convict T.Babu found guilty in two more cases for a term of 5 years with fine (for offences under Sections 459 and 307 I.P.C.) and for term of 7 years with fine (for offences under Section 392 r/w. 397 I.P.C.). The appeal preferred against the conviction and sentence, was dismissed and the Criminal Revision Petition against the concurrent finding of guilty is pending before this Court. Pending disposal of the Revision Petition, the sentence been suspended.

3. While so, when the trial in these two cases were under progress, he got involved in the murder case along with 4 others. Pending trial, he absconded and



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the case against him was split up from the parent case S.C.No.120 of 2000 and tried in split up S.C.No.179 of 2003 after securing him. For the offences under Sections 148, 450, 302 r/w 149 and 307 I.P.C., the trial Court found him guilty and sentenced him to undergo imprisonment for different terms, including imprisonment for life for the charge under Section 302 r/w. 149 IPC. The appeal preferred by the convict also got dismissed. As per the prison records, till the disposal of the appeal, the convict was intermittently in prison. After giving set off for a period of 604 days and taking note of 1063 abscondence, as on 22.09.2023, the life convict had served only 12 years 9 months and 14 days. Further, his conviction in S.C.No.136 of 2001 for the offences under Section 392 r/w 397 I.P.C. and non-payment of fine amount imposed in this case also disentitles him from claiming premature release. It is also contented in the counter affidavit that the claim of the petitioner that her husband had crossed 65 years of age is also not correct to get eligible for premature release. As per the prison record, the convict is only 55 years as on 2023.

4. The learned counsel for the petitioner submitted that the life convict, who was confined in Palayamkottai Central Prison till 25.03.2016 was transferred



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to Nettukaltheri Open Prison and Correctional Home on reciprocal basis as per the orders of Additional Director General of Police and Inspector General of Prisons. The information obtained from the Office of the Superintendent, Open Prison & Correctional Home, Nettukaltheri, reveals that the life convict T.Babu (CP – V /249) has undergone actual imprisonment of 19 years 04 months and 29 days as on 24.08.2023. The Certificate issued to that effect produced before this Court for consideration.

5. The submissions made by the learned counsels considered. The records perused. The husband of the petitioner been convicted in three different cases at three different point of time. His imprisonment at times overlaps. The Certificate alleged to have been issued by Prison Superintendent at Nettukalitheri, Kerala, cannot be relied for the present, since only from 26.03.2016 the convict is in Kerala prison. The actual days of imprisonment in respect of S.C.No.179 of 2003 for which, the said T.Babu convicted for life can be ascertained only from the records maintained by the Palayamkottai Prison. From the details furnished by the parties, it could be easily affirmed that Crime No.326 of 1989 by the Arumanai Police, registered on 06.08.1989 against 5 persons. T.Babu is one



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among them. The final report taken on file by the Sessions Court, Kanniyakumari.

A-1 and A-2 were tried in S.C.No.120 of 2000. Case against the remaining 3 accused got split up, since they were absconding. Later, T.Babu was secured and tried in the split up case S.C.No.179 of 2003. The trial Court convicted him on 31.01.2005 for the offences under Sections 148, 450, 302 r/w 149 and 307 IPC and sentenced him as below:-

Section 148 I.P.C.	Rs.500/- fine. In default, 6 months rigorous imprisonment.
Section 450 I.P.C.	3 years rigorous imprisonment and fine of Rs.100/-, in default, one year rigorous imprisonment.
Section 302 r/w. 149 I.P.C.	Life imprisonment and fine Rs.1000/-. In default, one year rigorous imprisonment.
Section 307 I.P.C	5 years rigorous imprisonment and fine of Rs.1,000/-. In default, one year rigorous imprisonment.

The period of substantive sentence ordered to run concurrently. The period of imprisonment already undergone ordered to be set off under Section 428 of Cr.P.C.

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6. The accused had preferred appeal CrI.A.(MD)No.463 of 2006 before this Court and his sentence was suspended pending appeal. The appeal came up for consideration and dismissed on 15.10.2008. Thereafter, the accused/appellant T.Babu was secured on 04.09.2009 and committed to prison to undergo the remaining period of sentence.

7. In respect of the other two cases referred earlier, the records shows that Crime No.357 of 1984 registered by Kulithurai Police for offence under Section 392 r/w. 397 I.P.C., T.Babu was one of the accused and tried in S.C.No.136 of 2001 by the Assistant Sessions Court, Kulithalai. He was sentenced to undergo 7 years rigorous imprisonment and to pay fine of Rs.100/-, in default, to undergo three months rigorous imprisonment. The period of sentence ordered to run concurrently. The conviction and sentence challenged in C.A.No.312 of 2005 before the Principal Sessions Court, Kanniyakumari. The appeal was dismissed on 06.06.2018. Against the concurrent finding of guilty, the Criminal Revision filed by the accused is pending on the file of High Court Madras (Madurai Bench) in CrI.R.C.(MD)No.649 of 2020. In the Revision, the accused granted suspension of sentence in CrI.M.P.(MD)No.6369 of 2020, dated 28.04.2021.



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8. As far as Crime No.245 of 1988 registered by Kaliyakaviali Police Station for offences under Sections 459 and 307 IPC, the accused T.Babu was tried in S.C.No.151 of 2003 and found guilty by the trial Court, vide judgment dated 11.08.2005. He was sentenced to undergo 5 years rigorous imprisonment each for offences under Section 459 I.P.C. and Section 307 I.P.C. The period of sentence ordered to run concurrently. The appeal preferred by him in C.A.No.233 of 2005 dismissed on 24.01.2011, confirming the trial Court's judgment. Against the concurrent finding, the accused had preferred Criminal Revision in CrI.R.C. (MD)No.652 of 2020 before the Madras High Court Madurai Bench and the same is pending. In this case also, the accused granted suspension of sentence, vide order dated 28.04.2021 in CrI.M.P.(MD)No.6486 of 2020.

9. Thus, the records shows that the husband of the petitioner still not served the sentences in other two cases in view of the pendency of criminal revision and suspension of sentence imposed. In S.C.No.179 of 2003, for which, he is sentenced to life imprisonment, he had been in prison only for 604 days till 04.09.2009, the date on which, he was committed to the prison after dismissal of his appeal in CrI.A.(MD)No.463 of 2006, dated 15.10.2008.



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10. Therefore, the contention of the petitioner that her husband has already served more than 19 years of imprisonment and so entitle for the premature release is not supported by records. The convicts referred in the Writ Petition to claim parity on facts fall under different footing. Till the life convict T.Babu fall within the zone of consideration as per the remission Government Orders issued, he cannot claim premature release as a matter of right. He cannot also claim the period of imprisonment in different cases to be added to the period of sentence in the case for which, he is undergoing life sentence. Each case is distinct and clubbing together for reckoning the period of imprisonment is not permissible.

11. To conclude, this Court is of the view that it is profitable to extract the Government Order in G.O.(Ms)No.64, dated 01.02.2018 and the scheme framed there-under for premature for premature release in G.O.(Ms)No.302, dated 03.05.2018. The scheme framed under G.O.(Ms)No.302, dated 03.05.2018, is based on the judgment rendered by the Hon'ble Supreme Court in **Epuru Sudhakar and others vs. Government of A.P. and others [2006 (8) SCC 161]** and the earlier judgments of the Hon'ble Supreme Court on this subject, which reads as follows:-



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(II) The life convicts who have completed 10 years of actual imprisonment as on 25.2.2018 including those who were originally sentenced to death by the Trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to satisfaction of the following conditions:-

(1) The prisoner's behavior should be satisfactory

(2) Prisoners convicted for the following offences are ineligible for consideration for 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 namely:-

(A) Prisoners convicted for the following offences, namely:-

(i) Rape (Section 376 of IPC)

(ii) forgery (Section 467, 471 of IPC)



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(iii) robbery (Section 397, 398 of IPC)

(iv) dacoity (Section 396, 397, 398, 399, 400, 402 of IPC)

(v) terrorist crimes

(vi) offences against the State

(vii) offences under sections 153-A, 153-AA and 153B of IPC

(viii) Escape or attempting to escape from lawful custody (except overstayl of parole leave only)

(ix) Forgery/Counterfeit of currency notes or bank notes / Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes (Section 472, 474, 489A, 489B and 489D of IPC)

(x) Cruelty against women or dowry death (section 498A and 304 B of IPC)

(xi) Economic offences, black marketing, smuggling or misuse of power and authority.



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(xii) Selling illicit arrack mixed with poisonous substances.

(xiii) Habitual Forest offenders who are responsible for disturbing the ecological balance.

(B) Prisoners convicted and sentenced under the following Central Acts of offences, which relates to matters to which the executive power of the Union of India extends, namely:-

(a) The Prevention of Corruption Act, 1988 (Central Act 49 of 1988)

(b) The Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956)

(c) The Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940); The Drugs (Control) Act, 1949 (Tamil Nadu Act XXX of 1949); the Dangerous Drugs Act 1930 (Central Act II of 1930); The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954, (Central Act 21 of



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1954); or *The Prevention of Food Adulteration Act, 1954*
(Central Act 37 of 1954)

(3) *That their cases should not come under Section 435 of Code of Criminal Procedure.*

(4) *That there is safety for the prisoner's life, if released.*

(5) *That the prisoner will be accepted by the members of their family.*

(6) *That there is safety of life of the family which was affected by the prisoner, if released.*

(7) *That the prisoner will execute the Bonds as per usual terms and conditions.*

(III) *The life convict prisoners who have completed 20 years of their actual imprisonment as on 25.2.2018 may be considered for premature release, subject to the satisfaction of following conditions:-*



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(1) Prisoners convicted for the following offences are ineligible for consideration for 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 namely;

(A) Prisoners convicted for the following offences, namely;-

(i) Rape (Section 376 of IPC)

(ii) terrorist crimes

(iii) offences against the State

(iv) offences under section 153-A, 153-AA and 153 B of IPC.

(v) Forgery/Counterfeit of currency notes or bank notes / Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes (Section 472, 474, 489A, 489B and 489D of IPC)

(vi) Cruelty against women or dowry death, (Section 498A and 304 B of IPC)



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(vii) Economic offences, black marketing, smuggling or misuse of power and authority.

(viii) selling illicit arrack mixed with poisonous substances.

(ix) Habitual forest offenders who are responsible for disturbing the ecological balance.

(B) The conditions prescribed in guideline II (2) (B) above.

(2) The Prisoner's behavior should be satisfactory.

(3) That their cases should not come under section 435 of Code of Criminal procedure.

(4) That there is safety for the prisoner's life, if released.

(5) That the prisoner will be accepted by the members of their family

(6) That there is safety of life of the family which was affected by the prisoner, if released and



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(7) That the prisoner will execute the Bonds as per usual terms and conditions.

(IV) The Life convict prisoners of the following categories of medical infirmities may be considered for premature release based on the State Medical Board report;-

(a) In all cases of complete and incurable blindness not caused by any act of the prisoner in order to procure release or of decrepitude or other incurable infirmities, which incapacitate a prisoner from commission of any further crime.

(b) Prisoner who are dangerously ill and will be so aggravated by further imprisonment as to render his/her early death likely and the prisoner will have a reasonable chance of recovery, if released.

(c) Prisoner is in danger of death from sickness, that there is no hope of recovery within or without the prison.



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(V) The above cases shall be examined with reference to the above guidelines on a case to case basis.

(VI) This general amnesty is applicable to the life convict prisoners who have been convicted by the Court of criminal jurisdiction of the State of Tamil Nadu and are now undergoing their sentence in the prisons of other States/Union Territories on reciprocal basis. However, this order shall not be applicable to those prisoners who have been convicted by Court of criminal jurisdiction of other States / Union Territories / Other Countries but undergoing imprisonment in this State.

(VII) The granting of premature release of the prisoner is a onetime affair in commemoration of Birthday centenary celebration of Bharat Ratna, Puratchi Thalaivar Dr.M.G. Ramachandran, former Chief Minister of Tamil Nadu and it



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is applicable to those who are eligible as on 25.02.2018 and it shall not be extended later on to the persons who fulfill all the conditions stipulated in the Government Orders on a later date.

(VIII) The life imprisonment prisoners cannot claim premature release as a matter of right."

12. As discussed above, when the case of the petitioner's husband is tested with the guidelines framed by the Government of Tamil Nadu, it is clear that he falls short of the eligible condition on the date when the representation was made.

13. For the reasons stated above, this Court finds no merit in this Writ Petition. Hence, this Writ Petition is dismissed. No costs. The dismissal of this Writ Petition shall not preclude the convict to seek for premature release by furnishing particulars, if he satisfies the required preconditions for considering premature release as per the Government Orders in force.

Index : Yes
NCC : Yes / No

[G.J., J.] & [C.K., J.]
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To

- 1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.
- 2.The Additional Director General of Prison,
CMDA Towers,
Egmore,
Chennai – 600 008.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY ORDER MADE IN
W.P.(MD)No.13237 of 2023

29.02.2024

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