



W.P.(MD).No.18702 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN  
AND  
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.P.(MD).No.18702 of 2023

Thavamani

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,  
Represented by,  
The Additional Chief Secretary to Government,  
Home (Prison-IV) Department,  
State of Tamil Nadu,  
Secretariat, St.George Fort,  
Chennai – 9.
- 2.The Additional Director General of Police /  
Inspector General of Prisons,  
C.M.D.A. Towers II,  
No.1, Gandhi Irvin Road,  
Egmore, Chennai - 8.
- 3.The Deputy Inspector General of Prison,  
Office of the Deputy Inspector General of Prison,  
Madurai Division,  
Madurai Central Prison Campus,  
Madurai - 16.
- 4.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

.. Respondents



W.P.(MD).No.18702 of 2023

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records connected with the impugned order G.O.(D)No.1025 dated 21.07.2022 issued by the Respondent No.1 and quash the same as illegal, consequently to direct to respondents to release the petitioner's husband by name Udayali, son of Subramani, aged about 52 years now lodged and confined at Central Prison, Madurai have completed the more than 22 years of actual sentence on the basis of the humanitarian ground in Government Order M.S.No.428 (Prison Department) dated 29.07.2011 and in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.S.Ravi  
Additional Public Prosecutor

### **ORDER**

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

The present Writ Petition is filed by the wife of the life convict prisoner, namely, Udayali, challenging the impugned order in G.O.(D)No.1025 dated 21.07.2022 issued by the first respondent and consequently, direct the respondents to release the petitioner's husband prematurely.



W.P.(MD).No.18702 of 2023

2. The impugned order reveals that the petitioner's husband, Udayali, was convicted and sentenced to undergo life imprisonment for the offence under Section 302 IPC and for the offence under Section 376(1) of IPC, separately. The Trial Court has ordered the sentence to run concurrently. On appeal, the conviction and sentence was confirmed by the High Court vide order dated 24.06.2004. For more than 20 years, he has been in confinement. Earlier, when he was released on emergency leave, he overstayed and was thereafter secured. The petitioner's application for premature release of her husband was not considered favourably for the following reasons:

*a) The life convict prisoner No.3388, Udaiyali, son of Subramania Gounder, Confined in Central Prison, Madurai has been convicted and sentenced to undergo life Imprisonment both under Section 376 (1) of IPC and under Section 302 of IPC, separately and they have been ordered to run concurrently. Hence he is ineligible for consideration as per para 5 (III) 1 (A) (i) of G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018.*

*b) His case cannot be compared with the case of the life convict prisoner No.3746, Raju @ Subburaj, then confined in Central Prison, Madurai, considering his conviction under the*



W.P.(MD).No.18702 of 2023

*respective sections of the Indian Penal Code with that of the conviction and sentence of the petitioner husband.*

*c) As per the Supreme Court directions in Mariammal Vs. State of Tamil Nadu in Criminal Appeal No.865/2016, dated 08.09.2016, the Government had framed a revised guidelines for considering the cases of life convict prisoners on premature release invoking the power conferred by Article 161 of the Constitution of India in G.O.Ms.No.64, Home (Prison-IV) Department, dated 01.02.2018 and therefore the instructions issued in letter(Ms) No.1358, Home Department, dated 10.11.1994 has no force and applicability in this case now.”*

3. The learned counsel appearing for the petitioner submits that the petitioner's husband had been in prison for more than 22 years and in a similar case, the Government has considered sympathetically and released the convict and therefore, on parity, the petitioner's husband should also be released prematurely. In support of his submission, he refers to G.O. (Ms).No.428, Home (Prison-IV) Department, dated 29.07.2011, a premature release order issued by the Government in favour of Life Convict No.3746, Raju @ Subburaj, who was convicted for the offences under Section 302, 376 and 417 IPC and sentenced to undergo life imprisonment and ten years and six months of rigorous imprisonment.



W.P.(MD).No.18702 of 2023

4. The learned Additional Public Prosecutor appearing for the respondents has filed a detailed counter through the Deputy Secretary to Government, Home Department, Secretariat, Chennai – 600 009, wherein, he has narrated the march of law of premature release of life convicts and the directions of the Courts. The sum and substance of the counter is that as far as the offence under Section 376 IPC, the convicts are not eligible for any premature release. Further, in this case, the victim was 11 years old child, who was raped and murdered. Hence, for distinct offence, two life sentences were imposed and ordered to run concurrently. The premature release order issued in the year 2011 cannot be a precedent or reason to draw parity, since the policy decision has been changed pursuant to the directions of the Hon'ble Supreme Court in ***Mariammal Vs. State of Tamil Nadu*** in Criminal Appeal No.865 of 2016 dated 08.09.2016 and the Government has framed a revised guidelines for considering the cases of life convict prisoners on premature release invoking the power conferred under Article 161 of the Constitution of India.

5. It is not necessary to extract all the judgments cited in the counter and the law, which prevails as on date. It is suffice to state that unless and until the petitioner's husband is found eligible for consideration, the



W.P.(MD).No.18702 of 2023

petitioner's request for premature release based on the Government Orders cannot be entertained. The prison authorities had rightly declined to entertain the application for premature release based on the facts and law.

6. G.O.(Ms).No.596, Home (Prison-IV) Department dated 24.11.2023, which is latest in the line, issued by the Government of Tamil Nadu pursuant to the directions of the Hon'ble Supreme Court in the case of *Sonadhar Vs. State of Chhatishgarh*, makes it very clear that the periodical reference to the committee for premature release shall be only in respect of eligible convicts identified by the prison authorities and not for all. As long as the petitioner's husband falls within the zone of consideration of eligible convicts, the request for premature release cannot be entertained and hence, the impugned order is hereby upheld.

7. With the above observations, the Writ Petition stands dismissed.

There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)  
22.02.2024

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
Lm



W.P.(MD).No.18702 of 2023

WEB COPY

To

1. The Additional Chief Secretary to Government,  
Home (Prison-IV) Department,  
State of Tamil Nadu,  
Secretariat,  
St. George Fort,  
Chennai – 9.
2. The Additional Director General of Police /  
Inspector General of Prisons,  
C.M.D.A. Towers II,  
No.1, Gandhi Irvin Road,  
Egmore, Chennai - 8.
3. The Deputy Inspector General of Prison,  
Office of the Deputy Inspector General of Prison,  
Madurai Division,  
Madurai Central Prison Campus,  
Madurai - 16.
4. The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.
5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*W.P.(MD).No.18702 of 2023*

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

Lm

W.P.(MD).No.18702 of 2023

22.02.2024