



W.P.(MD).No.23234 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.02.2024

CORAM

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

W.P.(MD).No.23234 of 2023
and
W.M.P.(MD).No.22177 of 2023

Seetharaman

.. Petitioner

Vs.

1.The State of Tamil Nadu, Represented by
The Additional Chief Secretary to Government,
Home (Prison-IV) Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Additional Director General of Police,
Inspector General of Prison,
No.1, Gandhi Irwin Salai,
Egmore,
Chennai – 600 008.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 1st respondent in G.O.(D) No.1064 Home (Prison-IV) Department dated 08.09.2023 and quash the same as illegal and direct the 1st respondent to release the petitioner's son namely Muthukrishnan, S/o.Seetharaman, C.P.No.4399, from the 3rd respondent prison.

For Petitioner : M/s.S.Prabha
For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the life convict, by name, Muthukrishnan. An application was made to the prison authorities seeking to consider the petitioner's son for premature release based on G.O.(Ms).No. 488, Home (Prison-IV) Department, dated 15.11.2021. Though the State Level Committee constituted under G.O.(Ms).No.302 dated 03.05.2018 has recommended for premature release, the State through the Governor thought that it is not a fit case to exercise power under Article 161 of the



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Constitution of India to release the life convict prematurely. The reason for rejection is reflected in the impugned G.O.(D)No.1064, Home (Prison-IV) Department, dated 08.09.2023.

2. Challenging the said Government Order, the present Writ Petition is filed on the ground that the impugned G.O. proceeds with arbitrariness and non-application of mind besides bereft of reasoning. Hence, the learned counsel for the petitioner prayed for judicial review of the impugned order.

3. The learned counsel for the petitioner submits that the impugned order, which states that the remission would be premature and prejudicial to justice, does not carry any merit or reasoning and therefore, in the light of catena of judgments rendered by the Hon'ble Supreme Court and this Court, the impugned order has to be interfered with and the petitioner's son has to be released prematurely.

4. The learned Additional Public Prosecutor appearing for the respondents has filed a detailed counter, stating as to how and why the



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request for premature release based on G.O.(Ms)No.488, Home (Prison-IV) Department, dated 15.11.2021 is not applicable to the life convict. It is also submitted that apart from the sentence of life imprisonment in Crime No.427 of 2000 on the file of Rajapalayam (North) Police Station, the life convict also suffers conviction in Crime No.513 of 1999 on the file of the same Police Station, wherein, the sentence of seven years rigorous imprisonment was imposed by the Trial Court in S.C.No.55 of 2001 dated 06.06.2006, which was later modified to 40 months of rigorous imprisonment by the High Court in Crl.A.(MD).No.22 of 2009 dated 21.07.2009. Further, the learned Additional Public Prosecutor would submit that the antecedents of the convict, who overstayed the emergency leave for more than five years has been taken note of while considering the request for premature release.

5. The point for consideration in this case is whether the impugned order passed by the Executive in exercise of the power under Article 161 of the Constitution of India, is liable to be interfered with by the Judiciary in exercise of the power of judicial review of an executive order as per the



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guidelines laid down in the case of ***Epuru Sudhakar and another Vs. Government of Andhra Pradesh and others reported in (2006) 8 SCC 161.***

The test for judicial review of an order passed by the Governor under Article 161 of the Constitution of India shall be as under:

“(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness.”

6. The impugned order while scrutinised in the light of the above guidelines, this Court finds no grounds to exercise the power of judicial review, since the impugned order does not indicate any non-application of mind or mala fide. There is no extraneous consideration *ex facie* seen. All the relevant materials are considered and the same has been reflected in the impugned order, which reads as follows:



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“3. In the proposal second read above, the Director General of Police and Director General of Prisons and Correctional Services has stated that the Life Convict Prisoner No.4399, Muthukrishnan, son of Seetharaman, confined in Central Prison, Madurai was concerned in Rajapalayam (N) Police Station Crime No.427/2000 Principal Sessions Judge, Srivilliputhur in Session Case No.21 of 2002, dated 25.02.2005 and sentenced to undergo imprisonment for life under section 302 of the Indian Penal Code and fine of Rs.1000/- in default rigorous imprisonment for 1 year and the conviction and sentence was confirmed in C.A.No.60 of 2007 dated 14.11.2007 by the Hon'ble Madurai Bench of Madras High Court. He was also concerned in Rajapalayam (N) Police Station Crime No. 513/1999 sentenced to undergo rigorous imprisonment of 7 years by the Additional Sessions Judge, Srivilliputhur in Session Case No.55 of 2001, dated 06.06.2006 under section 394 of the Indian Penal Code. On appeal, the sentence was modified to rigorous imprisonment for 40 months instead of 7 years by the Principal Sessions Court, Srivilliputhur in Criminal Appeal (MD) No.22 of 2009, dated 21.07.2009. The above sentence was ordered to run concurrently with the sentences imposed in Criminal Appeal No.60 of 2007 in Criminal Original Petition (MD) No.15728 of 2020, dated 22.01.2021 by the Madurai Bench of Madras High Court.



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4. The Government have examined proposal of the Director General of Police and Director General of Prisons and Correctional Services along with relevant records wherein the State Level Committee has recommended for the premature release of the Life Convict Prisoner No.4399, Muthukrishnan, son of Seetharaman, confined in Central Prison, Madurai. In this case, the Life Convict Prisoner No.4399, Muthukrishnan, son of Seetharaman, confined in Central Prison, Madurai was concerned in Rajapalayam (N) Police Station Crime No. 427/2000 Principal Sessions Judge, Srivilliputhur in Session Case No.21 of 2002, dated 25.02.2005 and sentenced to undergo imprisonment for life under section 302 of the Indian Penal Code and fine of Rs.1000/- in default rigorous imprisonment for 1 year and Rajapalayam (N) Police Station Crime No.513/1999 Additional Sessions Judge, Srivilliputhur in Session Case No.55 of 2001, dated 06.06.2006 under section 394 of the Indian Penal Code rigorous imprisonment for 7 years and the sentences were ordered to run concurrently for murdering in which the convict alongwith one another murdered one Rajendran by stabbing him with knife due to enmity arising out of frequent quarrelling of the deceased with his wife Selvi suspecting fidelity who is the cousin sister of the convict and another case is of attempt to commit robbery in



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which the convict attempted to snatch a money bag containing Rs.4,25,000/- from one Jayakumar respectively.

5.The Government have decided to reject the recommendation of the State Level Committee for the premature release of the Life Convict Prisoner No.4399, Muthukrishnan, son of Seetharaman, confined in Central Prison, Madurai and order accordingly, for the reason that the Remission would be pre-mature and Pre-Judicial to justice.”

7. At this juncture, the learned counsel appearing for the petitioner submits that as on date, the convict has completed 14 years of imprisonment and therefore, the request for premature release may be re-considered.

8. This Court is of the view that the request for premature release made earlier and rejected, need not be revived, since two other Government Orders regarding remission have been passed subsequently by the Government and any request for premature release shall be in consonance with the latest G.O. issued by the Government. If the convict is eligible and entitled for such a premature release, he can make a fresh representation to the Government and the same shall be considered by the respondents on



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merits and in accordance with law and disposed of within a period of eight (8) weeks from the date of receipt of the fresh representation.

9. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
29.02.2024

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

To

1.The Additional Chief Secretary to Government,
The State of Tamil Nadu,
Home (Prison-IV) Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Additional Director General of Police,
Inspector General of Prison,
No.1, Gandhi Irwin Salai,
Egmore,
Chennai – 600 008.



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3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
C.KUMARAPPAN,J.

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