



W.P.(MD) No.28524 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.P.(MD) No.28524 of 2023

and

W.M.P.(MD) No.24586 of 2023

Dinesh @ Dineshkumar

... Petitioner

-VS-

1.State of Tamil Nadu
rep.by the Principal Secretary to Government
Home (Prison-IV) Department
Secretariat, Fort St.George
Chennai-600 009

2.The Director General of Police /
Director General of Prison and
Correctional Service
Egmore, Chennai-600 008

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

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the first respondent in G.O.(D) No.1202, Home (Prison-IV) Department, dated 17.10.2023 and quash the same as illegal and consequently direct the first respondent to treat the petitioner, namely, Dinesh @ Dineshkumar, son of Ganesan (C.P.No.5204) 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.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner *viz.*, Dinesh @ Dineshkumar, (C.P.No.5204) has filed this writ petition seeking to quash the impugned order in G.O.(D) No. 1202, Home (Prison-IV) Department, dated 17.10.2023, passed by the first respondent and to direct the first respondent to release him prematurely based on G.O.(Ms) No.488, dated 15.11.2021.



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2. It is the case of the petitioner that he is a life convict and he is lodged in the Central Prison. Since he is duly eligible for premature release based on G.O.(Ms) No.488, dated 15.11.2021, the third respondent had recommended the case of the petitioner for premature release to the State Level Committee and the State Level Committee had also recommended the case of the petitioner for premature release to the second respondent and the second respondent had also sent a proposal in this regard to the first respondent. However, the first respondent, by the impugned order dated 17.10.2023, has rejected the plea of premature release, on the ground that the petitioner has not served fourteen years of imprisonment.

3. Learned counsel for the petitioner would submit that the impugned order has clearly proceeded on the basis that premature release has been sought on the basis of G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, whereas it has been sought *vide* G.O.(Ms) No.488, dated 15.11.2021. Therefore, the impugned order calls for interference of this Court.

4. To be noted, Condition No.2(I) in G.O.(Ms) No.64 Home (Prison-IV) Department, dated 01.02.2018, reads as follows:



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“2.....

(I) Section 433-A of the Code of Criminal Procedure which is deals with Restriction on powers of remission or commutation in certain cases reads as follows:-

'Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.'

whereas condition No.2(A) in G.O.(Ms) No.488 Home (Prison-IV) Department dated 15.11.2021 reads as follows:

“2.....

(A) The life convicts who have completed 10 years of actual imprisonment as on 15.09.2021 including those who were originally sentenced to death by the Trial Court and modified to life imprisonment by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to the satisfaction of the following conditions:-



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(i) The prisoner's behaviour should be satisfactory.

(ii) 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 offences, namely:-

- (1) Rape (Section 376 of IPC)*
- (2) Forgery (Sections 467, 471 of IPC)*
- (3) Robbery (Sections 397, 398 of IPC)*
- (4) Dacoity (Sections 396, 397, 398, 399, 400, 402 of IPC)*
- (5) Terrorist crimes*
- (6) Offences against the State*
- (7) Offences under sections 153-A, 153-AA and 153-B of IPC*
- (8) Escape or attempting to escape from lawful custody under section 224 of IPC (except over stayal of emergency/ordinary leave only)*
- (9) Forgery/Counterfeit of currency notes or bank notes/Making or possessing instruments or materials for forging or counterfeiting currency notes (or) bank notes (sections 472, 474, 489A, 489B and 489D of IPC)*
- (10) Cruelty against Women (Section 498A of IPC) / Dowry death (Section 304 B of IPC)*
- (11) Economic offences, black-marketing, smuggling or misuse of power and authority*



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- (12) *Selling illicit arrack mixed with poisonous substances.*
- (13) *Habitual Forest offenders who are responsible for disturbing the ecological balance.*
- (14) *Prisoners convicted for more than one murder and their Life sentences ordered to run concurrently.*
- (15) *Violence on Communal/Religious basis.*
- (16) *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 1954); the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).*



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(17) Prisoners who have pending cases (other than their criminal appeals pending against their conviction).

(iii) That their cases should not come under section 435 of the Code of Criminal Procedure;

(iv) That there is safety for the prisoner's life, if released;

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

(vi) That there is safety of life of the family which was affected by the prison, if released.”

5. Learned counsel for the petitioner drew the attention of this Court to Paragraph No.5 of the impugned order, which reads as follows:

“Accordingly, the Government have decided to reject the case of the Life Convict Prisoner No.5204, Dinesh @ Dinesh Kumar, son of Ganesan, confined in Central Prison, Madurai, for premature release in view of the condition prescribed in para 2(G) of G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 and for the reason that it is a pre-meditated heinous murder of woman and the convict has not served 14 years imprisonment in prison and hence his remission at this stage would be premature.”



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6. Heard the learned Additional Public Prosecutor appearing for the respondents on the above submissions.

7. We have perused G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018 and G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021 and the impugned order passed by the first respondent. A careful analysis of the same would show that the impugned order has been passed on the basis that the convict prisoner has not completed fourteen years of imprisonment, rather, completion of ten years of imprisonment would suffice as per G.O.(Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021, more particularly, *vide* Paragraph No.2(A), as extracted above. In other words, the impugned order has been made on the erroneous assumption that the convict prisoner has sought for premature release based on G.O.(Ms) No.64, Home (Prison-IV) Department, dated 01.02.2018, which prescribes fourteen years of imprisonment as the requirement to be eligible for being considered for premature release.

8. Taking into consideration the above facts and circumstances of case, without going into the merits of the matter, we are inclined to pass the following orders:



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- (i) The impugned order in G.O.(D) No.1202, Home (Prison-IV) Department, dated 17.10.2023, passed by the first respondent, is set aside;
- (ii) The matter is remitted back to the first respondent for fresh consideration on merits, by applying G.O. (Ms) No.488, Home (Prison-IV) Department, dated 15.11.2021;
- (iii) The above exercise shall be completed as expeditiously as possible.
- (iv) If any corrigendum has been issued in respect of the impugned order, it is open to the first respondent to communicate the same to the petitioner / convict prisoner, under due acknowledgment forthwith.
- (v) If there is no corrigendum and if the above mentioned exercise is embarked upon, the culmination of exercise shall be communicated to the petitioner / convict prisoner under due acknowledgement, within seven working days from the date of disposal.



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9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.]

[K.R.S., J.]

01.08.2024

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

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To:

- 1.The Principal Secretary to Government,
Home (Prison-IV) Department,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Director General of Police /
Director General of Prison and
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