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W.P.No.34005 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.34005 of 2024

and

W.M.P.No.36823 of 2024

M.Veeran @ Venkatesan

... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police and
Director General of Prisons & Correctional Service,
Whannels Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
Central Prison,
Cuddalore - 4.

... 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 in the order bearing No.in with order in G.O.(D).No.1153, Home (Prison - IVA) Department dated 26.09.2024 passed by the first respondent and quash the same and direct the respondents to release the petitioner namely M.Veeran @ Venkatesan, S/o. Munusamy, aged 44 years, Life Convict Ct.No.14168, now confined at Central Prison, Cuddalore immediately under G.O.(Ms.) No.430, Home (Prison - IV) Department dated 11.08.2023.

For Petitioner : Mr.P.Pugalenth
For Respondents : Mr. R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by the Hon'ble *S.M.SUBRAMANIAM, J.*)

The writ on hand has been instituted to set aside the Government Order issued in G.O.(D).No.1153, Home (Prison - IVA) Department dated 26.09.2024 passed by the first respondent and further direct the respondents to release the petitioner viz., M.Veeran @ Venkatesan, S/o. Munusamy, aged 44 years, Life Convict Ct.No.14168, now confined at Central Prison, Cuddalore.



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2. The petitioner/convict prisoner was involved in the murder of his wife and relative. After trial, the trial court in S.C.No.297 of 2010 on the file of the Principal District Court, Villupuram District convicted the prisoner under Section 302 I.P.C (Two Counts) and sentenced to life imprisonment. Both the life sentences be ordered to run concurrently. The trial court further ordered that the imprisonment for life and directed that the petitioner/convict prisoner shall not be released from prison till the rest of his life. The petitioner/convict prisoner filed Crl.A.No.305 of 2022 before the High Court and the order of the trial court was set aside by the High Court on 23.02.2024. The relevant portion of the appellate order passed by the Division Bench of the High Court reads as under:

"15. The trial court therefore, has no power to sentence the appellant to life imprisonment with a condition that he shall not be released till his last breath. Hence, we aside the portion of the finding of the learned Trial Judge which directs that the appellant shall not be released till his last breath. While doing, we are also conscious of the fact that this is a case based on circumstantial evidence and the nature of the evidence would also be a factor in deciding the question of sentence. Considering the nature of the evidence we are of the view that the interest of justice would be served if the appellant is sentence to life imprisonment.

16. Except the above modification, the judgment of conviction and sentence made in S.C.No.297 of 2010 dated 08.10.2010, on the file of the learned Principal Sessions, Judge, Villupuram, is confirmed. The Criminal Appeal stands partly allowed."



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3. The petitioner filed an application seeking premature release under the scheme approved by the Government in G.O.(Ms)No.430, Home (Prison - IV) Department dated 11.08.2023. The basic criteria to consider the application seeking premature release under G.O.(Ms).No.430 is that the prisoner should have completed 14 years of actual imprisonment as on 15.09.2023 as per paragraph No.5(I) of G.O.(Ms).No.430.

4. The case of the petitioner was scrutinised by the Government and rejected on the ground that the life convict prisoner has completed 12 years 11 months and 07 days of actual imprisonment as on 15.09.2023. Since he has not fulfilled the basic criteria of completion of 14 years of actual imprisonment as on 15.09.2023, he is not eligible for consideration of premature release.

5. Mr.P.Pugalenth, the learned Counsel for the petitioner would mainly contend that the petitioner/convict prisoner was in actual imprisonment for about 14 years. The Superintendent of Prisons, Central Prison, Cuddalore issued a Certificate stating that the petitioner/convict



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prisoner was undergoing imprisonment in prison as remand prisoner from 22.07.2009 to 07.10.2010 (443 days).

6. The period spent as remand prisoner inside the prison is also to be reckoned as qualifying period for the purpose of considering the application seeking premature release. Therefore, the Government Order is perverse and to be set aside.

7. Mr.R.Muniyapparaj, the learned Additional Public Prosecutor appearing on behalf of the respondent would oppose by stating that the period of qualifying imprisonment was reckoned from the date of conviction and the period spent as remand prisoner was not taken into account, since there is no order passed by the trial court to that effect. Thus, the Government order is in consonance with the scheme and the writ petition is to be rejected.

8. Section 428 of Criminal Procedure Code (Section 468 of Bharatiya Nagarik Suraksha Sanhita, 2023) stipulates period of detention



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undergone by the accused to be set off against the sentence of imprisonment.

Accordingly, where an accused person has, on conviction, been sentenced to imprisonment for a term (not being imprisonment in default of payment of fine) the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

9. The benefit of set off has not been extended to the petitioner in the present case. Therefore, the impugned Government Order is perverse. The order of the trial court cannot be relied upon by the Government for the purpose of reckoning the period, since the trial court order has already been modified. The order passed in criminal appeal was not taken into consideration by the Government with reference to Section 428 of Cr.P.C. Therefore, the calculation of period of actual imprisonment made in Government Order is not in conformity with the provisions. Therefore, the writ petition is to be considered.



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10. Right to liberty is a fundamental right and the beneficial provisions under the code is to be extended in its letters and spirit.

Admittedly, the sentence to undergo till the rest of the life of the convict prisoner was modified by the High Court as stated above. Therefore, the period of actual imprisonment cannot be calculated based on the judgment of the trial court. The trial court judgment since modified by the High Court, the benefit of Section 428 Cr.P.C. is to be extended to the convict prisoner in the present case. The period spent as a remand prisoner is also to be taken into consideration for reckoning the total qualifying services for premature release of the prisoner under the scheme approved in G.O.(Ms).No.430.

11. In the present case, the Government has not considered the order passed by the Division Bench in the criminal appeal. Thus, the matter requires fresh consideration from the hands of the Government. The Superintendent of Prison, Cuddalore issued a certificate stating that the petitioner was in actual imprisonment for about 443 days as remand prisoner. Therefore, the said period is also should be taken into consideration for the purpose of calculating the total period of actual



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imprisonment to consider the application submitted by the prisoner seeking premature release in terms of G.O.(Ms.) No.430.

12. In view of the facts and circumstances, the impugned order of rejection passed by the Government in G.O.(D).No.1153, Home (Prison - IVA) Department dated 26.09.2024 is set aside. The matter is remanded back to the first respondent for fresh consideration of the facts with reference to the order of the Hon'ble Division Bench of High Court of Madras in CrI.A.No.305 of 2022 dated 23.02.2024, by extending the benefit of set off as contemplated under Section 428 of Cr.P.C (Section 468 of B.N.S.S.). The said exercise is directed to be completed within a period of six (6) weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [M.J.R., J.]
27.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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2. The Director General of Police and
Director General of Prisons & Correctional Service,
Whannels Road,
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3. The Superintendent of Prison,
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Cuddalore - 4.
4. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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