

(1989) 02 MAD CK 0041
In the Madras High Court
Case No : Writ Petition No 9692 of 1988

K. Selvam

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 22-02-1989

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1989) LW(Cri) 97

Hon'ble Judges : S. Mohan, O.C.J.; Venkataswami, J

Bench : Division Bench

Advocate : R. Gandhi for M/s. N. Paul Vasanthakumar, M.N. Mohamed Ali, K. Ravichandrababu and T.S. Sivagnanam, for the Appellant; A.N. Rajan, for the Respondent

Judgement

Venkataswami, J.—This writ petition is filed by the daughter of a life convict for the issue of a writ of habeas corpus to release her father one Kochumani prematurely in view of the circumstances stated in the affidavit.

2. The facts as admitted in the counter-affidavit filed on behalf of the Respondents are given below. The life convict No. 7128 by name Kochumani was convicted under Ss. 302 and 201 of the Indian Penal Code in Sessions Case No. 14 of 1972, on the file of the court of Sessions Judge, Kanyakumari at Nagarcoil and sentenced to imprisonment for life and rigorous imprisonment for three years on 30-9-1972. The said conviction and sentence were confirmed by this Court in Criminal Appeal No. 894 of 1972 dated 17-7-1973. As on 12-9-1988, the said convict has undergone 16 years, 17 days of actual sentence including the remand period of 4 months and 8 days. His case for premature release was placed before the Advisory Board for consideration so far on three occasions. On the first occasion, the Advisory Board, by proceedings dated 17-11-1982, did not recommend the premature release. Hence the Government in G.O. Rt. No. 2236 Home dt. 17-5-1983, ordered re-submission of the records after one year. On the second occasion, the Advisory Board, by proceedings dated 17-9-1984,

recommended the premature release of the convict. Notwithstanding that, the Government again ordered for re-submission of the case after two years by G.O. Rt. 215, Home, dated 11-1-1985. On the third occasion, the Government called for the reports of the Probation Officer and the Collector for placing the same before the Advisory Board. After considering the relevant reports, the Advisory Board again recommended on 28-8-1987 for the premature release of the prisoner. Nevertheless, the Government by G.O. Rt No. 2958, Home, dated 17-8-1988 again ordered for re-submission of the case after one year. It is under these circumstances, the present writ petition came to be filed.

3. In obedience to the Rule Nisi, the file relating to the convict has been produced before us. We have carefully gone through the file. It is seen from the file that all the authorities concerned except the Collector have recommended for the premature release of the convict. There is a reference in the file about the Collector's report recommending against the release of the convict prematurely. We hasten to add that the report of the Collector is not in the file whereas all the recommendations of other authorities for premature release find a place in the file. In fact, the Probation Officer, Thuckalay, after an "On the Spot" Enquiry has stated as follows:?

The Director General of Prisons has sent a report as follows:?

This clearly indicates that the Director General of Prisons was in favour of premature release of the convict. However, the Government in Letter No. 154633(sic) . 4/86, dated 1-6-1988, has stated as follows: ?

We are unable to appreciate the view taken by the Government in paragraph 3 extracted above for which there is no basis at all. Further, it is the daughter who has moved this petition and in the affidavit, it is stated inter alia as follows:?

"The Petitioner's father is now aged about 55 years and he is not in sound health. He is having three daughters who are aged 24, 22 and 20 years old respectively and none of them are married. Only after the Petitioner's release their marriage can be arranged after raising sufficient money. The Petitioner's father visited his native place on parole and he behaved properly and nothing had happened. The Petitioner's father through his letter dated 27-6-1988 represented the 1st Respondent for his immediate release and brought to his notice regarding the recommendations given by the 2nd Respondent and without releasing the Petitioner's father as per the report of the 2nd Respondent the Petitioner's father is illegally detained in Central Prison, Palayamkottai. The Petitioner's father's personal liberty is illegally affected and his fundamental right conferred under Article 21 of the Constitution of India is violated. Since the Petitioner's father is imprisoned in jail even after the recommendations of the 2nd Respondent which is illegal, arbitrary, capricious, the Petitioner is invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India."

In this connection, a decision of the Supreme Court cited by the learned Counsel

for the Petitioner can be advantageously referred to. The decision is, Shri Niwas and Others Vs. Delhi Administration and Others, . The relevant paragraph (Para 4) reads as follows:?

In Writ Petition No. 914/82 (Shri Niwas) the Petitioner has undergone a total imprisonment of 14 years 3 months and 28 days inclusive of remissions and as such his case for premature release has become ripe for consideration. From the counter-affidavit filed on behalf of Delhi Administration, the only thing that has been stated is that his case for premature release was deferred for being considered to the next meeting of the Board for want of requisite information without indicating what information was required by the Board. It is not disputed that the police report. Probation Officer's report as well as the Jail Superintendent's report are favourable to the Petitioner and that all these authorities have recommended his premature release and his conduct in jail has also been certified to be good. In these circumstances, we do not see any reason why consideration of his case for premature release should be deferred any longer. We, therefore, direct that the Petitioner be released forthwith from the prison. If, at a subsequent stage, the sentence revising Board comes to a contrary conclusion, it may be open to the authorities concerned to move this Court for appropriate orders.

The above decision of the Supreme Court was rendered under circumstances more or less similar to the one obtaining in this case, and, therefore squarely applies to the facts of this case. The stand taken in the counter-affidavit to oppose the premature release is as follows:?

In this connection, it is respectfully submitted that it is not obligatory or mandatory on the part of the Government to release a lifer prisoner from the prison on completion of 14 years. There are various aspects like his conduct in prison, law and order problem in the locality after release; safety of the prisoner and the likely reaction and feelings of the victim's family, nature of offence and the recommendation of the various officers such as Probation Officer, Collector, Superintendent of Prison, Inspector General of Prisons and the decision of the Advisory Board are taken into consideration before passing orders by the Government to release a prisoner prematurely under Advisory Board Scheme. The Government may order to release the prisoner prematurely or to postpone the case to a specified period on its merits. Since he has undergone 14 years of imprisonment and is of good conduct in prison, he cannot claim premature release as a matter of right.

In view of the uniform report of the concerned authorities, except the report of the Collector which has not been produced before us, the above stand taken by the Government does not appear to be sound.

4. In the circumstances, we direct that the convict No. 7128 Kochumani (father of the Petitioner herein) be released forthwith from the prison.