

(2010) 04 MAD CK 0088
In the Madras High Court
Case No : Writ Appeal No. 1207 of 2008

S. Nalini Srikanan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 14, 161, 21, 72, 74(1)
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433(A), 435, 435(1)
Explosive Substances Act, 1908 — Section 3, 4, 5
Foreigners Act, 1946 — Section 14
Passports Act, 1967 — Section 12
Penal Code, 1860 (IPC) — Section 120B, 201, 212, 216, 302
Prisons Act, 1894 — Section 59(5)
Tamil Nadu Prison Rules, 1983 — Rule 335, 337, 339, 341
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4, 5
Wireless Telegraphy Act, 1933 — Section 6(1A)

Citation : (2010) 04 MAD CK 0088

Hon'ble Judges : K.K. Sasidharan, J; Elipe Dharmarao, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; P.S. Raman, General, assisted by L.S.M. Hasan Fizal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharmarao, J.—By this writ appeal, the appellant challenges the verdict of a learned single Judge of this Court in turning down her

prayer to quash Clause (v) of G.O.(Ms) No. 873, dated 14.9.2006 and consequently to direct the respondents to consider her premature release

from prison.

2. The appellant herein is a convict prisoner in the case of assassination of former Prime Minister of India, Sri Rajiv Gandhi. This appellant was

arrested on 14.6.1991 by the Deputy Superintendent of Police, Central Bureau of

Investigation, SIT, Chennai in connection with the Rajiv Gandhi

assassination case for the offences under Sections 302, 307, 326 IPC, Sections 3 - 5 of the Indian Explosives Act and Sections 3 - 5 of the

TADA and after investigation, the charge sheet was filed in C.C.No. 3 of 1992 on the file of the Designated Court No.I, Chennai at Poonamalle

against 41 accused for the offences under Sections 120B r/w. 302, 326, 324, 201, 212 and 216 IPC; Sections 3, 4 and 5 of the Explosive

Substances Act; Section 25 of the Arms Act; Section 12 of the Passport Act; Section 14 of the Foreigners Act; Section 6(1A) of the Wireless

Telegraphy Act and Sections 3, 4 and 5 of the TADA. The array of accused include 12 deceased accused and 3 absconding accused. The

remaining 26 persons including this appellant faced trial before the Designated Court No. I, Chennai at Poonamallee and the said Court by its

judgment dated 28.1.1998, convicted all the 26 persons and awarded death penalty. On appeal to the Supreme Court in Death Reference Case

No. 1 of 1998 with Criminal Appeal Nos.321 to 325 of 1998, the Supreme Court, by the judgment dated 11.5.1999, has acquitted 19 persons

and confirmed the death sentence against four accused, including the present appellant and life sentence was awarded to three accused. Thereafter,

two review petitions were filed by the CBI/SIT seeking to review the acquittal of the accused and the accused persons against whom death

sentence was confirmed, but both the review petitions were dismissed by the Supreme Court.

3. Thereafter, the present applicant filed an application before the Governor of Tamil Nadu for clemency and on its rejection, she filed

W.P.No.17655 of 1999 before this Court and this Court, by the order dated 25.11.1999, remitted the matter back for fresh consideration and

ultimately, based on the recommendation of the Government, the Governor of Tamil Nadu commuted the death sentence imposed against this

appellant to one of life imprisonment by G.O.Ms.No.406, Home Department, dated 24.4.2000 and from 25.4.2000, she was converted as a life

convict.

4. According to the appellant, since the death sentence was commuted to life imprisonment, she should complete 14 years of imprisonment for any

premature release as provided u/s 433A of Criminal Procedure Code and thus

she is eligible to be considered for premature release from 18.6.2005 and though she has completed 14 years of imprisonment on 17.6.2005, her name was not considered for the premature release either in the year 2005 or in 2006 or even in 2007. According to the appellant, on 14.9.2006, the Government has issued an order in G.O. Ms. No. 873, granting premature release of 472 life convicts who have completed 10 years and more actual imprisonment, but her name was not considered on the ground that the cases which fall u/s 435 Cr.P.C. are not entitled for the premature release. Aggrieved by the same, the appellant herein has filed W.P. No. 41020 of 2006, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to G.O. (Ms) No. 873, dated 14.9.2006, issued by the first respondent, quash the clause (v) of Paragraph 1 of the said G.O. and consequently direct the respondents to consider her for premature release from prison. Since the learned single Judge of this Court has dismissed the said writ petition, by the order dated 24.9.2008, the present writ appeal has been filed by the writ petitioner.

5. The learned Counsel appearing for the appellant would vehemently argue that clause (v) of the G.O. (Ms) No. 873, dated 14.9.2006 is illegal, in it denying consideration of the cases falling u/s 435 of the Criminal Procedure Code and denying the premature release of the appellant as on 15.9.2006 only on the ground that her offence was investigated by the CBI and the nature of investigating agency could not have determined the eligibility of a life convict for consideration of premature release from prison. The learned Counsel would further argue that by the said clause (v) in the G.O., so far as it relates to Section 435 of Cr.P.C., perpetrates discrimination and deprivation of personal liberty and therefore, violative of Articles 14 and 21 of the Constitution of India and that the life convicts for the purpose of premature release under Article 161 of the Constitution, could not have been classified into two categories viz. those covered by Section 435 of Cr.P.C. and those who do not fall within the purview of Section 435 Cr.P.C. and that the respondent-State could not have ordained those covered by Section 435 Cr.P.C. to be in prison forever. It has further been argued by the learned Counsel for the appellant that introduction of clause (v) in the G.O. issued under Article 161 of the Constitution

would amount to self denial of powers under Article 161 of the Constitution available to the respondent-State, which cannot be fettered by any means whatsoever. The learned Counsel for the appellant would further argue that the learned single Judge has erred in not directing the respondent-State to produce all the records in respect of G.O. (Ms) No. 873, dated 14.9.2006 and in not effecting judicial review to find out whether the Governor, in introducing clause (v) aforesaid, is found to have exercised the power himself without being advised by the Government or if the Governor has transgressed the jurisdiction in exercising the same or if the Governor has not applied his mind to the said clause or if he has introduced the said clause on some extraneous consideration. It has also been argued by the learned Counsel for the appellant that the learned Judge has erred in not appreciating the judgment of the Honourable Supreme Court in Satpal and Another Vs. State of Haryana and Others, in this regard.

6. The learned Counsel for the petitioner would further argue that Section 435 Cr.P.C. does not prohibit premature release of life convicts whose offences were investigated by the CBI and what Section 435 Cr.P.C. contemplates is that the State Government should exercise its power of remission under Sections 432 and 433 only in consultation with the Central Government and the learned single Judge ought to have appreciated that clause (v) of the G.O. cannot be said to be a reasonable guideline at all even in the light of Section 435 Cr.P.C., since the said clause makes the life convicts languish in jail forever. The learned Counsel for the appellant would further argue that the power vested on the Governor under Article 161 of the Constitution is amenable to judicial review and therefore, this Court could very well interfere with the decision of the Governor under Article 161 of the Constitution. On such arguments, the learned Counsel for the appellant would pray to allow this writ appeal, setting aside the order of the learned single Judge.

7. In support of his arguments, the learned Counsel for the appellant would rely on the following judgments:

- 1 Maru Ram and Others Vs. Union of India (UOI) and Others,
- 2 Kehar Singh and Another Vs. Union of India (UOI) and Another,
- 3 State of Punjab and others Vs. Joginder Singh and others,

4 Satpal and Another Vs. State of Haryana and Others, and

5 State of Haryana v. Mahender Singh and Ors. 2007 (4) CRIMES 289 (SC).

8. In the first judgment cited above in Maru Ram and Others Vs. Union of India (UOI) and Others, , a Constitutional Bench of the Honourable

Apex Court has held:

Undoubtedly, Section 433A does not and cannot affect the pardon power under Articles 72 or 161 and therefore, notwithstanding Section 433A

the President and the Governor continue to exercise the power of commutation and release under the aforesaid articles. In exercising this power

the Governor or the President act and must act not on their own judgment but in accordance with the aid and advice of their council of ministers.

But all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal

execution are guarantors of the valid play of power. The power being of the greatest moment cannot be a law unto itself but must be informed by

the finer canons of constitutionalism spelt out in R.D. Shetty [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,]

and Punan Thomas [V. Punnan Thomas v. State of Kerala AIR 1979 Ker 81] cases. All power, whatever its source, must in its exercise

anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power.

Hence the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of Presidential

power. The court, if it finds frequent misuse of this power may have to investigate the discrimination. Therefore, the proper thing to do is to make

rules for its own guidance in the exercise of the pardon power keeping, or course, a large residuary power to meet special situations or sudden

developments. This will exclude the vice of discrimination. Such rules of remission may be effective guidelines of a recommendatory nature, helpful

to government to release the prisoner by remitting the remaining term.

9. In the second judgment reported in Kehar Singh and Another Vs. Union of India (UOI) and Another, , another Constitutional Bench of the

Honourable Apex Court has held:

The power to pardon rests on the advice tendered by the Executive to the President who, subject to the provisions of Article 74(1), must act in

accordance with such advice.

the question as to the scope of the President's power under Article 72 falls squarely within the judicial domain and can be examined by the court

by way of judicial review. The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or

legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power, is a matter for the

court.

10. In the third judgment reported in *State of Punjab and others Vs. Joginder Singh and others*, , the Honourable Apex Court has held:

Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for

life, ordinarily the convict has to pass the remainder of his life in prison, but remissions and commutations are granted in exercise of power under

Sections 432 and 433, Cr.PC carving out an exception in the category of those convicts who have already enjoyed the generosity of executive

power on the commutation of death sentence to one of life imprisonment. Even in such cases Section 433A of the Code or the executive

instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least

14 years. In the case of other "lifers" the insistence under the 1971 amendment is that he should have a period of at least 8 ½ years of

incarceration before release. The 1976 amendment was possibly introduced to make the remission scheme consistent with Section 433A of the

Code. Since Section 433A is prospective, so also would be the 1971 and 1976 amendments.

11. In the fourth judgment reported in *Satpal and Another Vs. State of Haryana and Others*, , the Honourable Apex Court has held:

The power of granting pardon under Article 161 is very wide and does not contain any limitation as to the time on which and the occasion on

which and the circumstances in which the said powers could be exercised. But the said power being a constitutional power conferred upon the

Governor by the Constitution is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with

an order passed by the Governor in exercise of power under Article 161 of the

Constitution if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a mala fide one or the Governor has passed the order on some extraneous consideration.

12. In the last judgment cited on the part of the learned Counsel for the appellant reported in 2007 (4) Crimes 289 (SC), the Honourable Apex

Court has held:

State is entitled to take a prison policy as contra-distinguished from a sentencing policy. Power of the State to issue general instructions, so that no

discrimination is made, is also permissible in law. The State by successive executive instructions finally classifying the life convicts having regard to

the number of deaths which might have taken place at their hands. Any existing executive instructions could be substituted by issuing fresh

executive instructions for processing the cases of lifers for premature release but once issued these must be uniformly and invariably applied to all

cases of lifers so as to avoid the charge of discrimination under Article 14.

13. On the contrary, the learned Advocate General appearing for the respondent State would argue that it is the policy of the Government not to

consider the premature release of the life convicts who did not satisfy the conditions specified in the G.O. and their cases were taken up for

consideration for premature release as per Rule 341 of the Tamil Nadu Prison Rules, 1983 and the guidelines of the Government in force; that it is

the policy of the Government not to consider the premature release of such life convicts on enmasse release, whose cases fall under the purview of

Section 435 of the Code of Criminal Procedure and in accordance with such policy, no life convict who were coming under the purview of Section

435 of the Code of Criminal Procedure were released from prison during the enmasse release ordered on the occasion of the birth anniversary of

Peraringnar Anna on 15.9.2001 and 15.9.2006; that the Government by virtue of the powers delegated to them u/s 59(5) of the Prisons Act,

1894, have powers to frame Rules/policies consistent with this Act and decide as to which case shall be taken up for consideration for premature

release on enmasse release or under Advisory Board Scheme, as the case may

be; that the appellant has no locus standi to interfere with the policy of the Government and demand the Government to frame rules which is favourable to her.

14. The learned Advocate General would further argue that as per Section 435 of the Code of Criminal Procedure, the State Government shall not

exercise powers under Sections 432 and 433 of the Code of Criminal Procedure to remit or commute a sentence in a case where the sentence is

for an offence, which was investigated by the Delhi Special Police Establishment, constituted under Delhi Special Police Establishment Act, 1946,

except after consultation with the Central Government and therefore, the Government, after making due examination on all relevant aspects, as a

matter of policy, taken a studied decision not to consider the life convicts whose cases fall under the purview of Section 435 of the Code of

Criminal Procedure and premature release of such life convicts are being considered individually, taking note of the social history of the prisoner,

the circumstances of his/her criminal behaviour, conduct in prison, response to training and treatment, notable changes in his/her attitude and

treatment, degree of criminality, health and mental condition by considering such cases in the Advisory Board Scheme in normal course.

15. Meting out the argument of discrimination raised on the part of the appellant, the learned Advocate General would argue that none of the 472

cases of life convicts released on 15.9.2006, as per G.O.Ms.No.873, Home (Pri.IV) Department, dated 14.9.2006, fell under the purview of

Section 435 of the Code of Criminal Procedure and all of them satisfied the conditions stipulated by the Government and therefore, no

discrimination was shown in considering the premature release of life convicts.

16. The learned Advocate General would further argue that the appellant was first sentenced to death and thereafter it was commuted to life

imprisonment on mercy grounds and that being so, she constitute a distinct class and cannot claim equality with those sentenced to life

imprisonment and that life imprisonment means imprisonment for whole of remaining period of convict's life and that no vested right is created on

the convict to seek for premature release. In support of his arguments, the learned Advocate General would rely on the following judgments:

1. L.N. Mukherjee Vs. The State of Madras,

2. State of Madhya Pradesh v. Ratan Singh And Ors. 1976 SCC (Cri) 428];
3. Maru Ram and Others Vs. Union of India (UOI) and Others, ;
4. Sadhu Singh and Others Vs. State of Punjab, ;
5. Vineet Narain and Others Vs. Union of India (UOI) and Another, ;
6. Laxman Naskar (Life Convict) v. State of W.B. and Anr., 2000 CriLJ 4017
7. Zahid Hussein and Ors. v. State of W.B. and Anr. 2001 SCC (Cri) 631;
8. Subash Chander v. Krishan Lal 2001 SCC (Cri) 735;
9. State of Haryana and Anr. v. Jai Singh 2003 SCC (Cri) 1761;
10. Saibanna v. State of Karnataka 2005 SCC (Cri) 1094 and
11. C.A. Pious v. State of Kerala and Anr. (2007) 3 SCC (Cri) 544.
17. In the first judgment cited above, reported in L.N. Mukherjee Vs. The State of Madras, , a Constitutional Bench of the Honourable Apex

Court has held:

Sentence of imprisonment for life is for indefinite period. Government alone can remit sentence and remissions earned by convict are of little help.

18. In the second judgment cited above, reported in 1976 SCC (Cri) 428, also, the Honourable Apex Court has held that "imprisonment for life

means a sentence for entire life and remissions under Jail Manual or Prisons Act do not give any right to the prisoner for a lesser term of sentence

and appropriate Government may in its discretion remit either the whole or a part of the sentence."

19. In the third judgment reported in Maru Ram and Others Vs. Union of India (UOI) and Others, , a Constitutional Bench of the Honourable

Apex Court has held:

Parliament has competency to pass Section 433A Cr.PC since it falls under Entry 2 of List III as a cognate provision integral to remission and

commutation, as it sets limits to the power conferred by the preceding two sections. Even if the State passed laws for remission and short-

sentencing, in case of repugnancy Section 433A would prevail.

Section 302 IPC or other like offence fixes the sentence to be life imprisonment and 14 years" imprisonment u/s 433A is never heavier than life

term. Remission vests no right to release when sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law

annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14 year jail life, since a life sentence is a sentence for life.

Section 433A Cr.P.C., does not violate Article 14 and the classification therein is based on gravity of crime and need for deterrent punishment.

20. In the fourth judgment cited above, reported in 1984 SCC (Cri) 241, a three Judge Bench of the Honourable Apex Court has held that

"prisoners whose death sentence commuted to life imprisonment on mercy ground constitute a distinct class and cannot claim equality with those

sentenced to life imprisonment."

21. In the fifth judgment cited above, reported in Vineet Narain and Others Vs. Union of India (UOI) and Another, , a Three Judge Bench of the

Honourable Apex Court has held that "while ultimate responsibility for functioning of the investigating agency viz. CBI to Parliament lies in the

Minister concerned, he cannot interfere with the course of investigation in individual cases."

22. In the sixth, seventh, eighth and tenth judgments cited above, respectively reported in Laxman Naskar (Life Convict) v. State of W.B. and

Anr., 2000 CriLJ 4017 also, the Honourable Apex Court has held that "life imprisonment means imprisonment for whole of remaining period of

convict's life".

23. In the ninth judgment cited above, reported in 2003 SCC (Cri) 1761, held that "Government's power u/s 432 Cr.P.C. to exclude a class of

prisoners from benefit of remission is not affected by Section 433A."

24. In the eleventh judgment cited above, reported in 2007 (3) SCC (Cri) 544, the Honourable Apex Court has held that "study leave, cannot be

reckoned under Kerala Prison Rules, while computing period of sentence undergone."

25. On a thorough perusal of the above judgments of the Honourable Apex Court, it is clear that the power exercised by the Governor under

Article 161, on the advice of the council of Ministers, is amenable to judicial review and the decision of the Governor under Article 161 of the

Constitution could be interfered with by the Courts if it is established that the Governor has passed the order without application of mind or the

order in question is a mala fide one or the Governor has passed the order on

some extraneous consideration; that the life imprisonment means imprisonment for whole of remaining period of convict's life; that Section 433A of the Cr.P.C. was upheld as not violative of Article 14; that the Governments power u/s 432 to exclude a class of prisoners from benefit of remission is not affected by Section 433A. Keeping in mind the above principles enunciated by the Honourable Apex Court, we shall now see whether there are any grounds to interfere with the decision of the Governor.

26. u/s 432 of the Code of Criminal Procedure, the power to suspend or remit sentences vests with the appropriate Government and Section 433 grants power to commute sentence on the appropriate Government, while Section 433A imposes restriction on powers of remission or commutation in certain cases and Section 435 creates an obligation on the State Government to act after consultation with Central Government in certain cases, while remitting or commuting a sentence.

27. Since the issue on hand, revolves around the commutation of sentence, for better appreciation, we shall now extract hereunder Sections 433, 433A and 435 of the Code of Criminal Procedure.

Section 433. Power to Commute sentence - The appropriate Government may, without the consent of the person sentenced, commute-

- (a) a sentence of death, for any other punishment provided by the Indian Penal Code;
- (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
- (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
- (d) a sentence of simple imprisonment, for fine.

Section 433A. Restriction on powers of remission or commutation in certain cases - 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 u/s 433 into one of imprisonment for life, such person shall not be released

from prison unless he has served at least fourteen years of imprisonment.

Section 435. State Government to act after consultation with Central Government in certain cases -

(1) The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is

for an offence -

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, or by any

other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been

convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to

separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as

the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with

regard to matters to which the executive power of the Union extends.

28. The Governor of Tamil Nadu, in exercise of his powers conferred under Article 161 of the Constitution to grant pardons, reprieves, respites or

remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter

to which the executive power of the State extends, on being advised by the Council of Ministers, has issued the impugned G.O.Ms.No.840, Home

(Pri.IV) Department, dated 12.9.2001, on the occasion of 93rd Birth Anniversary of Peraringnar Anna on 15.9.2001, ordering release of life

convicts who had completed ten years of actual sentence as on 15.9.2001, subject to the following conditions:

i That the prisoners who are convicted for the offences specified in

G.O.Ms.No.1762, Home dated 20.7.1987 are not be eligible for this concession;

ii That their general behaviour in the prison should have been satisfactory;

iii That the life of the convict would be safe if released;

iv That they would be accepted by the members of their families or any other social organization which can give guarantee for the safety of their lives;

v That their cases do not come u/s 435 Criminal Procedure Code; and

vi That they will execute bonds, according to the usual terms and conditions.

29. According to the appellant, except the above said clause (v) of the G.O., she has satisfied all the conditions stipulated therein and therefore,

she should have also been granted remission by the Governor and introduction of clause (v) into the G.O. has made the equals unequal by

introducing a classification among the life convicts viz. those life convicts falling u/s 435 Cr.P.C. and those who do not fall under the said Section

and thus rendering it violative of Articles 14 and 21 of the Constitution of India since amounts to discrimination, besides being arbitrary, unfair and

unreasonable and denial of consideration for premature release to a life convict like the appellant solely on the ground of the nature of investigating

agency would be again arbitrary and violative of Articles 14 and 21 of the Constitution.

30. We totally disagree with this contention raised on the part of the appellant. Special Investigations Teams are created for a specific purpose of

investigating crimes and offences of higher degree and offences committed against the humankind at large, since such specialised crimes need

systematic and specialised investigation techniques and to unearth the mysteries in a quick phase, well before the evidence being screened by the

offenders. It is for these specialised reasons, the Special Investigation Teams are not being formed in a casual and callous manner in each and

every case. This shows that the nature of investigation agency also depends on the degree and nature of offence. Only by taking into consideration

all these practical aspects into consideration, by Section 435(1)(a) of the Cr.P.C., an obligation has been created on the State Government to

consult the Central Government while remitting or commuting a sentence for the

offences mentioned therein. In the case of heinous, brutal and barbaric assassination of former Prime Minister of India, wherein the present appellant is a convict prisoner, undergoing life sentence, the SIT has investigated a crime that was cunning in conception, meticulous in planning and ruthless in execution and the SIT has carried out a tremendous job with its meticulous investigation which was able to unearth the mystery from some slender clues. When the offence proved against the appellant is that of a higher magnitude rather sending shocking waves throughout the world as by such inhuman and barbaric act, the appellant and the other co-accused have taken away the life of a former Prime Minister of India, resulting in the specialised investigating team to take over the case, this argument advanced on the part of the appellant needs only to be rejected.

31. Coming to the other ground urged by the appellant that the classification introduced by the impugned G.O., among the life convicts viz. those

life convicts falling u/s 435 Criminal Procedure Code and those who do not fall under the said Section, by the Governor, while exercising powers

under Article 161 of the Constitution is arbitrary, discriminatory, unfair and unreasonable and violative of Articles 14 and 21 of the Constitution, as

has already been observed by us supra, the appellant is a convict prisoner in a case of doing away the life of a former Prime Minister of India, in a

barbaric manner of plotting human bombs and taking away the life of many others. It must be borne in mind that branding the case as one falling

under the category of "rarest of rare", originally death sentence was awarded to the appellant, which was later on commuted to one of life

imprisonment, which seems to be purely on humanitarian grounds. Such commutation of death sentence to one of life imprisonment does not in any

manner reduce the gravity of the offence proved to be involved by the appellant. That being so, in terms of the judgment of the Honourable Apex

Court in Sadu Singh's case (1984 SCC (Cri) 241), she constitute a distinct class and cannot claim equality with those sentenced to life

imprisonment" and the gravity of an offence and the quantum of sentence prescribed in the Code could be a reasonable basis for a valid

classification if the object of such classification is to grant or not to grant remission. If all the prisoners, irrespective of the gravity of the offences for

which they are convicted are classified and considered similarly, it will have

serious repercussions on the safety and security of the society besides shaking the foundation of the entire criminal justice system of awarding appropriate quantum of sentence depending on the nature of the offence proved to be committed by the accused. Therefore, the classification incorporated by the Government in the impugned G.O. among the life convicts falling within and outside the ambit of Section 435 Cr.P.C., is a reasonable classification, which the Government is empowered to bring in to uphold the majesty and to meet the real ends of justice. Therefore, this classification cannot at all be branded as arbitrary or discriminatory or unfair or even unreasonable, so as to say and hold that it violates Articles 14 and 21 of the Constitution. Hence, we uphold this reasonable classification introduced by the Government of Tamil Nadu in the impugned G.O. and we reject the argument advanced on the part of the appellant.

32. The convict cannot, as of right, could seek the remission, but a right would vest on her to request the authority to consider her case of remission. In the case on hand, the Governor of Tamil Nadu, in exercise of his powers enshrined under Article 161 of the Constitution has issued the impugned G.O., on the advice of the council of Ministers, bringing in a reasonable classification to protect the interest of the Society and since the claim of the appellant does not satisfy the mandatory requirements of the conditions in the said G.O., her request could not be considered by the authorities, wherein we find no illegality or irregularity. When the power granted on him under Article 161 of the Constitution has been judiciously exercised by the Governor in the case on hand, the challenge made to the clause (v) of the G.O., by the appellant cannot have any legs to stand before us.

33. As a matter of fact, it is to be stated here that pending W.P.No.41020 of 2006 filed by her, (which is the subject matter in the present writ appeal), the petitioner has also filed W.P.No.11118 of 2008, challenging the validity of G.O.(D) No.1303, Home (Prison-IV) Department, rejecting her request for premature release on the basis of the recommendations of the Additional Director General of Prison, Chennai and further praying to direct the respondents to order her premature release from the prison. This writ petition was listed along with two other writ petitions in

W.P.Nos.15842 and 15892 of 2008, respectively filed by S. Jeyakumar and Robert Payas @ Kumaralingam, who are also similarly placed as

that of Mrs. Nalini. During the pendency of W.P.No.11118 of 2008, Dr. Subramanian Swamy, the former Minister of Law and Justice and the

President of Janata Party, has filed a petition in M.P.No.3 of 2008, praying to implead him as a party respondent to the above said

W.P.No.11118 of 2008, opposing the claim of Mrs. Nalini. The learned single Judge, by the order dated 14.8.2008, dismissed the said

application for impleading, but permitted Dr. Subramanian Swamy to assist the Court on the issues involved under the nomenclature "Public

Representator".

34. The learned single Judge, by a common order dated 24.9.2008, has disposed of all the above said three writ petitions, quashing the

proceedings of the Advisory Board and the Government Orders and remitted the matter back to the Advisory Board for re-consideration.

Challenging the said order of the learned single Judge, Dr.Subramanian Swamy has preferred Writ Appeal No.1464 of 2008 before this Court.

Though, along with the said writ appeal, he has filed a petition to stay the operation of the order of the learned single Judge, no such order was

passed.

35. When the present Writ Appeal and the said Writ Appeal No. 1464 of 2008 filed by Dr. Subramanian Swamy were taken up for

consideration, there was also a request from the convict prisoner Mrs. Nalini to permit her to appear in person and argue her case. When things

stood thus, after considering the common order of the learned single Judge in W.P.No.11118 of 2008 etc., dated 24.9.2008, the Government

have issued orders amending Rules 335, 337, 339 and 341 of the Tamil Nadu Prison Rules, 1983, constituting a revised Advisory Board in

G.O.Ms.No.687, Home, dated 19.8.2009; G.O.Ms.No.68, Home, dated 19.8.2009 and G.O.Ms.No.962, Home, dated 11.11.2009 and the

Advisory Board consisting of the District Collector of Vellore (Chairman); the Principal Sessions Judge, Vellore; the Superintendent of Prisons

(i/c), Special Prison for Women, Vellore and the Regional Probation Officer, Vellore, in its meeting held on 20.1.2010, has found the case of Mrs.

Nalini "Not fit" for recommendation on premature release and the Government,

after considering the said report and also the other circumstances,

has issued G.O.(D) No.313, Home (Prison-IV) Department, dated 24.3.2010, rejecting the request of Mrs. Nalini for her premature release.

36. In view of the above G.O.(D) No.313, Home (Prison-IV) Department, dated 24.3.2010, we have dismissed the Writ Appeal No.1464 of

2008 filed by Dr. Subramnian Swamy as infructuous, by our judgment dated 29.3.2010.

In view of our discussions, the following conclusions are arrived at :

1 The Governor of Tamil Nadu, exercised the power granted to him under Article 161 of the Constitution of India, on the advice of the Council of Ministers, in a judicious manner.

2 The classification brought in between the life convicts falling within the scope of Section 435 Cr.P.C. and the life convicts falling outside the

scope of Section 435 Cr.P.C. is a reasonable classification to protect the interest of the Society since the nature of the offence also plays a major

role in considering the case of premature release of the convicts by exercising the remission powers of the Government.

3 The appellant being originally awarded with death sentence and her sentence was commuted to one of life imprisonment purely under

humanitarian grounds, she constitute a distinct class and cannot claim equality with those sentenced to life imprisonment.

4 The appellant, a life convict in a crime that was cunning in conception, meticulous in planning and ruthless in execution in taking away the life of

the former Prime Minister of India, cannot seek premature release, as of right, though she got a right to seek for consideration of her plea.

5 Even the subsequent developments, like the decision of Advisory Board in rejecting the claim of premature release of the appellant, would weigh

against her.

For all the above reasons, we find no ground to cause our interference into the order passed by the learned single Judge. Accordingly, this writ

appeal is dismissed. No costs.