
(2017) 12 MAD CK 0106
In the Madras High Court
Case No : 491 of 2017

S.L.Mary

APPELLANT

Vs

The State of Tamil Nadu & Ors

RESPONDENT

Date of Decision : 13-12-2017

Acts Referred:

Citation : (2017) 12 MAD CK 0106

Hon'ble Judges : Rajiv Shakdher, N.Sathish Kumar

Bench : DIVISION BENCH

Advocate : Rajiv Shakdher, N.Sathish Kumar

Judgement

1. This is a writ petition, whereby, the petitioner, who is the wife of the detenue, seeks issuance of a writ or direction for production and release of the detenue from the Central Prison-1, Puzhal, Chennai-600 066.

2. Notice in this petition was issued on 05.04.2017. Since then, counter affidavit has been filed by the State.

3. The only issue, which arises for consideration in the instant writ petition is whether or not, the detenue should have the benefit of G.O.Ms.No.1155, Home (Prison IV) Department, dated 11.09.2008 (in short, "G.O. dated 11.09.2008").
3.1. The State via G.O. dated 11.09.2008, has granted premature release to life convicts, generally, who had completed seven (7) years of actual imprisonment as on 15.09.2008.

3.2. Apart from this, there was another category of prisoners, who were granted premature release. These were, those prisoners, who had reached sixty (60) years of age and had completed five (5) years of actual imprisonment as on 15.09.2008.

3.3. Qua both categories, the release was subject to fulfilment of other conditions, including condition No.(i)(b) provided for in G.O. dated 11.09.2008. Condition No.(i)(b) provides that prisoners, whose death sentence stood

commuted to life imprisonment by an appellate court are not eligible for premature release from custody.

4. Therefore, what we are required to examine is: as to whether condition contained under clause (i)(b) would come in the way of the detenue securing the benefit of G.O. Dated 11.09.2008. 4.1. Concededly, the detenue as on 30.09.2017, has completed nineteen (19) years, four (4) months and nine (9) days of actual imprisonment. Furthermore, in particular, as on 15.09.2008, the detenue had completed ten (10) years, six (6) months and nine (9) days of actual imprisonment.

4.2. The only reason that the State resists the present petition, is that, the detenue's sentence was commuted to life imprisonment by the Supreme Court, and therefore, having regard to the bar contained in condition (i)(b), he cannot be granted premature release from custody.

5. We had an opportunity to examine this issue in H.C.P.No.580 of 2017, titled : Madhu V. The State of Tamil Nadu and others. Via judgement dated 06.12.2017, we have repelled this very contention advanced on behalf of the State. For the sake of convenience, the observations made therein are extracted hereafter : "..... 11. We may note that the State has in fact extracted that part of the judgement of the Supreme Court, passed in Criminal Appeal No.239 of 2014, whereby, it has held clause (i)(b) of the 2008 G.O. to be exclusionary and hence violative of Article 14 of the Constitution. However, after having extracted the observations of the Supreme Court, the respondents have taken the stand that the said observations would not apply to the instant case and that they were confined to the case in which judgment was rendered by the Supreme Court.

12. According to us, the stand taken by the first respondent is completely untenable. We have carefully examined the judgement of the Supreme Court. The observations of the Supreme Court clearly lay down that the clause (i)(b) of the 2008 G.O. was "exclusionary" and hence violative of Article 14 of the Constitution. As a matter of fact, the said judgement of the Supreme Court was rendered in an appeal which arose out of a decision of the Division Bench of this Court dated 29.04.2009, passed in H.C.P.No.1894 of 2008. The Division Bench of this Court had struck down clause No.(i)(b) of the 2008 G.O. The Supreme Court, though, vide its judgement dated 21.01.2014, passed in Criminal Appeal No.239 of 2014, while sustaining the conclusion reached by the Division Bench provided its own reason and rationale in coming to the very same conclusion.

The reasoning furnished by the Supreme Court was as follows :

" From the abovementioned facts, it can be seen that this appeal has nothing to do with the subject matter of the Criminal Appeal No.973 of 2008. Though we do not agree with the reasoning adopted by the High Court for allowing the writ petition, we agree with the conclusion arrived at by the High Court. The exclusionary clause creates an artificial class of convicts which is unsustainable tested on the touchstone of Article 14 of the Constitution of India.

Neither there is any rational basis for creation of such a class nor are we able to discern any legitimate purpose sought to be achieved by the State in creating such a class. Therefore, the appeal is dismissed." (emphasis is ours)

13. A mere perusal of the judgement of the Supreme Court, as indicated above, would demonstrate that clause (i)(b) contained in 2008 G.O. is no longer valid in the eyes of law.

1 4. Therefore, the rejection of the petitioner's request for premature release by invoking clause (i)(b) was clearly erroneous. Since, no other impediment is brought to our notice by the respondents, the impugned G.O. Dated 09.08.2016, is quashed, as prayed." (emphasis is ours)

5.1. In this case as well, the State, apart from placing reliance on condition (i)(b) of G.O. dated 11.09.2008, does not put forth any other objection to the relief sought by the petitioner for premature release of the detenu in terms of G.O. dated 11.09.2008. As noticed above, since this very objection raised by the State has been repelled by us in Madhu V. The State of Tamil Nadu and others, in this case as well, the objection raised on behalf of the State will have to be rejected. It is held, accordingly.

6. In the result, the Habeas Corpus Petition is allowed. The detenu, namely, P.Laksmi Narasiman, S/o.Purushothaman, aged 56 years, is directed to be released forthwith, unless his detention is required, in connection with another case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.