



ITEM NO.12

COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 269/2022

USHA CHANDRAN

Petitioner(s)

VERSUS

THE STATE OF KERALA &amp; ORS.

Respondent(s)

(FOR ADMISSION and IA No.95268/2022-EXEMPTION FROM FILING O.T. )

Date : 19-10-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE  
HON'BLE MR. JUSTICE VIKRAM NATH

For Petitioner(s) Ms. Malini Poduval, AOR  
Ms. Babita Sant, Adv.

For Respondent(s) Mr. Harshad V. Hameed, AOR  
Mr. Dileep Poolakkot, Adv.  
Ms. Ashly Harshad, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the petitioner and the State of Kerala.

The husband of the petitioner (Chandran) was convicted for commission of offences under Sections 120B, 302, 307, 326, 328 and 201 read with Section 34 of the Indian Penal Code (IPC) as also under certain provisions of the Abkari Act, on 16<sup>th</sup> July, 2002 by the Sessions Judge, Kollam. He was sentenced to life imprisonment alongwith fine of Rs.30,45,000/- (Rupees thirty lacs and forty five thousand only). Several persons were implicated in the said case

and Chandran was arraigned as accused no.7. So far as Chandran is concerned, he has undergone actual imprisonment of over 21 years. Sentences and Orders of imprisonment of different duration were passed in connection with individual offences, but they were to run concurrently. His appeal was dismissed by the High Court as also by this Court in Criminal Appeal No. 1528 of 2005 decided on 4<sup>th</sup> April, 2011. By an order of the Governor, in exercise of power under Article 161 of the Constitution of India, premature release of the husband of the petitioner alongwith 32 other convicts was directed, after remitting their remaining period of sentence. A copy of this order dated 14<sup>th</sup> June, 2022 has been annexed at page 19 of the Paper Book. The petitioner's husband figure in the list forming part of the said order against serial number 30, as Chandran @ Manichan S/o Sivadasan.

The petitioner contends that though Chandran has been directed to be released by the aforesaid order, because of his inability to pay the fine, he still remains in prison. This has been communicated to him by the office of the Superintendent, Open Jail and Correctional Home, Nettukaltheri by a communication dated 15<sup>th</sup> June, 2022, a copy of which has been annexed at page 14 of the Paper Book.

Before us, an order of a Coordinate Bench of this Court in Writ Petition (Criminal) No.270/2021 (Aswathy Vinod & Anr. vs. The State of Kerala & Ors.) decided on 3<sup>rd</sup> December, 2021 has been cited by the learned counsel for the petitioner. We are apprised by the learned counsel for the petitioner that the said writ petition was decided in favour of a co-convict in relation to the same incident.

His release was also held up for not making deposit of fine amount of Rs.8,30,000/-. In this judgment, it has been *inter alia*, held:

"It cannot be disputed that the sentence of simple imprisonment of 8 years and 4 months in the case of default, as awarded in terms of the stated order passed by the First Additional Sessions Judge, Kollam was to run concurrently. That period having already been undergone by said convict Manikantan @ Kochani, the order of release dated 06.11.2021 issued by the Additional Chief Secretary must come into play with immediate effect and he should be released forth without doing anything more. We are informed that similar conditional letter has been issued by the Superintendent of Cheemeni Open Jail and Correctional Home, Kasaragod District in the case of Vinod Kumar (Prisoner C.No.703). Resultantly on the same analogy, in the case of convict Vinod Kumar (Prisoner C.No.703), the letter issued by the Superintendent of Cheemeni Open Jail and Correctional Home, Kasaragod District be treated as ineffective and effaced in terms of this order.

The writ petition, accordingly, succeeds. The State authorities are directed to release the convicts (Vinod Kumar-Prisoner C.No.703 and Manikantan-Prisoner C.No.2509) forthwith prematurely in terms of order dated 06.11.2021, referred to above.

The writ petition is allowed in the above terms.

Pending applications, if any, stand disposed of."

As a Coordinate Bench of this Court has taken this view, we do not find any material difference so far as the case of the petitioner is concerned, except that the fine imposed on the petitioner's husband is of a higher amount. We do not think that can be a distinguishing criteria on the basis of which relief can be denied to him.

We, accordingly, allow the petition and direct the State Authorities to release the convict Chandran @ Manichan S/o Sivadasan being convict No. 2643 confined in Open Prison &

Correctional Home, Nettukaltheri, forthwith prematurely in terms of the order dated 14<sup>th</sup> June, 2022.

The petition is allowed in the above terms.

(JATINDER KAUR)  
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)  
ASSISTANT REGISTRAR