

2022 LiveLaw (SC) 954

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., B.V. NAGARATHNA; J.**

November 11, 2022

CRIMINAL APPEAL NO. 1974 OF 2022 [Arising out of SLP(CRL.) No. 7536 of 2022]
R.P. RAVICHANDRAN versus STATE OF TAMIL NADU REP. BY ITS CHIEF SECRETARY AND ORS.

Supreme Court orders premature release of all 6 convicts in the Rajiv Gandhi assassination case.

Constitution of India, 1950; Article 161 - Grant of Remission - Governor, in the matter of remission of an appellant convicted under Section 302, was bound by the advice of the State Cabinet. Follows the AG Perarivalan versus State of Tamil Nadu
2022 LiveLaw (SC) 494

WITH CRIMINAL APPEAL NO. 1975 OF 2022 [Arising out of SLP (CRL.) No. 8178 of 2022] (Arising out of impugned final judgment and order dated 17-06-2022 in WPMD No. 16658/2020 passed by the High Court of Judicature at Madras)

For parties: Mr. Sanjay Hedge, Sr. Adv. Mr. G. Ananda Selvam, Adv. Mr. Thiru Murugan, Adv. Mr. S. Muthu Krishnan, Adv. Mr. P. Soma Sundaram, AOR Mr. Arunagiri, Adv. Mr. Kishor Hussain, Adv. Mr. G. Ananda Selvam, Adv. Mr. G Muthu, Adv. Mr. Sanchit Maheshwari, Adv. Mr. Mayilsamy. K, Adv. Mr. Raghav Gupta, Adv. Mr. Shahrukh Ali, Adv. Mr. Mahabir Singh, Adv. Mr. Anand Dilip Landge, AOR Mr. Rakesh Dwivedi, Senior Adv. Mr. V. Krishnamurthy, Sr. Adv./AAG. Mr. Amit Anand Tiwari, AAG Dr. Joseph Aristotle S., AOR. Ms. Shakeena A.G., Adv. Mr. Eklavya Dwivedi, Adv. Ms. Monika Dwivedi, Adv. Ms. Devyani Gupta, Adv. Ms. Tanvi Anand, Adv. Ms. Nupur Sharma, Adv. Mr. Shobhit Dwivedi, Adv. Ms. Vaidehi Rastogi, Adv. Mr. Rakesh Dwivedi, Sr. Adv. Mr. V. Krishnamurthy, Ar. Adv/AAG Mr. Amit Anand Tiwari, AAG Dr. Joseph Aristotle S., AOR Ms. Shakeena A.G., Adv. Ms. Monika Dwivedi, Adv. Ms. Devyani Gupta, Adv. Ms. Tanvi Anand, Adv. Ms. Nupur Sharma, Adv. Mr. Sobit Dwivedi, Adv. Mr. Sanjeev Kr. Mahana, Adv. Ms. Vaidehi Rastogi, Adv. Ms. Riha Vishwakarma Mr. Gopal Sankaranarayanan, Sr. Adv. Mr. N. Chandrasekaran, Adv. Mr. Prabu Ramasubramanian, Adv. Ms. Shivani Vij, Adv. Mr. Alagu Raja Bharathi. B, Adv. Mr. Bharathimohan. M, Adv. Ms. Priya R, Adv. Mr. S. Sabari Bala Pandian, Adv. Mr. Avinash Kumar, Adv. Mr. T. Harish Kumar, AOR

ORDER

1. Leave granted.
2. For the reasons stated, applications for impleadment are allowed.
3. The appellants/applicants have been convicted for offences under the Indian Penal Code, 1860, the Arms Act, 1951, the Explosive Substances Act, 1908, the Passport Act, 1967, the Foreigners Act, 1946, the Indian Wireless Telegraphy Act, 1933 and the Terrorist and Disruptive Activities (Prevention) Act, 1987 for the assassination of Shri Rajiv Gandhi, the Former Prime Minister of India and others, on 21.05.1991. This Court, vide judgment dated 11.05.1999, upheld the conviction and sentence imposed on the appellants/applicants.
4. In so far as the six appellants/applicants before us are concerned, out of the six, the death sentence was confirmed in the case of accused S. Nalini, Suthendraraja @ Santhan and Sriharan @ Murugan, which was subsequently converted to life imprisonment on account of inordinate delay in deciding their mercy petition, vide judgment and order dated 18.02.2014.
5. In so far as the rest of the appellants/applicants are concerned, they have been convicted and sentenced to life imprisonment.

6. The Cabinet of the State of Tamil Nadu had passed a Resolution on 09.09.2018 recommending the release of all the appellants/applicants, including the original convict A.G. Perarivalan. There were certain other developments after the State Cabinet had passed a resolution. Consequently, the matter reached upto this Court by way of Criminal Appeal Nos. 833-834 of 2022. The issue that fell for consideration before this Court was, as to whether the Hon'ble Governor was bound by the decision of the State Cabinet or, as to whether, he could refer the matter to the Union of India for its opinion.

7. The issue was finally concluded by the judgment of this Court dated 18.05.2022, in the case of **A.G. Perarivalan vs. The State of Tamil Nadu** (Criminal Appeal Nos. 833-834 of 2022). This Court held thus:

“29. In conclusion, we have summarised our findings below:

(a) The law laid down by a catena of judgments of this Court is well-settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

(b) Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

(c) The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two and a half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby “the Governor is but a shorthand expression for the State Government” as observed by this Court.

(d) The judgment of this Court in M.P. Special Police Establishment (supra) has no applicability to the facts of this case and neither has any attempt been made to make out a case of apparent bias of the State Cabinet or the State Cabinet having based its decision on irrelevant considerations, which formed the fulcrum of the said judgment.

(e) The understanding sought to be attributed to the judgment of this Court in Sriharan (Supra) with respect to the Union Government having the power to remit/commute sentences imposed under Section 302, IPC is incorrect, as no express executive power has been conferred on the Centre either under the Constitution or law made by the Parliament in relation to Section 302. In the absence of such specific conferment, it is the executive power of the State that extends with respect to Section 302, assuming that the subject-matter of Section 302 is covered by Entry 1 of List III.

(f) Taking into account the Appellant's prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments for his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for two and half years after the recommendation of the State Cabinet, we do not consider it fit to remand the matter for the Governor's consideration. In exercise of our power under Article 142 of the Constitution, we direct that the Appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The Appellant, who is already on bail, is set at liberty forthwith. His bail bonds are cancelled.”

8. Thus, it could be seen that the Court held that the Hon'ble Governor, in the matter of remission of an appellant convicted under Section 302, was bound by the advice of the State Cabinet. Indisputably, in the present case also, the State Cabinet had resolved to grant remission to all the appellants/applicants.

9. In the case cited Supra, this Court took into consideration various factors, which, according to this Court, were sufficient to direct that the appellant therein be deemed

to have served the sentence awarded in connection with Crime No. 329 of 1991. The appellant therein, who was already on bail, was directed to be set at liberty forthwith. His bail bonds were also cancelled.

10. We propose to examine the case of each of the appellants/applicants herein in the light of the observations made by this Court in the case of **A.G. Perarivalan** (supra).

11. In the case of Appellant/applicant-Robert Payas, it is seen that his conduct has been found to be satisfactory. He has also been suffering from various ailments. During the period of incarceration, he has undertaken studies and obtained various degrees and diplomas, including the post-graduate degree in Arts (History).

12. In the case of appellant/applicant Jeyakumar also, his conduct has been found to be satisfactory. He has also undertaken various studies, including diplomas in catering, four wheeler mechanism, etc.

13. In the case of appellant/applicant-Suthendraraja @ Santhan, he has also been suffering from various ailments. During the period of incarceration, he has written many articles and poems which have not only been published but have received various prizes and awards, including in France and Germany.

14. In the case of appellant/applicant-R.P. Ravichandran, his conduct has also been found to be satisfactory and he too has undertaken various studies during the period of incarceration, including the post-graduate degree in Arts. He has also donated various amounts for charitable purposes.

15. In the case of appellant/applicant-S. Nalini, she is a woman and has been incarcerated for a period of more than three decades and her conduct has also been found to be satisfactory. She has also undertaken various studies during the period of incarceration, including a post-graduate diploma in Computer Applications.

16. In the case of appellant/applicant-Sriharan @ Murugan, his conduct has also been found to be satisfactory. He has also undertaken various studies, including Master of Computer Applications.

17. It is thus clear that the factors which weighed with this Court while directing that A.G. Perarivalan be deemed to have served the sentence in connection with Crime No. 329 of 1991 are equally applicable to all the present appellants/applicants. All the present appellants/ applicants have been incarcerated for the same period for which A.G. Perarivalan was incarcerated. The conduct of the present appellants/applicants has been found to be satisfactory. Most of them are suffering from various ailments. All of them have undertaken various studies during the period of incarceration.

18. We, therefore, direct that all the appellants/applicants be deemed to have served their respective sentences in connection with Crime No. 329 of 1991. The appellants/applicants are, therefore, directed to be set at liberty forthwith, if not required in any other case.

19. The appeals are disposed of in the above terms.

20. Pending application(s), if any, stand(s) disposed of.