



W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
25.01.2023	03.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020
and
W.M.P.(MD)No.1643 of 2020 in W.P.(MD)No.25333 of 2019
and
W.M.P.(MD)No.2884 of 2020 in W.P.(MD)No.3431 of 2020**

W.P.(MD)No.24324 of 2019:-

P.Rathinam

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to the Government,
Home Department,
Fort St. George,
Chennai – 600 009.

2.Inspector General of Prisons,
Tamil Nadu Government,
Chennai – 8.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.Chinna Odunkan [LCT No.3809]

5.Selvam [LCT No.3812]

6.Manokaran [LCT No.3803]

7.Manikandan [LCT No.3801]

8.Azhagu [LCT No.3808]



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9.Chokkanathan [LCT No.3811]

10.Sekar [LCT No.3813]

11.Ponnaiah [LCT No.3799]

12.Rajendran [LCT No.3810]

13.Ranganathan [LCT No.3804]

14.Ramar [LCT No.5222]

15.Sakkarai Murthy [LCT No.3807]

16.Andichamy [LCT No.3802]

... Respondents

[R4 to R16 are suo motu impleaded vide order dated 20.11.2019,
made in W.P.(MD)No.24324 of 2019]

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Government Order in G.O.Ms.No.603 – 615, Home (Pri-IV) Department, dated 08.11.2019, on the file of the first respondent and quash the same as illegal.

[Prayer amended vide order dated 25.11.2019, made in W.M.P.(MD)No.21588 of 2019]

For Petitioner	: Mr.T.Lajapathi Roy Senior Counsel for Ms.T.Seeni Syed Amma
For Respondents 1 to 3	: Mr.N.R.Elango Senior Counsel for Mr.A.Thiruvadikumar Additional Public Prosecutor
For Respondents 4 and 11	: Mr.V.Karthick, Senior Counsel for Mr.R.Manickaraj
For 7 th Respondent	: Mr.V.Karthick, Senior Counsel for Mr.G.Karuppasamy Pandian
For 10 th Respondent	: Mr.V.Karthick, Senior Counsel for Mr.S.Ram Sundar Vijayaraj
For 14 th Respondent	: Mr.V.Karthick, Senior Counsel for Mr.M.Jegadeeshpandian
For Respondents 12, 13, 15 & 16	: Mr.S.Kanagarajan



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W.P.(MD)No.25333 of 2019:-

WEB: **Balachandra Bose @ Ulaganambi**

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Home Department,
Fort St. George,
Chennai – 600 009.
- 2.The Additional Chief Secretary to Government,
Home (Prison – IV) Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 3.The Inspector General of Prisons,
Tamil Nadu Government,
Chennai – 600 008.
- 4.The Deputy Inspector General of Prisons (HQrs),
Central Region, Madurai.
- 5.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 6.Chinna Odunkan [LCT No.3809]
- 7.Selvam [LCT No.3812]
- 8.Manoharan [LCT No.3803]
- 9.Manikandan [LCT No.3801]
- 10.Azhagu [LCT No.3808]
- 11.Chokkanathan [LCT No.3811]
- 12.Sekar [LCT No.3813]
- 13.Ponnaiah [LCT No.3799]
- 14.Rajendran [LCT No.3810]
- 15.Ranganathan [LCT No.3804]
- 16.Ramar [LCT No.5222]
- 17.Sakkarai Murthy [LCT No.3807]
- 18.Andichamy [LCT No.3802]
- 19.Manimegala, W/o.Late.Murugesan

<https://www.mhc.tn.gov.in/judis>



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20.Karuppaiah, S/o.Late. Kannakaruppan

21.Vasanthi, W/o.Late.Raja

22.Kaali, W/o.Late. Sevugamoorthy

23.Pachaiyammal, W/o.Late Mookkan

24.Kattachi, W/o.Mookkan

... Respondents

[R19 to R24 are impleaded as per order dated 03.02.2023,
made in W.M.P.(MD)No.1643 of 2020]

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned orders of the second respondent in G.O.Ms.No.603, Home (Prison – IV) Department, G.O.Ms.No.603, Home (Prison – IV) Department, G.O.Ms.No.604, Home (Prison – IV) Department, G.O.Ms.No.605, Home (Prison – IV) Department, G.O.Ms.No.606, Home (Prison – IV) Department, G.O.Ms.No.607, Home (Prison – IV) Department, G.O.Ms.No.608, Home (Prison – IV) Department, G.O.Ms.No.609, Home (Prison – IV) Department, G.O.Ms.No.610, Home (Prison – IV) Department, G.O.Ms.No.611, Home (Prison – IV) Department, G.O.Ms.No.612, Home (Prison – IV) Department, G.O.Ms.No.613, Home (Prison – IV) Department, G.O.Ms.No.614, Home (Prison – IV) Department, G.O.Ms.No.615, Home (Prison – IV) Department, with common dated 08.11.2019 respectively, quash the same and consequently, direct the respondents 1 to 5 herein to restore the conviction and sentence imposed on the respondents 6 to 18 and other accused concerned in CrI.A.Nos.803, 863 and 871 of 2001, on the file of the Hon'ble Principal Seat of this Hon'ble Court.

For Petitioner

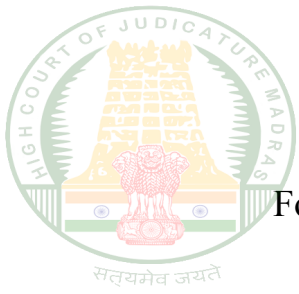
: Mr.A.C.Asai Thambi

For Respondents 1 to 5

: Mr.N.R.Elango, Senior Counsel
for Mr.A.Thiruvadikumar
Additional Public Prosecutor

For Respondents 6 and 13

: Mr.V.Karthick, Senior Counsel
for Mr.R.Manickaraj



W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020

For 9th Respondent

: Mr.V.Karthick, Senior Counsel
for Mr.G.Karuppasamy Pandian

WEB COPY For 12th Respondent

: Mr.V.Karthick, Senior Counsel
for Mr.S.Ram Sundar Vijayraj

For Respondents 14 and 16

: Mr.V.Karthick, Senior Counsel
for Mr.M.Jegadeeshpandian

For Respondents 7, 8, 10 & 11 : Mr.Y.Jagadeesh

For Respondents 15, 17 & 18 : Mr.S.Kanagarajan

For Respondents 19 to 24 : Mr.R.Alagumani

W.P.(MD)No.3431 of 2020:-

- 1.Manimegala, W/o.Late.Murugesan
- 2.Vasanthi, W/o.Raja
- 3.K.Kaali, W/o.Sevagumurthy
- 4.Pachaiyammal, W/o.Mookan
- 5.Kattachi, W/o.Mookan

... Petitioners

vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary to the Government,
Home Department,
Fort St. George, Chennai – 600 009.
- 2.The Inspector General of Prisons,
Tamil Nadu Prison Department,
Whannels Road, Egmore, Chennai – 600 008.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai District.
- 4.The Deputy Superintendent of Police,
Madurai, Madurai District.
- 5.Chinna Odunkan [LCT No.3809]
- 6.Selvam [LCT No.3812]



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- 7.Manokaran [LCT No.3803]
- 8.Manikandan [LCT No.3801]
- 9.Azhagu [LCT No.3808]
- 10.Chokkanathan [LCT No.3811]
- 11.Sekar [LCT No.3813]
- 12.Ponnaiah [LCT No.3799]
- 13.Rajendran [LCT No.3810]
- 14.Ranganathan [LCT No.3804]
- 15.Ramar [LCT No.5222]
- 16.Sakkarai Murthy [LCT No.3807]
- 17.Andichamy [LCT No.3802]

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned orders of the second respondent in G.O.Ms.No.603 - 615 Home (Prison – IV) Department, dated 08.11.2019, on the file of the first respondent, quash the same and consequently, direct the first respondent to restore them back to the prison, where they were earlier detained.

For Petitioners	: Mr.T.Lajapathi Roy, Senior Counsel for Ms.T.Seeni Syed Amma
For Respondents 1 to 4	: Mr.N.R.Elango, Senior Counsel for Mr.A.Thiruvadikumar Additional Public Prosecutor
For 15 th Respondent	: Mr.V.Karthick, Senior Counsel for Mr.M.Jegadeeshpandian

COMMON ORDER

DR.G.JAYACHANDRAN, J.

Challenging the premature release of 13 life convicts, by the State Government in exercise of its power conferred under Article 161 of the Constitution of India, two writ petitions (W.P.(MD)No.24324 of 2019 and W.P.(MD)No.25333 of 2019) filed by



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two different persons as public interest litigants and one petition by the relatives of the victims who died in the violence. All the three writ petitions are taken up for consideration together by consent.

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2. It is pertinent and relevant to record at this juncture that six members of the victims' family filed W.M.P.(MD)No.1643 of 2020 in W.P.(MD)No.25333 of 2019, to get themselves impleaded in the public interest writ filed by Balachandra Bose @ Ulaganambi, a Political Leader claiming himself interested in the case as a public. The Impleading Petition filed by the representatives of the victims to get themselves impleaded in W.P.(MD)No.25333 of 2019. They questioned the *locus* of the writ petitioner namely, Balachandra Bose @ Ulaganambi and also termed him as a busy body. Certain allegations were made specifically against Balachandra Bose @ Ulaganambi and the leader of his party for misleading them. For the sake of completion, W.M.P.(MD)No.1643 of 2020 is allowed though impleading them is only superfluous exercise in the light of the fact that the impleading petitioners have filed separate Writ Petition in W.P.(MD)No.3431 of 2020 subsequently.

Case background:-

3. Melavalavu Village Panchayat in Melur Taluk, Madurai District, was a General constituency till 1996. When the Government of Tamil Nadu notified it as a constituency exclusively reserved for the members of Scheduled Caste, resentment



from the other communities surfaced resulting in violent protest. After intervention by the State machineries, election date was fixed as 09.10.1996. Though few members of the Schedule Caste filed their nominations, they withdrew their nominations fearing danger to life. Again, the date for election fixed as 10.12.1996, but met with the same fate and got cancelled since the candidates again withdrew their nominations. For the third time, the election date was fixed as 28.12.1996. Though after much persuasions, the nominations were not withdrawn, but, on the date of election, there was rioting and booth capturing, leading to postponement of the election to 31.12.1996. At last, the election held on 31.12.1996. One Murugesan was declared elected as President and One Mookan was declared elected as Vice-President.

4. Nearly six months thereafter, on 20.06.1997 when Murugesan and Mookan with others were proceeding in a private bus, a gang of about 40 persons armed with lethal weapon, stopped the bus and brutally attacked the occupants. In the said attack, 6 persons, including Murugesan and Mookan died while several others were injured. All the victims belongs to Schedule Caste.

5. The jurisdictional Police registered the case under Sections 120-B, 147, 148, 341, 307 and 302 IPC and Section 3(2)(v) of the SC and ST (POA) Act, 1989. On completion of investigation, two final reports filed. Later, as per the direction of the



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High Court, both cases were clubbed and tried by the Sessions Court at Salem in S.C.

No.10 of 2001. The trial Court, vide its judgment dated 26.07.2001, acquitted 23

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accused from all charges and convicted 17 for offences under Section 302 r/w 34 IPC and sentenced them to undergo life imprisonment. All the accused were acquitted from the charges under SC & ST (POA) Act. Further, appeals to the High Court and then to Supreme Court by the convicts were dismissed on 19.04.2006 and 22.10.2009 respectively. The Criminal Revision Petitions filed on behalf of the victims against the order of acquittal of 23 accused from murder charge and all the accused from charges under the SC & ST (POA) Act, were dismissed by the High Court and no further appeal was filed before the Supreme Court challenging the acquittal.

6. The 17 life convicts were sent to prison and one among them died in prison due to illness. Out of the remaining 16 convicts, in the year 2008, three were released pre-maturely, vide G.O.Ms.No.1155, Home Department, dated 11.09.2008. Subsequently, the remaining 13 convicts were ordered to be released, vide G.O.Ms.Nos.603 to 615, Home (Prison IV) Department, dated 08.11.2019, pursuant to the decision taken by the State Government to grant amnesty to life convicts completed 10 years of imprisonment to commemorate the Birth Centenary of Bharat Ratna Puratchi Thalaivar Dr.M.G.Ramachandran, subject to Prison Rules.



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7. When this came to the knowledge of Mr.P.Rathinam, a practising Advocate, known for espousing the cause of downtrodden, filed W.P.(MD)No.24324 of 2019 as party-in-person, to issue Mandamus to the respondents, to furnish the copies of the G.O.Ms.Nos.603 to 615, dated 08.11.2019. Later, he amended his prayer to issue a Writ of Certiorarified Mandamus and quash the said G.Os. The beneficiaries of these G.Os were also later, impleaded as respondents 4 to 16.

8. With similar prayer, viz., to quash the G.Os. leading to premature release of the 13 life convicts accused in the Melavalavu massacre, Balachandra Bose @ Ulaganambi, a leader of a Political Party, preferred W.P.(MD)No.25333 of 2019. These two public interest writ petitions were followed by W.P.(MD)No.3431 of 2020, filed by the family members of the victims.

Case of the writ petitioners:-

9. The grounds for challenging the premature release of the life convicts in all these three writ petitions are almost similar and therefore, they are taken up for consideration together. For brevity, the grounds are capsulated as below:-

The impugned order of premature release is arbitrary, irrational and discriminatory.

(i) One of the convicts, by name Ramar, a beneficiary of G.O.Ms.No.613 was earlier convicted and sentenced to life imprisonment for committing double murder

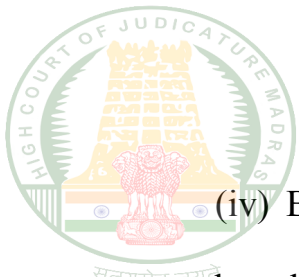


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of members belonging to Schedule Caste. Pending trial of the earlier case, he committed the present crime and found guilty. The antecedent of this convict disentitle him to get the benefit of the remission G.O.Ms.No.64, dated 01.02.2018. However, ignoring the said fact, 13 life convicts were released prematurely without considering the relevant materials need to be considered.

(ii) Though the accused were acquitted of the charges under the provisions of SC & ST (POA) Act, 1989, the Division Bench of the High Court while confirming the conviction for offences under Section 302 r/w 34 of IPC, had observed that, even in respect of charge under Section 3(2)(v) of SC & ST (POA) Act, there is enough material to hold against the accused persons, but unfortunately the State has not preferred appeal against the acquittal. This observation not been taken note before passing the impugned G.Os. Therefore, the life convicts are not entitled for premature release.

(iii) The Melavalavu Village is prone for caste discrimination and leaching violence against the SC Members. Numerous cases registered under the SC & ST (POA) Act, 1989 in the Melavalvu Police Station in the past would show that the premature release of these convicts is not conducive for the peace, tranquillity and safety of the oppressed class. Without considering the safety of the victims family, the State has exercised its power to release them prematurely without application of mind.



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(iv) Before passing the impugned G.Os., the State has failed to follow the procedure laid under law and the G.Os. silent about the reasoning, thus, suffers arbitrariness.

10. The State as well as the beneficiaries of the impugned G.Os. were served and represented through Counsels. On behalf of Mr.P.Rathinam, who preferred Writ Petition(MD)No.24324 of 2019 as party-in-person, on instruction from the petitioner Mr.T.Lajapathi Roy, learned Senior Counsel appeared and lead the submissions in support of the writ petitioners and placed reasons why the impugned G.Os. are unsustainable in law.

11. On behalf of the State, Mr.N.R.Ilango, learned Senior Counsel and on behalf of victims Mr.V.Karthick, learned Senior Counsel, assisted by Mr.R.Manickaraj, Mr.G.Karuppasamy Pandian, S.Ram Sundar Vijayaraj, Mr.M.Jegadeesh Pandian; and S.Kanagarajan and Mr.Y.Jagadesh lead the submissions in support of the impugned G.Os.

12. Even before adverting to the merits of the rival submissions, it is essential to understand the law of the land governing premature release of the prisoners by the State exercising its power under Article 161 of the Constitution. Hence, the law and dictum laid by the Apex Court, which are relevant is extracted below:-



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"161.Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases.- The Governor of a State shall have the power 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."

13. In exercise of the power conferred under Article 161, the Governor of Tamil Nadu through the Home Department of the State, issued G.O.Ms.No.64, dated 01.02.2018, wherein a scheme was framed for considering the cases of premature release of convicted prisoners on the occasion of the birth centenary of Shri. M.G.Ramachandran, former Chief Minister of Tamil Nadu.

14. Following the above said G.O., the State issued G.O.Ms.No.302, Home (Prison-IV) Department, dated 03.05.2018, wherein guidelines were issued in tune with the Supreme Court judgments rendered in **Epuru Sudhakar and others vs. Government of A.P. and others [2006 (8) SCC 161]**; **Maru Ram and others vs. Union of India [AIR 1980 SC 2147]**; and **Union of India vs. Sriharan @ Murugan [2016 (7) SCC 1]**. The said guidelines restricted the benefit to any life convicts, who have completed 10 years of actual imprisonment as on 25.02.2018 and those life convicts, who were aged above 60 years and completed 5 years of actual



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imprisonment on 25.02.2018, including those who were originally sentenced to death by the trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted).

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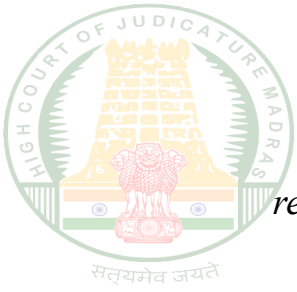
15. The Scheme framed under G.O.Ms.No.64, dated 01.02.2018 and the guidelines under G.O.Ms.No.302, dated 03.05.2018, read as follows:-

"(1) The following committees were constituted for examining the premature release of the life convict prisoners, case to case basis, on the above lines.

(i) the State level committee headed by the Inspector General of Prisons and the Deputy Inspector General of Prisons(Hqrs), Legal officer, Administrative officer (Hqrs) shall be members of the committee.

(ii) the Second level/District committee wherein the Central Prisons/Special Prisons for Women located, headed by the Superintendent of Prisons of the concerned Central Prison and the Additional Superintendent of Prison, Jailor, Administrative officer and Probation Officer shall be members of the committee.

(iii) the concerned Range Deputy Inspector General of Prisons and Regional Probation Officer of the concerned region shall examine the proposal of the second level committee and send the same to State Level Committee along with



recommendation.

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(II) *The life convicts who have completed 10 years of actual imprisonment as on 25.2.2018 including those who were originally sentenced to death by the Trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to satisfaction of the following conditions:-*

(1) The prisoner's behavior should be satisfactory

(2) Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence namely:-

(A) Prisoners convicted for the following offences, namely:-

(i) Rape (Section 376 of IPC)

(ii) forgery (Section 467, 471 of IPC)

(iii) robbery (Section 397, 398 of IPC)

(iv) dacoity (Section 396, 397, 398, 399, 400, 402 of IPC)

(v) terrorist crimes

(vi) offences against the State

(vii) offences under sections 153-A, 153-AA and 153B of

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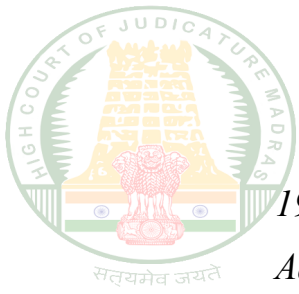
- (viii) *Escape or attempting to escape from lawful custody*
- (ix) *Forgery/Counterfeit of currency notes or bank notes / Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes (Section 472, 474, 489A, 489B and 489D of IPC)*
- (x) *Cruelty against women or dowry death (section 498A and 304 B of IPC)*
- (xi) *Economic offences, black marketing, smuggling or misuse of power and authority.*
- (xii) *Selling illicit arrack mixed with poisonous substances.*
- (xiii) *Habitual Forest offenders who are responsible for disturbing the ecological balance.*

(B) *Prisoners convicted and sentenced under the following Central Acts of offences, which relates to matters to which the executive power of the Union of India extends, namely:-*

(a) *The Prevention of Corruption Act, 1988 (Central Act 49 of 1988)*

(b) *The Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956)*

(c) *The Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940); The Drugs (Control) Act, 1949 (Tamil Nadu Act XXX of 1949); the Dangerous Drugs Act 1930 (Central Act II of*



1930); *The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954, (Central Act 21 of 1954); or The Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954)*

(3) That their cases should not come under Section 435 of Code of Criminal Procedure.

(4) That there is safety for the prisoner's life, if released.

(5) That the prisoner will be accepted by the members of their family.

(6) That there is safety of life of the family which was affected by the prisoner, if released.

(7) That the prisoner will execute the Bonds as per usual terms and conditions.

(III) The life convict prisoners who have completed 20 years of their actual imprisonment as on 25.2.2018 may be considered for premature release, subject to the satisfaction of following conditions:-

(1) Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence namely;

(A) Prisoners convicted for the following offences, namely:-



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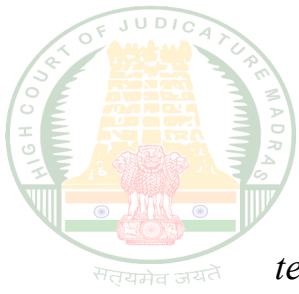


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- (i) Rape (Section 376 of IPC)*
- (ii) terrorist crimes*
- (ii) offences against the State*
- (iv) offences under section 153-A, 153-AA and 153 B of IPC.*
- (v) Forgery/Counterfeit of currency notes or bank notes / Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes (Section 472, 474, 489A, 489B and 489D of IPC)*
- (vi) Cruelty against women or dowry death, (Section 498A and 304 B of IPC)*
- (vii) Economic offences, black marketing, smuggling or misuse of power and authority.*
- (viii) selling illicit arrack mixed with poisonous substances.*
- (ix) Habitual forest offenders who are responsible for disturbing the ecological balance.*

(B) The conditions prescribed in guideline II (2) (B) above.

- (2) The Prisoner's behavior should be satisfactory.*
- (3) That their cases should not come under section 435 of Code of Criminal procedure.*
- (4) That there is safety for the prisoner's life, if released.*
- (5) That the prisoner will be accepted by the members of their family*
- (6) That there is safety of life of the family which was affected by the prisoner, if released and*



(7) *That the prisoner will execute the Bonds as per usual terms and conditions.*

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(IV) *The Life convict prisoners of the following categories of medical infirmities may be considered for premature release based on the State Medical Board report;-*

(a) *In all cases of complete and incurable blindness not caused by any act of the prisoner in order to procure release or of decrepitude or other incurable infirmities, which incapacitate a prisoner from commission of any further crime.*

(b) *Prisoner who are dangerously ill and will be so aggravated by further imprisonment as to render his/her early death likely and the prisoner will have a reasonable chance of recovery, if released.*

(c) *Prisoner is in danger of death from sickness, that there is no hope of recovery within or without the prison.*

(V) *The above cases shall be examined with reference to the above guidelines on a case to case basis.*

(VI) *This general amnesty is applicable to the life convict prisoners who have been convicted by the Court of criminal jurisdiction of the State of Tamil Nadu and are now undergoing their sentence in the prisons of other States/Union Territories on reciprocal basis. However, this order shall not be applicable to those prisoners who have been convicted by Court of criminal jurisdiction of other States / Union Territories / Other Countries but undergoing imprisonment in this State.*



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(VII) The granting of premature release of the prisoner is a onetime affair in commemoration of Birthday centenary celebration of Bharat Ratna, Puratchi Thalaivar Dr.M.G. Ramachandran, former Chief Minister of Tamil Nadu and it is applicable to those who are eligible as on 25.02.2018 and it shall not be extended later on to the persons who fulfill all the conditions stipulated in the Government Orders on a later date.

(VIII) The life imprisonment prisoners cannot claim premature release as a matter of right."

16. The case of the 13 life convicts, who are arrayed as respondents in these three Writ Petitions were positively considered for premature release. G.Os. were passed individually for each of the convict and they all were released.

17. The learned counsel appearing for the writ petitioners assail the G.Os. claiming that, except a vague references about the two committees constituted for the premature release and the proposal of the Additional Director General of Police/I.G. of Prisons, the G.O. does not discloses the content of the recommendations of the two committees or the proposal of the I.G. of Prisons, therefore, the decision of premature release suffers non application of mind.

18. In counter to this submission, Mr.N.R.Ilango, learned Senior Counsel



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representing the State submitted that these 13 life convicts were released prematurely

in accordance with the procedure laid and the G.O. indicates about the process and

material considered. The details of the recommendations or proposal deed not

necessarily be stated in detail while recording the satisfaction. The circulation file

pertaining to the respective G.O. contains the process undergone before passing the

G.O. and it will speak about the application of mind before passing the G.O. The

learned Senior Counsel also submitted that out of 17 persons convicted for life in

this case, one died in the prison due to illness. Three of them were positively

considered for premature release in the light of G.O.Ms.No.1155, Home (Prison (IV)

Department, dated 11.09.2008, issued in commemoration of Birth Centenary of

Peraringar Anna. The release of these three life convicts namely Alagarsamy,

Markandan and Rasam @ Ayyavu prematurely did not create any law and order

problem in Melavalavu Village nor objected by the victims family. Subsequently,

nearly after 10 years when the State took a policy decision to grant remission to life

convicts in view of the Birth Centenary of Late Dr.M.G.Ramachandran, former Chief

Minister of Tamil Nadu, about 1636 life convicts were found eligible for premature

release. They were considered case to case basis by the District Level Committees

and the State Level Committee. Based on their recommendations, independently

decision to release them were taken by the State and G.Os. Passed.

19. As far as the cases of the private respondents in these Writ Petitions are



concerned, initially, the District Level Committee did recommend for their premature release. However, the State Level Committee did not recommend for their premature release, apprehending possibility of communal clash again in the Village. Later, representations were received on behalf of the life convicts and by a Member of the Legislative Assembly. Objections were also received opposing any consideration for premature release. After due consideration of the rival representation, realising that the State Committee earlier has not taken note of the premature release of three co-convicts, who were convicted for life along with these 13 convicts in the same case and no report of communal clash at Melavalavu Village consequent to their release, the State Committee re-examined the file taking note of the facts which were omitted to be considered while rejecting the case of these life convicts.

20. Thereafter, considering the report of the Probation Officer, the representation made on the victims side, the prevalence of the law and order during the leave period of the said 13 prisoners, the impact of the premature release of the 3 co-accused/convicts recommended for premature release. This proposal of the Second Level/District Committee was re-examined by the State Level Committee headed by the Inspector General of Prisons. Based on the proposals, the premature release of these 13 life convicts were considered by the State and orders issued.

21. The files in connection with the issuance of G.Os. were produced for scrutiny and same perused by the Court. On examination of the files, which have



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originated by the Home Department of the State based on recommendations of the Committees, has been circulated upto the Governor of the State, contains all particulars necessary for taking the decision. The content of the file is in tune with the submission of the learned Senior Counsel Mr.N.R.Ilango. This Court is satisfied that the premature release of these 13 life convicts has undergone the procedure laid under law and was issued based on subjective satisfaction of the Government.

22. The point now for consideration is whether the Court can substitute its view in the place of the policy decision of the State exercised under Article 161 and Sections 432, 433 of the Cr.P.C., just because, the judiciary differs from the view of the Governor, who is head of the executive and act under the aid and advice of the Council of Ministers.

23. This issue is well addressed in **Epuru Sudhakar and another vs. Govt. of A.P.** reported in **2006 (8) SCC 161** by the Bench consisting of Hon'ble Mr.Justice Arjit Pasayat and Hon'ble Mr.Justice S.H.Kapadia. Before considering the dictum laid in the **Epuru Sudhakar** judgment [cited supra], it is also pertinent to record that, in W.P.(MD)No.9177 of 2019 filed by Thiru P.Rathinam arising from this very same case (S.C.No.10 of 2001), the writ petition filed to declare these 13 life convicts are not eligible for premature release, this Court declined to entertain the Writ and has observed that, "When an administrative decision is taken by the Government, this Court cannot intervene with the decision as such acting as an



appellate authority."

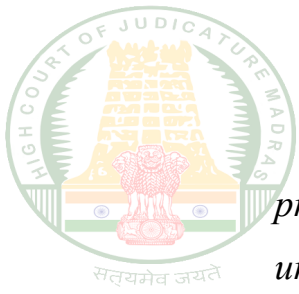
24. Reverting back to **Epuru Sudhakar's case** [cited supra], the Hon'ble

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Supreme Court has observed that,

"65. Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations.

66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that



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prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central place in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future."

25. It is also beneficial to refer the observation of judgment of this Court passed by the Division Bench in W.P.No.5073 of 2021, dated 25.03.2022 in **Zaheera Banu vs. State of Tamil Nadu** arising from a writ petition challenging the refusal to extend the benefit of G.O.(Ms)No.1155, Home (Pri.IV) Department, dated 11.09.2008 and G.O.(Ms)No.64, Home (Prison-IV) Department, dated 01.02.2018,



by the State Government.

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26. After relying upon observations of the Supreme Court made in earlier cases, the learned Judge has vividly explained the process undertaken before the administrative decision and the prerogative of the State under the scheme of constitution in the following words:-

*"22. Under our Constitutional Scheme, the judiciary is vested with the power to decide the culpability or otherwise of an accused objectively based on the evidence on record. After the judiciary convicts and sentences an accused, the convicted accused is handed over to the executive for implementing the sentence imposed by the Court. The executive cannot sit in judgment over the correctness of the findings of the judiciary. Life imprisonment means imprisonment until the end of the natural life of the convicted accused. The Governor has the sovereign power under Article 161, *ibid.*, to remit the sentence. The Governor acts under the aid and advice of the Council of Ministers (Cabinet). The Chief Minister and his Council of Ministers should enjoy the confidence of the majority of the elected members in the assembly. The task of governance of the State is on the Chief Minister and his Council of Ministers. Therefore, when they advise the Governor not to grant premature release to a prisoner, the Court should be slow in interfering with that order. In *Epuru Sudhakar and Another Vs. Government of Andhra Pradesh and Others [(2006) 8 SCC 161]*, the grounds on which judicial review of the order of the*



W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020

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27. In **Epuru Sudhakar's case** [cited supra], to recollect the words of Justice S.H.Kapadia, the power of pardon is the prerogative of the Government, but not immune from judicial review. If the decision indicates exercise of the power by application of manageable standards, Courts will not interfere in its supervisory jurisdiction. By manageable standard, we mean standard expected in functioning democracy. A pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review.

28. In the instant case, we find the impugned order of premature release been issued after due consideration of facts relevant. It includes the objections from the side of victims and the conduct of the prisoners during the parole and in prison. The law and order situation prevailing in the Village after three out of 17 convicts released prematurely earlier. The parity between those three convicts and the remaining 13 convicts (one died due to illness).

29. The learned counsel for the petitioners referring the earlier conviction of one Ramar in S.C.No.78 of 2007, on the file of the Principal District Judge, Karur,



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for the major offence under Section 302 IPC, submitted that S.C.No.78 of 2007 is a case of double murder of Scheduled Caste community members. Pending trial of this case, he has committed similar crime, in which 6 members of the SC community were murdered. This is a relevant material, which has not been considered while ordering premature release.

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30. The learned Senior Counsel appearing for the State, in response, submitted that in both the earlier case in S.C.No.78 of 2007 as well as in S.C.No.10 of 2001, though charges were framed for the offences under the SC & ST (POA) Act, 1989, in both the cases, the accused were acquitted of the charges under the SC & ST (POA) Act by the trial Courts. The murder occurred not because the victims were members of SC community, but for other reasons. Ramar preferred appeal before the High Court in CrI.A.No.369 of 2008 against the conviction in S.C.No.78 of 2007. The Hon'ble High Court in CrI.A.No.369 of 2008, ordered the period of sentence imposed in S.C.No.78 of 2007 to run concurrently along with the sentence imposed in S.C.No.10 of 2001. Thus, the life imprisonment imposed in these two cases got merged. Therefore, it is incorrect to allege that the antecedent of the prison was not considered.

31. The reading of the judgment of **Ramar and others vs. State of Tamil Nadu and others** in CrI.A.No.369 of 2008, dated 07.07.2010 against the judgment of conviction and sentence imposed in S.C.No.78 of 2007, the judgment of



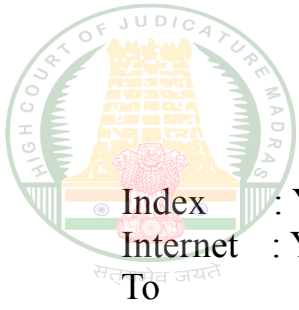
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Alagarsamy and others vs. State of Tamil Nadu and others in CrI.A.No.803 of

2002 etc. along with the revision filed on behalf of the victim against order of acquittal passed in S.C.No.10 of 2008 and the order of the Supreme Court on further appeal by Alagarsamy and others, we find though few of the accused are common in both the cases, the reason and motive for the occurrence are not same and the trial Court in both the cases, has disbelieved the case of the prosecution that the murder was committed because the victims belong to SC community. Therefore, there is no reason to infer that the State has failed to consider relevant materials or passed the order of premature release for extraneous considerations.

32. It is further reported by the learned Additional Public Prosecutor through the status report that there is no law and order problem either when the prisoners were released on parole on various occasions and also after their premature release. This justifies the discretion of the State exercising its prerogative power applying mind considering all relevant materials. In fine, on appreciating the facts and the perusal of records, this Court finds no irrelevant or extraneous materials entered into the decision making process. Therefore, the order granting premature release sustains.

33. In the result, the Writ Petitions are dismissed. No costs. Consequently, C.M.P.(MD)No.2884 of 2020 is closed.



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03.02.2023

Index : Yes / No

Internet : Yes / No

To

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- 1.The Secretary to the Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai – 600 009.
- 2.The Additional Chief Secretary to Government,
Home (Prison – IV) Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 3.The Inspector General of Prisons,
Tamil Nadu Prison Department,
Whannels Road, Egmore,
Chennai – 600 008.
- 4.The Deputy Inspector General of Prisons (HQrs),
Central Region, Madurai.
- 5.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 6.The Deputy Superintendent of Police,
Madurai,
Madurai District.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

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PRE-DELIVERY COMMON ORDER MADE IN
W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020

DATED : 03.02.2023