

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.10.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

H.C.P.(MD).No.540 of 2016

P.Veera Bhaarithi

: Petitioner

Vs.

1.The State of Tamil Nadu,

Rep by the Principal Secretary to Government,

Home [Prison] Department,

Tamil Nadu Government Chief Secretariat,

Fort.St.George, Chennai 600 009.

2.The Additional Director General of Police/IG of Prisons,

CMDA, Towers II, No.I, Gandhi Irvin Road,

Egmore, Chennai 600 008.

3.The Superintendent,

Central Prison, Palayamkottai,

Tamil Nadu, 627 002.

: Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the

records in order G.O.(D).No.646/Home [Prison IV] Department/2015, dated 28.08.2015, passed by the first respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner Veerabharaathi, S/o.Ponniah, aged about 45 years/2016] in prison before this Court from their illegal custody and to set him at liberty forthwith under the provisions of Articles 14, 20 and 21 of the Indian Constitution.

For Petitioner : Mr.P.Veerabharathi
Party-in-person

For Respondents : Mr.R.Rajarathinam
Public Prosecutor
Assisted by Mr.C.Ramesh
Additional Public Prosecutor

Reserved : On 20.10.2016
Pronounced : On 26.10.2016

ORDER

S.NAGAMUTHU, J.

The petitioner is a life convict, lodged in the Central Prison, Palayamkottai, Tirunelveli. He has come up with this Habeas Corpus Petition, challenging the Government Order in G.O.(D).No.646/Home [Prison IV] Department/2015, dated 28.08.2015 and he has prayed for a Mandamus to set him at liberty.

2. The facts leading to this Habeas Corpus Petition, in brief, are as follows:-

The petitioner was the first accused in S.C.No.30 of 1999, on the file of the learned Principal Sessions Judge, Virudhunagar. By Judgment dated 06.10.1999, the Trial Court convicted and sentenced him as follows:-

Section of Law	Sentence	Fine amount
302 r/w 34 IPC	Death	Nil.
341 r/w 34 IPC		Rs.500/- in default to undergo simple imprisonment for one week.
328 r/w 34 IPC	To undergo Rigorous imprisonment for ten years	Rs.1,000/- in default to undergo rigorous imprisonment for two years.
404 r/w 34 IPC	To undergo Rigorous imprisonment for three years	Rs.3,000/- in default to undergo rigorous imprisonment for two years.
376 IPC	To undergo Rigorous imprisonment for seven years	Rs.3,000/- in default to undergo rigorous imprisonment for two years.
201 r/w 34	To undergo Rigorous imprisonment for seven years	Rs.2,000/- in default to undergo rigorous imprisonment for two years.

3. It needs to be mentioned that the other accused were also similarly sentenced. For confirming the death sentence, the matter was referred to this Court in R.T.No.2 of 1999. The accused also filed Criminal Appeals challenging the conviction and sentence imposed

under various penal provisions.

4. A Division Bench of this Court, by Judgment dated 10.08.2000, confirmed the conviction under all the penal provisions as done by the Trial Court. However, the Division Bench did not confirm the death penalty imposed on the accused for the offence under Section 302 r/w Section 34 of the Indian Penal Code and instead, the Division Bench sentenced the petitioner to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code. The Division Bench, however, confirmed the sentences in respect of the other offences. As against the same, Special Leave Petitions filed by the petitioner in S.L.P(Crl).Nos.4019 and 4020 of 2000 were also dismissed by the Hon'ble Supreme Court, by Judgment dated 04.12.2000. Thus, as a life convict, he has been undergoing the sentence in the Central Prison, Palayamkottai, Tirunelveli.

5. While so, the Government of Tamil Nadu issued G.O.Ms.No. 1155, Home (Pri.IV) Department, dated 11.09.2008, granting premature release to the convicts, who had completed seven years of actual imprisonment as on 15.09.2008 and 66 life convicts, who are aged 60 years and above who had completed five years of actual

imprisonment as on 15.09.2008, subject to certain conditions. The petitioner was not given the benefit of the said Government Order, because, according to the said Government Order, the prisoner, who was awarded death penalty and whose death sentence, later on, was modified into that of life imprisonment by the Appellate Court, was not eligible to get the benefit of the said Government Order.

6. As against the said Government Order, he filed W.P(MD).No. 10509 of 2009, before this Court. The said Writ Petition was dismissed by order dated 26.02.2010. Challenging the said order, he filed W.A.(MD).No.193 of 2010, which was also dismissed by a Division Bench of this Court, on 12.12.2011. As against the same, he filed Review Application (MD).No.65 of 2012, which was also dismissed, on 25.09.2012. Then, he approached the Hon'ble Supreme Court by filing S.L.P.(Crl).No.6481 of 2013, challenging the order passed by the Division Bench. The said Special Leave Petition was also dismissed, by order dated 18.11.2014. Thus, he failed to get the benefit of premature release in terms of the said Government Order. While dismissing the Special Leave Petition, the Hon'ble Supreme Court issued the following direction:-

"We are of the view that the petitioner's case for

remission/commutation, etc., in accordance with the Tamil Nadu Prison Manual be considered by the State Authority and an appropriate order be passed on the petitioner's entitlement for release within a period of two months from today".

7. In pursuance of the same, the first respondent passed an order in G.O.(D).No.646, Home (Prison.IV) Department, dated 28.08.2015, rejecting the request of the petitioner for premature release. The main ground, upon which it was rejected, was that as per Rule 341(3) of the Tamil Nadu Prison Rules, 1983, [for brevity, "the Rules"] contained in Volume II of the Tamil Nadu Prison Manual, all the prisoners, who have been sentenced to undergo imprisonment for more than three years other than imprisonment for life, for the offences mentioned therein shall not be eligible for premature release under the Advisory Board Scheme, i.e., "Prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B, and 489-D of the Indian Penal Code" are not eligible for premature release.

8. According to the first respondent, since the petitioner was convicted for offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years for the said offence, he was not eligible for placing his case before the Advisory Board, as per Rule 341(3) of the Rules for consideration. The petitioner is aggrieved by the same. That is how, he has come up with this Habeas Corpus Petition, wherein he challenges the said Government Order and also he prays for setting him at liberty forthwith.

9. At his request, orders were issued by this Court for producing him before this Court, because, he wanted to argue the case as party-in-person. Accordingly, he was produced before this Court on the previous hearings and finally, on 20.10.2016. He made his submissions. According to him, the refusal of the first respondent to consider his case for premature release under Rule 341(3) of the Rules, is illegal. It is his contention that the Probation Officer of the Prison Department, through his enquiry report, dated 07.12.2013, as well as the District Collector concerned, through his enquiry report dated 31.03.2015, have recommended the case of the petitioner for premature release. Further, the history ticket of life convict prisoner

No.3334 - Mr.P.Veera Bharathi shows that there is no prison offence/punishment for the entire tenure of his life imprisonment for the period from the date of custody to till date. In order to substantiate the same, he has filed information furnished to him under the Right To Information Act, 2005, under reply No.171 of 2016, dated 20.04.2016. He would further submit that there is no legal bar for considering his case for premature release and as a matter of fact, according to him, he is eligible for being considered for premature release.

10. The first respondent, through the Deputy Secretary to Government, has filed a counter, in which he has reiterated that as per Rule 341(3) of the Rules, the case of the petitioner for premature release cannot be considered, because, he has not only been convicted for the offence under Section 302 r/w Section 34 of the Indian Penal Code, but also he has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. It is further contended in the counter that the petitioner is not entitled for premature release at any rate.

11. Mr.R.Rajarathinam, the learned Public Prosecutor

appearing on behalf of the State, took us through the Rule and tried to persuade us to the effect that the petitioner is not entitled for being considered for premature release.

12. We have considered the above submissions.

13. Before going into the applicability and scope of Rule 341 of the Rules, let us have a quick look into the provisions of the Code of Criminal Procedure, dealing with suspension, remission and commutation of sentences. Under Section 232 of the Code of Criminal Procedure, the appropriate Government [in the instant case - State Government] had been empowered to remit the sentences, which includes the life sentence. As per Section 433(A), which was inserted by the Act 45/1978 with effect from 18.12.1978, such person shall not be released from prison, unless he had served at least 14 years of imprisonment.

14. In the instant case, undoubtedly, the petitioner has served 14 years of actual imprisonment and therefore, he is eligible for being considered for remission, as provided in Section 432 of the Code of Criminal Procedure.

15. Now, turning to the Prison Manual, the Tamil Nadu Prison Rules, 1983, has been issued by the Government of Tamil Nadu in exercise of the power conferred under Section 59 of the Prisoners Act, 1984. Chapter 19 of the Rules deals with "The Remission System". Rule 312(b) defines that in these Rules, the expression "sentence" means, a sentence as finally fixed on appeal, revision or otherwise and includes an aggregate of more sentences than one and an order of committal to prison in default of furnishing security to keep the peace or be of good behaviour. As provided in Rule 335 of the Rules, there shall be an Advisory Board for each Central Prison and the Special Prison for Women. The said Advisory Board has been empowered to recommend the premature release of a prisoner. Rule 339 of the Rules deals with the procedure to be adopted by the Advisory Board.

16. Rule 341 of the Rules, which is very important for the issues involved in the present Habeas Corpus Petition, states as follows:-

"(1) The sentences of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or imprisonment for life and imprisonment for terms exceeding in the

aggregate twenty years shall, for the purpose of this rule, be deemed to be sentences of imprisonment for twenty years.

(2) The cases of prisoners undergoing imprisonment for life shall, ordinarily be placed before the Advisory Board as constituted for consideration as to whether their parole will be recommended, on completion of ten years of actual imprisonment :

Provided that by virtue of provision contained in section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the cases of prisoners sentenced to imprisonment for life on or after 18th December 1978 for an offence for which death is one of the punishments provided by law, or in whose case a sentence of death imposed has been commuted under section 433 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) into one of the imprisonment for life, shall be placed before the Advisory Board only if they have served at least fourteen years of imprisonment.

Explanation (1).— Special remission granted in the case of life convicts in connection with the Second World Tamil Conference and Gandhiji's Centenary Celebrations shall be taken into account for calculation of two thirds of their life sentence in terms of rigorous imprisonment for 20 years, for eligibility for consideration under the Advisory Board Scheme, provided that such cases shall be placed before the Advisory Board only after the convicts have actually undergone imprisonment for [ten and half years].

Explanation (2).— The set off period specified in section 428 of the Code of Criminal Procedure 1973 (Central Act, 2 of 1974) in the case of lifers sentenced prior to 18th December 1978 shall be taken into account and their cases shall be placed before the Advisory Board after completion of ten years of actual sentence including the above set off period, if any. The period of [ten and half years] shall also include the special remission of one year sanctioned in G.O. Ms. No. 3333, Home, dated the 19th December 1971, and six months sanctioned in G.O. Ms. No. 2475, Home, dated the 14th September 1977.

Explanation (3).—The set off period specified in section 428 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) shall be taken into account in the case of lifers sentenced on or after 18th

December 1978 referred to in the proviso under sub-rule (2) for computing the period of fourteen years.

(3) The cases of prisoners sentenced to more than three years, excepting lifers to whom sub-rule (2) applies, shall be placed before the Advisory Board if they have served two thirds of their sentence including remission :

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years or imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme :—

(i) Prisoners convicted of rape, dacoity, terrorist crimes, offences against the State or prisoners sentenced under section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1860) ;

[(ii) Prisoners convicted of economical offences, black marketing, smuggling or misuse of power and authority ;

(iii) Prisoners sentenced under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), the Suppression of Immoral Traffic in Women and Girls Act 1956, (Central Act 104 of 1956), 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), and 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).

(iv) Prisoners sentenced for Offences under sections 498-A and 306-B of the Indian Penal Code (Central Act XLV of 1860) ;

(v) Prisoners sentenced for the offence of selling illicit arrack mixed with poisonous substances ;

(vi) habitual forest offenders who are responsible for disturbing the ecological balance ; and

(vii) Prisoners sentenced for offences wherein minimum sentences are prescribed

The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) and Criminal lunatics shall not be placed before the Advisory Board.

Explanation (1).— The cases of prisoners convicted by Court Martial shall also be placed before the Advisory Board for consideration under sub-rules (2) and (3).

Explanation (2).— Sentences of imprisonment for failure to furnish security shall not be taken into account in determining the aggregate sentence for the purpose of sub-rules (2) and (3).

Explanation (3).— The set off period specified in section 428 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be taken into account in the case of all prisoners excepting lifers, to whom Explanations (2) and (3) of sub-rule (2) shall apply and to those sentenced to imprisonment not being in default of payment of fine, in determining the period of sentence served for the purpose of sub-rule (3).]

[Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years of imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme.

- i. Prisoners convicted of rape, forgery, dacoity, terrorist, crimes, offences against the State or Prisoners sentenced 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1980).
- ii. Prisoners convicted of economic offences, black marketing smuggling or misuse of power and authority; and
- iii. Prisoners sentenced under the prevention of corruption Act, 1988 (Central Act 49 of 1988) the Suppression of Immoral Traffic in Women and Girls and cosmetics Act, 1940 (Central Act XXIII of 1940), the Drugs Control Act 1949 (Tamil Nadu Act XXX of 1949), the Drugs and Magic Remedies (objectionable advertisements) Act 1954 (Central

Act 21 of 1954 (Central Act 37 of 1954) and the Dangerous Drugs Act, 1930 (Central Act II of 1930).]"

17. A close reading of sub-rule (2) and sub-Rule (3) of the Rules would make it *ipso facto* clear that the case of a life convict shall be considered for premature release only on his completing ten years of actual imprisonment, [as per Rule 433(A) - 14 years], whereas, in case of convict other than a life convict, his case shall be considered for remission on his completing 2/3rd of the sentence, including the remission. A plain reading of the proviso to sub-Rule (3) would again make it manifestly clear that the prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B, and 489-D of the Indian Penal Code, shall not be eligible for being considered for premature release as provided in Sub-Rule(3), which means they are not eligible for being considered on their completing 2/3rd of their sentences. It goes without any doubt that they can be considered only on their completing 14 years of imprisonment as provided in Sub-Rule (2). Sub-Rule (2) does not exclude a life convict, who has been convicted for any offence like an offence under Section 376 of the Indian Penal Code. Irrespective of

the nature of the offence committed, if he is a life convict, he will be eligible for consideration for premature release on his completing 14 years of actual imprisonment.

18. In the impugned order, it has been stated that the petitioner is not eligible for being considered for premature release, because, he has been convicted for offence under Section 376 of the Indian Penal Code. Rule 341(3) of the Rules has been placed reliance by the first respondent to reject the case of the petitioner. As we have already elaborately dealt with, since the petitioner has completed 14 years of actual imprisonment, he is eligible for being considered under Rule 341(2) of the Rules and he does not claim for premature release on his completing 2/3rd of imprisonment, as provided in Sub-Rule 3 of Rule 341 of the Rules. Therefore, the proviso to Sub-Rule 3 of Rule 341 of the Rules shall not be an impediment, in any manner, for the petitioner for being considered for premature release under Sub-Rule 2 of Rule 341 of the Rules.

19. The petitioner assails the impugned order from a different angle also. According to him, assuming that sub-Rule 3 of the Rules, including the proviso is applicable, even then, he is entitled for being

considered for premature release. According to him, while he has already served out the entire sentence imposed on him for the offence under Section 376 of the Indian Penal Code, he does not pray for any remission in respect of the sentence for the said offences. In the proviso to Sub-Rule 3 of Rule 341 of the Rules, Section 302 of the Indian Penal Code has not been included. In the instant case, according to the petitioner, since he prays for remission of sentence imposed on him only for the offence under Section 302 of the Indian Penal Code and not for the offence under Section 376 of the Indian Penal Code, the said proviso shall not be a bar for his case being considered for premature release. As we have already held that the petitioner is eligible for being considered under Sub-Rule 2 of Rule 341 of the Rules for premature release, any further discussion in respect of the proviso to Sub-Rule 3 of Rule 341 of the Rules, shall only be a mere academic exercise. Since it has been argued by the petitioner as well as the learned Public Prosecutor, we wish to go into the said academic debate also.

20. The learned Public Prosecutor would submit that if a person has been convicted for any offence, besides the offences enumerated in the proviso to Sub-Rule 3 of Rule 341 of the Rules, then, even in

respect of the punishment for other offence, he is not eligible for premature release. The learned Public Prosecutor has, however, been very fair in bringing to our notice a clarification issued by the Director General of Prisons in No.14189P.L./89, dated 04.11.1989, wherein he clarified that in a case, where a convict is undergoing imprisonment for life for the offence under Section 302 of the Indian Penal Code and has also been convicted and sentenced for the offences under Sections 376 and 396 of the Indian Penal Code, if the sentences were ordered to run concurrently, after he had served out the sentence for the offence under Sections 376 and 396 of the Indian Penal Code, he would be eligible for being considered for premature release in respect of the life sentence for the offence under Section 302 of the Indian Penal Code.

21. Though the Director General of Prisons himself has clarified the proviso to Sub-Rule 3 of Rule 341 of the Rules, the said clarification has missed the eyes of various Jail Authorities in the State, as it has happened in the instant case. We fully concur with the clarification issued by the Director General of Prisons, as enumerated above. As per the said clarification also, in the instant case, since the petitioner has already served out the sentence for the offence under

Section 376 of the Indian Penal Code, he is eligible for premature release in respect of the life sentence, which he has been undergoing for the offence under Section 302 of the Indian Penal Code. Thus, looking from any angle, the petitioner is entitled for being considered for premature release.

22. The petitioner, in his concluding argument, submitted that instead of directing the Government to consider his case for premature release, afresh, in the light of the verification reports of the Probation Officer and the District Collector, this Court may set him at liberty by remitting the sentence.

23. In our considered view, the said request cannot be considered, for the simple reason, when statutorily there is a forum constituted for considering the individual case for premature release by taking into account the various facts and circumstances, as enumerated in the Tamil Nadu Prison Rules, 1983, this Court cannot usurp the power of the said forum and exercise the powers of the Advisory Board. Therefore, this request is rejected.

24. In view of the foregoing discussion, it is patently clear that

the impugned order is not sustainable and the same is liable to be set aside. Accordingly, we set aside the impugned Government Order in G.O.(D).No.646/Home [Prison IV] Department/2015, dated 28.08.2015, passed by the first respondent and direct the first respondent to pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order, based on the verification reports and the other reports already available with the first respondent and it need be, by getting supplementary reports. If the first respondent calls for any supplementary report from any authority, the same shall be submitted by the authority concerned, without any further delay and at any rate, the first respondent shall pass final orders in this matter within a period of eight weeks from the date of receipt of a copy of this order.

25. During the course of hearing, it was also brought to our notice that by misinterpreting Sub-Rule 3 of Rule 341 of the Rules, viz-a-viz sub-Rule 2 of Rule 341 of the Rules and ignoring the clarification issued by the Director General of Prisons, as referred to above, the claims of several life convicts in the State for premature release have been rejected by the first respondent. Many of the prisoners, due to ignorance of law or out of lack of wherewithal and

help, without approaching this Court for relief, are languishing in various prisons in the State. Though they have not approached this Court, on that score alone, we cannot deny justice to them, as poverty and ignorance cannot stand in the way of a person securing his right, such as, liberty, which is a fundamental right guaranteed under the Constitution. Therefore, we direct the first respondent to review all the cases of the life convicts, who have completed 14 years of imprisonment lodged in various prisons in the State, where their claims for premature release have been rejected placing reliance erroneously on the proviso to Sub-Rule 3 of Rule 341 of the Rules, thereby ignoring the clarification issued by the Director General of Prisons, by his proceedings No.14189P.L.1/89, dated 04.11.1989. In short, the first respondent shall act on the said clarification and review the cases of such eligible convicts, who are lodged in various jails in the State. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this order. The Habeas Corpus Petition is allowed, as indicated above.

[S.N.J.] & [M.V.M.J.]

26.10.2016

Index : Yes/No
 Internet : Yes/No
 NB

To

- 1.The Superintendent of Prison,
Central Prison, Madurai 625 016.
- 2.The Principal Secretary to Government,
Home [Prison] Department,
Tamil Nadu Government Chief Secretariat,
Fort.St.George, Chennai 600 009.
- 3.The Additional Director General of Police/IG of Prisons,
CMDA, Towers II, No.I, Gandhi Irvin Road,
Egmore, Chennai 600 008.
- 4.The Superintendent,
Central Prison, Palayamkottai,
Tamil Nadu, 627 002.

S.NAGAMUTHU, J.

AND

M.V.MURALIDARAN, J.

NB

ORDER MADE IN

H.C.P.(MD).No.540 of 2016

26.10.2016