

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.7428 of 2020

V.Krishnamurthy

... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home (Prison IV) Department,
Fort St. George, Chennai 600 009.

2.The Chairman of State Legal Services Committee,
North Fort Road, High Court Campus,
Chennai 600 104.

3.The Director General of Prisons,
Egmore, Chennai 600 085.

4.The Additional Principal Secretary to Government,
Home Department, Secretariat, Kuber Salai,
Puducherry 605 000

5.The Inspector General of Prisons,
Mathur Road, Kalapet,
Puducherry 605 014.

... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, directing the respondents immediately to formulate a High Powered Committee to determine which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate.

For Petitioner :Mr.R.Vivekananthan

For Respondents :Mr.P.H.Aravind Pandian (for R1 to R3)
Additional Advocate General
Assisted by Mr.A.N.Thambidurai
Special Government Pleader &
Mr.C.V.Saichandran,
Government Advocate

Mr.Bharatha Chakkravarthy (for R4 & R5)
Public Prosecutor (Puducherry)

ORDER

(Order of the Court was delivered by **N.KIRUBAKARAN, J**)

This Writ Petition has been filed seeking Writ of Certiorarified Mandamus to formulate a High Powered Committee to determine which class of prisoners can be released on parole or on interim bail for such period.

2.Heard Mr.R.Vivekananthan, learned counsel appearing for the petitioner who would submit that the Hon'ble Supreme Court by virtue of order dated 23.03.2020 directed to constitute a High Powered Committee to determine which class of prisoners can be released on parole or on interim bail for such period. However, the State has not formulated any such Committee and therefore, the present Writ Petition has been filed.

3.Mr.P.H.Aravind Pandian learned Additional Advocate General would dispute the contentions of the learned counsel for the petitioner and would

submit that the State has acted upon the directions of the Honourable Supreme Court and formulated a Committee consisting of (i) The Executive Chairman of the Tamil Nadu State Legal Services Authority, (ii) The Additional Chief Secretary (Home, P & E), Chennai - 9 and (iii) The Director General of Police/IG of Prisons, Chennai - 8. The said Committee met under the Chairmanship of Hon'ble Dr. Justice VINEET KOTHARI, Judge of High Court of Madras on 26.03.2020 and after review of various measures taken by the Government and the Prison Department for the prevention of Pandemic COVID-19, about 7 recommendations have been made which are extracted as follows:

"(i) To consider relaxing the procedure prescribed in Tamil Nadu Suspension of sentence Rules, 1982 in respect of sanction of ordinary leave for more than a month, including other requirements while sanctioning leave for 30 days for the convict prisoners.

(ii) Leave of prisoners who are already out of prison on ordinary, emergency and leave granted by the Court may be extended upto 30.04.2020.

(iii) Prison Department should ensure that the safety of prisoners who are released on leave/bail to reach their destination safely in view of the 144 prohibition orders due to COVID-19.

(iv) To shift the under trial prisoners from Central Prison-II, Puzhal to Central Prison-I, depending on the need for decongestion.

(v) *The 3 Principal District Judges of Chennai, Tiruvallur and Kancheepuram are requested to visit the Central Prison-II, Puzhal to assess the possibilities for grant of bail to the above prisoners to further decongest in the Central Prison-II, Puzhal.*

(vi) *As a measure of precaution food may also be provided to the inmates inside the dormitories.*

(vii) *Prisoners of foreign nationals who have a travel history to the affected countries should be admitted into the prisons only after through screening adhering to the COVID-19 parameters."*

4.It is further submitted that as per the directions of the Hon'ble Supreme Court, based on the instruction of the Hon'ble High Court of Madras, around 4182 prisoners who were involved in various offences were released by Principal District Judges on Bail till 06.04.2020 by involving the Undertrial Review Committee and Tamil Nadu State Legal Services Authority. It is further stated that no other case was found eligible to be released on Bail under Section 436 A of Code of Criminal Procedure, 1973 in Tamil Nadu Prisons.

5.Heard the parties and perused the records.

6.The Hon'ble Supreme Court by order dated 23.03.2020 has issued direction to constitute High Powered Committee. The relevant paragraphs are extracted hereunder:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum."

7.The relevant paragraph of the subsequent order dated 07.04.2020 is also extracted hereunder:

"In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force"

8.Mr.Bharatha Chakravarthy, learned Public Prosecutor appearing on behalf of the 4th and 5th respondents would submit that the State of Puducherry

has already constituted the Committee and paragraph 2 of the counter affidavit is extracted as follows:

“2.I humbly submit that in compliance with the directions of Hon'ble Supreme Court of India dated 23.03.2020 suo motu Writ Petition (C) No.1/2020, which was also communicated vide Note of Commonwealth Human Rights Initiative, (CHRI), the Government of Puducherry has constituted High Powered Committee vide order No.35/2020/Home, dated 27.03.2020 consisting of:

- (i)The Executive Chairman of Union Territory of Puducherry Legal Services Authority (UTPLSA)*
- (ii)The Principal Secretary (Home) and*
- (iii)The Inspector General of Prisons”*

9.He would further submit that about 85 persons have been released by the Committee and the same is recorded.

10.Mr.P.H.Aravind Pandian learned Additional Advocate General has also produced a communication dated 07.04.2020 issued by the Additional Chief Secretary addressed to the Director General of Police regarding extension of parole and leave. The last paragraph of the said communication is extracted as follows:

"In the circumstances stated by the Director General of Police / Inspector General of Prisons in his letters fourth and

fifth cited, the Government hereby order that:

a) the ordinary and emergency leave already sanctioned to the prisoners under rule 19 and rule 13 of the above said rules by the respective authorities of prisons which are likely to expire from 25.03.2020 be deemed to have been extended till 30.04.2020 in relaxation of rule 22, 24 and rule 34 in respect of these prisoners only under rule 40 of the said rules and

b) the authorities of the Prison Department concerned by permitted to grant ordinary and emergency leave till 30.04.2020 to those prisoners convicted and sentenced in the State of Tamil Nadu and undergoing their sentence in the prisons of this State by exempting the procedures prescribed in Rule 22 and 24 and rule 34 under Rule 40 of the Tamil Nadu Suspension of Sentence Rules 1982, subject to fulfillment of other conditions prescribed in the rules."

11.As rightly pointed out by Mr.P.H.Aravind Pandian, learned Additional Advocate General, the State has already formulated such Committee which also held a meeting and given its recommendation, based on which about 4182 prisoners were already released. Since the prayer sought for by the petitioner has already been complied with, no further order is required. Accordingly this Writ Petition is closed. No costs.

(NKKJ) (RHJ)
08.04.2020

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To

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2.The Chairman of State Legal Services Committee,
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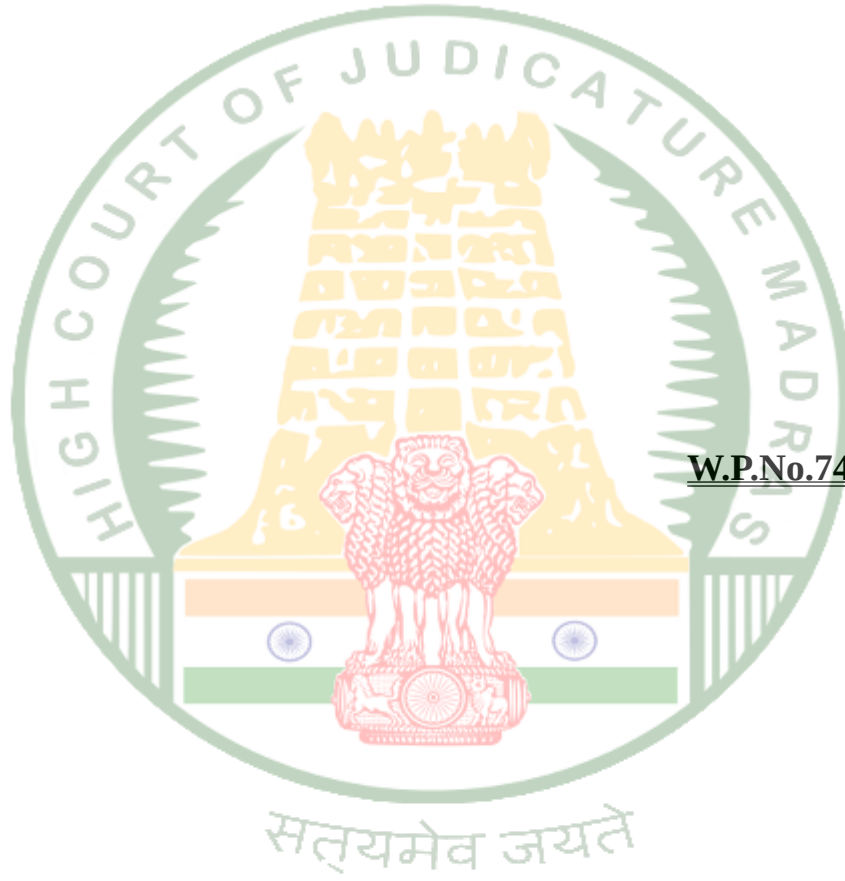
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