

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 1.8.2024

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.(MD) No.31073 of 2023

A.Manikandan

Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.
2. The Director General of Police,
Tamil Nadu Government,
Chennai.
3. The Inspector General of Prisons,
Tamil Nadu Government,
Chennai.
4. The District Collector,
Madurai District, Madurai.
5. The Superintendent of Police,
Madurai District, Madurai.
6. The Deputy Superintendent of Police,
Melur Sub Division, Madurai District.

7. Sekar

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the impugned order of the 3rd respondent in G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019, quash the same and consequently direct respondents 1 to 5 herein to restore the conviction and sentence imposed on the 7th respondent in C.A.No.871 of 2001 on the file of the Principal Seat of this court.

For Appellant : Mr.A.Vadivel

For R1 to R6 : Mr.A.Thiruvadikumar
Additional Public Prosecutor.

For R7 : Mr.V.Karthi, Senior Counsel for
Mr.M.Jegadeesh Pandian

ORDER

A.D.JAGADISH CHANDIRA, J.

The present writ petition has been filed by the de facto complainant in Crime No.248/2023 on the file of the Melavalavu Police Station seeking issuance of a writ of certiorarified mandamus calling for the impugned order of the 3rd respondent in G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019, quash the same and consequently direct respondents 1 to 5 herein to restore the conviction and sentence imposed on the 7th respondent in C.A.No.871 of 2001 on the file of the Principal Seat of this court.

2. Factual background of the case resulting in filing of the writ petition is as under:-

i) The writ petitioner belongs to scheduled caste community and is a resident of K.Muthuvelpatti, located between Ettimangalam and Sennagarampatti. In the year 1996, during Local Body Election, the nearby village viz., Melavalavu Panchayat was notified as reserved category exclusively for scheduled caste people which resulted in some strained feelings and communal issues between the community of the petitioner and the other communities causing hindrance for conducting of the election.

ii) After much persuasion, election was conducted and one Murugesan and one Mookan from the community of the petitioner were elected as President and Vice President. However, later, during the month of June 1997, both of them and four others belonging to the scheduled caste community were brutally murdered and several others were injured by a gang belonging to other community people.

iii) As a consequence, a criminal case was registered against 40 persons for the offences punishable under Sections 120-B, 147, 148, 341, 307 and 302 IPC and Section 3(2)(v) of the SC and ST (POA) Act,

1989 and on conclusion of trial, judgment of conviction dated 26.7.2001 was rendered by the Principal Sessions Judge, Salem in S.C.No.10 of 2001 convicting 17 persons for offences under Section 302 r/w 34 IPC and sentencing them to undergo life imprisonment, the 7th respondent herein being one among them. Appeals to the High Court and then to the Supreme Court were dismissed on 19.4.2006 and 22.10.2009 respectively.

iv) Thereupon, the 17 accused were sent to jail and out of them one 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.

v) The respondent herein, one among the above convicts, was released prematurely vide G.O.(Ms) No.609 Home (PRISON-IV) Department dated 8.11.2019

vi) Challenging the premature release of the 13 convicts including the 7th respondent herein Writ Petitions in W.P.Nos.24324 and 25333 of 2019 and 3431 of 2020 were filed, which came to be dismissed by this court by order dated 3.2.2023.

vii) In such circumstances, the present complaint lodged by the writ petitioner against the 7th respondent came to be filed in F.I.R. No.248 of 2023 on the file of Melavalavu Police Station contending as under:-

On 12.10.2023 at about 7.00 pm, the writ petitioner, having come to know that his two wheeler had been taken by one of his relatives viz., Sanjay and he was seen near Pulipatti Bungalow, went there to take back the two wheeler and by then, he had seen the 7th respondent quarrelling with the said Sanjay and one Southarapandian and when he enquired with Sanjay, he was apprised that both Sanjay and Southarapandian were sitting on the bike with crossed legs and thereupon, the 7th respondent had picked up the quarrel questioning their act in front of him claiming it to be a disrespectful one for him. When the writ petitioner questioned the 7th respondent, he went away. Thereafter, the writ petitioner alongwith Sanjay, Southarapandian, one Parthiban and one Sakthi went to the house of

the 7th respondent and reported about the incident to the wife of the 7th respondent for which, the 7th respondent and the neighbours one Tamilmaran and his mother had assured them to warn the 7th respondent. Thereafter, the writ petitioner and others had returned home. Later, when the writ petitioner and one Pandian were near the TV room belonging to village panchayat, the 7th respondent, who came there in a two wheeler, claiming himself as the brother-in-law of one Ramar another accused in the Melavalavu case, attacked Pandian with a knife and when tried to escape the attack, the index finger of his right hand was cut causing a bleeding injury and the 7th respondent had attacked on the left side of the temple of the writ petitioner as a result, he had sustained a grievous head injury. The 7th respondent had threatened them with dire consequences that he would murder them as done in Melavalavu. For the injuries sustained, the writ petitioner was admitted in Melur Government Hospital at the instance of Pandya, one Sasi and Parthiban and during the course of treatment at the hospital, the police from Melavalavu Police Station visited the hospital and registered the present complaint for the offences punishable under Sections 294(b), 324, 307 IPC read with Sections 3(i)(r), 3(i)(s), 3(2)(va) of SC/ST POA Act.

viii) On the basis of the above complaint, the 7th respondent was arrested and as on date, he is in jail.

ix) The 7th respondent, who was a life convict, having been released prematurely by G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019, had violated the conditions for such release and thereby the said G.O. is liable to be quashed and a direction has to be issued to respondents 1 to 5 herein to restore the conviction and sentence imposed on the 7th respondent in Crl.A.No.871 of 2001 on the file of the Principal Seat of this court.

3. Respondents 1 to 6 have filed a common counter, crux of which is as under:-

i) The 7th respondent is under judicial custody in Central Prison, Madurai from 13.10.2023 as per the orders of the Judicial Magistrate, Melur in Melur Police Station Crime No.248 of 2023.

ii) The 7th respondent was released prematurely on 9.11.2019 as per G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019 according to the policy decision taken by the Tamil Nadu Government in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 1.2.2018 as amended in G.O.(Ms) No.302, Home (Prison-IV)

Department dated 3.5.2018 for the premature release of the life convict prisoners, who had completed actual sentence of 10/20 years as on 25.2.2018 in commemoration of the Birth Centenary of "Bharath Rathna" Puratchi Thalaivar Dr.M.G.Ramachandran, former Chief Minister of Tamil Nadu.

iii) While effecting such premature release, a bond in Form No.130 as per Rule 341(8) of the Tamil Nadu Prison Rules, 1983 was obtained from the life convict.

iv) The constitutional power conferred to the Hon'ble Governor of Tamil Nadu under Article 161 of the Constitution of India was exercised according to the Government policy decision taken by the Government in G.O.(Ms) No.64, Home (Prison-IV) Department, dated 1.2.2018.

v) There is no arbitrariness in executing Article 161 of the Constitution of India. A proposal for consideration of premature release of the life convict prisoner was submitted to the Government without omission of any of the terms and conditions laid down in the Government Order in G.O.(Ms.) No.64, Home (Prison-IV) Department, dated 1.2.2018. The Probation Officer report was also obtained and conduct of the convict during the incarceration was reckoned.

vi) The premature release of the 7th respondent having been

done on 8.11.2019, the supervision period of three years as stipulated in condition (2) of Form 130 had expired on 8.11.2022 itself. Hence, it is not correct to contend that the conditions for such premature release had been breached by the 7th respondent.

vii) In the subsequent case in Crime No.248 of 2023, the 7th respondent herein had been arrested and lodged as remand prisoner. On the outcome of the Criminal case, action will be taken under Section 227 of IPC and Section 432(3) of Cr.P.C., if need be. At this juncture, quashing of G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019 is not warranted and thereby, the writ petition is liable to be dismissed.

4. The 7th respondent has filed a counter, gist of which, is as under:-

i) The 7th respondent, having completed 10 years of actual imprisonment as on 25.3.2018, was released prematurely through G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019 issued pursuant to G.O.(Ms) No.64, Home (Prison-IV) Department, dated 1.2.2018 and after following all the conditions stipulated under the Government order.

ii) The Government Order remitting the unexpired portion of the sentence of imprisonment was passed in accordance with law and within the confines of Article 161 of the Constitution of India. There is no scope for judicial review on the power exercised under Articles 72 and 161 of the Constitution of India except on very limited grounds such as non-application of mind while passing the order, non-consideration of relevant material or if the order suffers from arbitrariness as laid down by the Apex Court in ***State of Uttar Pradesh vs. Sanjay Kumar*** (2012) 8 SCC 537 and ***Mohinder Singh vs. State of Punjab*** (2013) 3 SCC 294.

iii) The very same Government Order passed in respect of the 7th respondent herein alongwith other Government Orders passed in respect of other prisoners had already been put to challenge in W.P.Nos.24324 and 25333 of 2019 and 3431 of 2020 and this court, by order dated 3.2.2023 dismissed the same by holding that the premature release of the life convicts were made only after due consideration of the facts which is relevant and also considering the objections on the side of the victims, law and order situation, similarly placed three life convicts, who were released prematurely and also on parity. Moreover, the probation period of three years were also

completed.

iv) Whiles, the petitioner had intentionally lodged a false complaint against the 7th respondent which was registered in Crime No.248 of 2023 and based on the registration of a false case, the writ petitioner had filed the present writ petition seeking to cancel the remission order in G.O.(Ms.) No.609 HOME (PRISON-IV) Department dated 8.11.2019.

v) The earlier case in respect of which, remission of punishment was granted to the 7th respondent was registered in the year 1997 and the present case in Crime No.248 of 2023 has been filed by the petitioner in the year 2023 and thus, there is no live link and proximity between both the cases.

vi) On mere registration of a false case in Crime No.248 of 2023, which is still pending adjudication before the Trial Court, the present writ petition seeking to cancel the remission order is highly premature and thereby it is liable to be dismissed.

5. Heard the learned counsel appearing for the parties at length and perused the materials available on record including the affidavit of

the writ petitioner and the counter affidavits filed.

6. While it is the case of the petitioner that the 7th respondent, having availed the concession of remission of punishment for an heinous crime committed by him, now, by indulging into further similar offence, has breached the conditions for such remission of punishment and thereby invocation of Section 432(3) Cr.P.C. and 227 of IPC is warranted, the case of the respondents including the 7th respondent are three fold, viz.,

i) The same Government Order, which granted remission of punishment to the 7th respondent was already put to challenge in an earlier Writ Petition, which came to be dismissed and thereby, it warrants no interference.

ii) The period of supervision by the probationary officer as per clause (5) of Form 130 had expired as on 8.11.2022 and the present incident is alleged to have taken place on 12.10.2023 and thus, there is no breach of condition by the 7th respondent warranting revocation of remission.

iii) The present complaint itself is a false case and the 7th

respondent is only an under trial prisoner as of now and without there being any concrete finding against the 7th respondent, the present writ petition is a premature one.

7. Broadly, two questions arise in this matter, one being that whether the Government Order granting remission of punishment to the 7th respondent is valid in the eye of law and the other being that whether the 7th respondent, having availed such concession, had complied with the conditions imposed thereunder to sustain it or breached any of the conditions warranting revocation of the remission of punishment granted to him. The first question, having been decided in the earlier writ petition after much deliberation on legal aspects including the Scope of Article 161 of the Constitution of India, we feel that we can restrict ourselves in the present writ petition only to the second question. Similarly, we find that the present occurrence, having been alleged to have taken place only on 12.10.2023, it would not have been taken as a ground for interference with the remission order when the earlier writ petition was dismissed on 3.2.2023 and thereby, the contention of the respondents that the issue had already been decided does not hold water, especially, when such earlier writ

petitions were filed by third parties and the victims of that case and the present writ petition has been filed by the victim of the present crime allegedly committed by the 7th respondent subsequent to the remission order and also subsequent to the order passed in the earlier writ petitions.

8. The decisions in ***State of Uttar Pradesh vs. Sanjay Kumar*** (2012) 8 SCC 537 and ***Mohinder Singh vs. State of Punjab*** (2013) 3 SCC 294 relied on by the learned counsel for the 7th respondent cannot come to his rescue as the Government Order granting which granted remission of punishment is not being reviewed judicially on its merits, rather, on the breach of the conditions that ought to have been complied with by the prisoner.

9. Before going into the question as to whether the 7th respondent had breached the conditions for his premature release, it would be appropriate to understand the concept of premature release on remission of punishment and the Rules governing the same.

10. While the undesirable retributive theory had been given a

goby long back, our present legal system is based only on deterrent, preventive and reformative theories. They are the underlying principles behind the punishment of imprisonment. The law enforcing agencies would play a vital role based on the deterrent theory and when it goes to the next level, the preventive theory will come into play and the offenders are being disabled from committing any crime by long incarceration to achieve the immediate goal of prevention and the long term goal of reformation. Therefore, the ultimate focus of prison policy is rehabilitation.

"The only difference between the saint and the sinner is that every saint has a past, and every sinner has a future." - Oscar Wilde.

11. The premature release of the prisoner by remitting the punishment is a policy considering the rehabilitation. Its object of could precisely be -

i) To assure the prisoner his fundamental right of liberty on his emitting signal for getting rehabilitated.

ii) To make the other offenders in the society understand the consequence of the crime committed by the prisoner and the

concession earned by his good conduct.

iii) To have better administration of Prisons with the available infrastructure.

12. Though the noble idea of rehabilitation in the concept of premature release cannot be disputed, the impact of recidivism in the society cannot be simply ignored. What is required is a balanced view in between the fundamental right of the prisoner and that of the society consisting of innocent common men.

13. Once a life convict violates any condition imposed in the bond executed at the time of his premature release, Section 227 IPC gets attracted, which reads as under:-

"Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as

he has not already suffered."

14. Section 432(3) Cr.P.C., which deals with the power of the State to suspend or remit the sentence, reads as under:-

"If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon, the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence."

15. The 7th respondent herein is a life convict prisoner, who had been shown the above said concession of premature release from prison on remission of his unexpired period of sentence as per the Government Order impugned. It is the contention of the respondents that while the prisoner was released prematurely, a bond under Form No.130 as contemplated by Rule 341(8) of the Tamil Nadu Prison

Rules, 1983 was obtained from him, where there is an undertaking clause to the effect that he shall be under the supervision of the Probation Officer for a maximum period of three years and he had undertaken to abide by many conditions during such period, however, the present crime alleged by the petitioner is alleged to have taken place after the said period of three years and hence, the 7th respondent has not breached any undertaking given by him warranting interference with the remission order.

16. At this juncture, it is relevant to note that there is a widespread misconception that a sentence for life imprisonment is only for a specific period, but, the fact is otherwise, When once, a sentence of imprisonment for life is inflicted, it has to be construed as sentence for the rest of the entire life of the prisoner, subject to any remission granted by the appropriate Government under Section 432 Cr.P.C. Though the said issue had been dealt with by various High Courts and the Apex Court time and again, a recent decision of a Division Bench of the Apex Court in ***Bilkis Yakub Rasool v. Union of India***, (2024) 5 SCC 481 would throw some light on the issue with regard to reckoning of period of sentence in life imprisonment as well as the the question

as to whether the rule of law prevail over personal liberty of a person or vice versa. Relevant portion of the decision is extracted hereunder for ready reference:-

"126. It was further observed in Sangeet case [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] that a convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 CrPC which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A CrPC.

.....

***231.** Article 21 of the Constitution states that no person shall be deprived of his liberty except in accordance with law. Conversely, we think that a person is entitled to protection of his liberty only in accordance with law. When a person's liberty cannot be violated in breach of a law, can a person's liberty be protected even in the face of a breach or violation*

of law? In other words, should rule of law prevail over personal liberty of a person or vice versa? Further, should this Court weigh in favour of a person's freedom and liberty even when it has been established that the same was granted in violation of law? Should the scales of justice tilt against rule of law? In upholding rule of law are we depriving Respondents 3 to 13 their right to freedom and liberty? We wish to make it clear that only when rule of law prevails will liberty and all other fundamental rights would prevail under our Constitution including the right to equality and equal protection of law as enshrined in Article 14 thereof. In other words, whether liberty of a person would have any meaning at all under our Constitution in the absence of rule of law or the same being ignored or turned a blind eye? Can rule of law surrender to liberty earned as a consequence of its breach? Can breach of rule of law be ignored in order to protect a person's liberty that he is not entitled to?

.....

233. *Rule of law means wherever and whenever the State fails to perform its duties, the Court would step in to ensure that the rule of law prevails over the abuse of the process of law. Such abuse may result from, inter alia, inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or other obligations in consonance with the procedural and penal statutes. Breach of the rule of law, amounts to negation of equality under Article 14 of the Constitution.*

234. *More importantly, rule of law means, no one, howsoever high or low, is above the law; it is the basic rule of governance and democratic polity. It is only through the courts that rule of law unfolds its contours and establishes its concept. The concept of rule of law is closely intertwined with adjudication by courts of law and also with the consequences of decisions taken by courts. Therefore, the judiciary*

has to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task and always in favour of rule of law. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review and relief and all these features would lose their significance if the courts do not step in to enforce the rule of law. Thus, the judiciary is the guardian of the rule of law and the central pillar of a democratic State. Therefore, the judiciary has to perform its duties and function effectively and remain true to the spirit with which they are sacredly entrusted to it."

17. Therefore, what is to be seen is whether the offence alleged to have been committed by the prisoner/7th respondent herein after the period of three years mentioned in the bond under Form No.130 under Rule 341(8) of the Tamil Nadu Prison Rules, 1983 executed by him attracts the provisions of Section 227 IPC and Section 432(3) Cr.P.C. to make him serve the unexpired period of sentence by

revoking the remission order granted to him or not.

18. Much reliance has been placed by the respondents with regard to the conditions incorporated in the Bond under Form No.130 under Rule 341(8) of the Tamil Nadu Prison Rules, 1983, executed by the 7th respondent to contend that the 7th respondent had crossed the period of probation and thereby the premature release does not require any interference.

19. The relevant provision governing the premature release in the Tamil Nadu Prison Rules, 1983 is extracted hereunder for ready reference:-

"341. Cases of prisoners to be placed before the Advisory Board --

(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.

.....

(8) Where order is received from the Government for parole of a prisoner on his executing a bond in addition to a bond from a surety, the Superintendent shall send the prisoner on parole only after obtaining the bond in Form No.130 from the prisoner and a bond in Form No.131 from the surety."

20. A meticulous reading of the above provision would make it clear that the sentence of imprisonment for life is reckoned to be sentence of imprisonment for twenty years under Tamil Nadu Prison Rules, 1983 only for the purpose of placing the case of the prisoner before the Advisory Board for considering the remission of sentence and premature release (referred as parole in the provision) and obtaining of a Bond from the prisoner under Form No.130 apart from a bond in Form No.131 from the surety has been specified as a condition

precedent for the premature release.

21. To have a better understanding, the entire contents of the Bond in Form No.130 being obtained from the prisoner are extracted hereunder:-

"FORM No. 130.

[(See rule 341 (8)]

Form of bond to be obtained from a prisoner to be sent on parole on the recommendation of the Advisory Board.

Whereas, I (Name), son of inhabitant of (place) have been ordered to be released by the Government of Tamil Nadu before the date of expiry of my normal period of imprisonment on condition of my entering into a bond to observe the conditions specified hereafter, I hereby bind myself as follows :-

(1) that I shall accept and fulfill all the conditions specified below till the date of expiry of my normal period of imprisonment;

(2) that I shall present myself, within fourteen days

from the date of my release, before the Probation Officer of the district to which I belong, of if there is more than one Probation Officer in the District, before the Probation Officer who has jurisdiction over my place of residence, or before any other officer appointed in the place of the Probation Officer of the District or the Probation Officer having jurisdiction as aforesaid and shall produce copies of the order of my release and the copy of this bond executed by me;

(3) that I shall submit myself to the supervision of the said Probation Officer or other Officer till the date of expiry of my normal period of imprisonment or for a period of three years from the date of release whichever is earlier;

(4) that I shall keep the said Probation Officer or other Officer advised of my place of residence and means of livelihood till the date of expiry of my normal period of imprisonment or for a period of three years from the date

of release, whichever is earlier;

(5) that during the period of supervision by the said Probation Officer or other Officer —

(a) I shall not quit the said District without the written permission of the said Probation or other Officer;

(b) I shall not associate with persons of bad character or lead a dissolute life;

(c) I shall live honestly and peaceably and shall endeavour to earn an honest livelihood;

*(d) **I shall not commit any offence** punishable by any law in force in the Indian Union;*

(e) I shall abstain from taking intoxicants; and

(f) I shall carry out such lawful directions as may, from time to time, be given by the said Probation Officer or other Officer for the due observance of the conditions mentioned above.

*In case of **breach of any of the above conditions** on my part, I hereby **bind myself** and my properties mentioned below to be forfeited to the*

*Government of Tamil Nadu to a sum of Rupeesand I also agree that the Government of Tamil Nadu may collect the said amount from me either by proceeding against my under mentioned properties or my other properties as if the said amount were an arrear land revenue or by otherwise proceeding against me legally and **to render myself liable to be rearrested to undergo the unexpired portion of sentence of imprisonment on the date of release.**"*

22. It appears that the respondents seek shelter under clauses (4) and (5) of the Bond under Form No.130 to contend that the present crime, which is alleged to have been committed after the period of three years from the date of remission order, cannot be construed to have an impact on the remission granted to the 7th respondent. Firstly, it cannot be presumed that clauses (4) and (5) referred to above as an exhaustive ones. Those clauses have a binding effect exclusively on the prisoner, who is released prematurely, to submit himself to the supervision of the said Probation Officer or other Officer till the date of expiry of his normal period of

imprisonment (which is reckoned as 20 years for the purpose of Tamil Nadu Prison Rules, 1983) or for a period of three years from the date of release whichever is earlier; The concept of such a restriction clause viz.,

... till the date of expiry of my normal period of imprisonment or for a period of three years from the date of release whichever is earlier

could, if at all, be for restricting the period of probation even below three years when the prisoner has got an unserved period of sentence lesser than three years, of course, for the benefit of the prisoner, but, such a restriction clause cannot be taken for granted to infer that after a period of three years from the date of premature release, the life convict prisoner can indulge into any crime and that would not attract the provisions for revocation of such remission and the authorities concerned need not bother about the relapse of the prisoner even when it is brought to their notice, especially, when the power of the authorities to revoke the remission order has not been taken away. If the intention of the legislature could have been that the above restriction clause would have been mentioned as

"till the date of expiry of my normal period of

imprisonment or for a period which shall not exceed three years from the date of release whichever is earlier"

That cannot be the intention of the legislature, especially, if clause (1) of the same Bond under Form No.130 is taken into consideration, which, at the risk of repetition, is extracted hereunder:-

"(1) that I shall accept and fulfill all the conditions specified below till the date of expiry of my normal period of imprisonment;"

23. The above clause clearly improbabilises the theory of three years of probation period sought to be projected by the respondents. Similarly, the default clause in the ultimate portion of the Bond, which emphasises that in case of breach of any of the conditions, the prisoner shall render himself liable to be rearrested to undergo the unexpired portion of sentence of imprisonment on the date of release, cannot be construed to have application only in respect of the clause containing the restriction of probation period by three years, excluding clause (1) referred to above, which clearly stipulates compliance of the conditions till the date of expiry of normal period of imprisonment.

24. The concept of punishment and remission policy have been dealt with by a Full Bench of the Apex Court in ***State of Haryana v. Jagdish***, (2010) 4 SCC 216, wherein it has been held as under:-

"45. The basic principle of punishment that "guilty must pay for his crime" should not be extended to the extent that punishment becomes brutal. The matter is required to be examined keeping in view modern reformatory concept of punishment. The concept of "savage justice" is not to be applied at all. The sentence softening schemes have to be viewed from a more human and social science oriented approach. Punishment should not be regarded as the end but as only the means to an end. The object of punishment must not be to wreak vengeance but to reform and rehabilitate the criminal. More so, relevancy of the circumstances of the offence and the state of mind of the convict, when the offence was committed, are the factors, to be taken note of.

.....

47. Considerations of public policy and humanitarian

*impulses—supports the concept of executive power of clemency. If clemency power is exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasises that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances e.g. suffering of a convict from an incurable disease at the last stage, may warrant his release even at a much early stage. **Vana est illa potentia quae nunquam venit in actum** means—vain is that power which never comes into play.*

48.*Pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment which law inflicts for a crime he has committed. Every civilised society recognises and has*

therefore provided for the pardoning power to be exercised as an act of grace and humanity in appropriate cases. This power has been exercised in most of the States from time immemorial, and has always been regarded as a necessary attribute of sovereignty. It is also an act of justice, supported by a wise public policy. It cannot, however, be treated as a privilege. It is as much an official duty as any other act. It is vested in the authority not for the benefit of the convict only, but for the welfare of the people; who may properly insist upon the performance of that duty by him if a pardon or parole is to be granted."

25. A Division Bench of the Apex Court has held in **State (Govt. of NCT of Delhi) v. Prem Raj**, (2003) 7 SCC 121 as under:-

"10. *Reprieve means a stay of execution of sentence, a postponement of capital sentence. Respite means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. It is something like a release*

on probation for good conduct under Section 360 of the Code. Remission is reduction of the amount of a sentence without changing its character. In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. Commutation is change of a sentence to a lighter sentence of a different kind (Section 432-A empowers the appropriate Government to suspend or remit sentences). The expression "appropriate Government" means the Central Government in cases where the sentence or order relates to the matter to which the executive power of the Union extends, and the State Government in other cases. The release of prisoners condemned to death in exercise of powers conferred under Section 433-A of the Code and Article 161 of the Constitution does not amount to interference with the due and proper course of justice, as the power of the

High Court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. Powers under Article 161 of the Constitution can be exercised before, during or after trial. By reducing the sentence, the authority concerned does not thereby modify the judicial sentence. The fact that the sentence was remitted by the appropriate Government or that on account of certain remissions which he earned under the jail rules or under some order of general amnesty, the person was released earlier, does not affect disqualifications incurred, if any. Section 432 confines the power of the Government to the suspension of the execution of the sentence or the remission of the whole or any part of the punishment. The conviction under which the sentence is imposed remains unaffected. The section gives no power to the Government to revise the judgment of the court. It only provides with the power to remit the sentence. Remission of punishment assumes the correctness of the conviction and only

reduces the punishment in part or in whole. The word "remit" as used in Section 432 is not a term of art. Some of the meanings of the word "remit" are "to pardon, to refrain from inflicting, to give up". A remission of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself."

26. In the case on hand, the 7th respondent, having availed the benefit of remission, though is expected to comply with the conditions till the date of expiry of his normal period of imprisonment, may endeavour to contend that he does not come within the purview of the provisions for revocation of the remission order. A feeble contention has also been made on behalf of the 7th respondent that the present complaint is a false one lodged by the writ petitioner with a mala fide intention to bring the 7th respondent within the purview of the provisions for revoking the remission order and till the offence alleged has been proved by a complete trial, mere registration of a case cannot be taken into consideration for invoking the clause of revocation.

27. It has to be borne in mind that registration of FIR is being done only when a complaint discloses the commission of cognizable offence. In the case on hand, the registration of the present FIR and the arrest of the 7th respondent made thereon would clearly prove the cognizance taken by the police with regard to the offence alleged against him. When such cognizance has been taken against the 7th respondent, the stand taken by him that it is only a false case filed by the writ petitioner to bring the 7th respondent within the purview of the provisions for revocation and the authorities have to wait till a decision is arrived in the said case by a complete trial, especially, when the condition in the Bond under Form No.130 executed by the 7th respondent to the effect that he shall not commit any offence, cannot be sustained. Such condition speaks about commission of offence alone and it does not emphasise for a resultant conviction. No ulterior motive on the part of the writ petitioner can be attributed when the present complaint has not been lodged immediately on premature release of the 7th respondent.

28. In the circumstances of the case, this court is of the view

that it is the bounden duty on the part of the authorities concerned to initiate steps for revoking the remission order by implementing the default clause in the Bond under Form No.130 under Rule 341(8) of the Tamil Nadu Prison Rules, 1983 executed by the prisoner/7th respondent, when it has been brought to their notice by the writ petitioner and they cannot shirk their responsibility. Their inaction had resulted into filing of the present writ petition warranting interference of this court. Therefore, we are constrained to direct the respondents to revoke the remission order in exercise of the default clause in the Bond executed by the 7th respondent and restore the conviction and sentence imposed on the 7th respondent.

29. The writ petition is ordered accordingly. No costs.

(A.D.J.C.,J.) (K.R.S.,J.)
1.8.2024
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Index: Yes/No.
Internet: Yes/No.
ssk.

To

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

2. The Director General of Police,
Tamil Nadu Government, Chennai.
3. The Inspector General of Prisons,
Tamil Nadu Government, Chennai.
4. The District Collector,
Madurai District, Madurai.
5. The Superintendent of Police,
Madurai District, Madurai.
6. The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.

A.D.JAGADISH CHANDIRA, J.
and
K.RAJASEKAR, J.

ssk.

W.P.(MD) No.31073 of 2023

1.8.2024
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