

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION NO: 23812 OF 2024

Between:

B. Vasantha Kumari, W/o Late B. Keshava Rao, Mother of B. Shiva Prasad Rao (Life Convict No.8553), aged about 65 years, Occ. Housewife R/o 11-3-266/40/B/4/A, Madhura Nagar, Shahbaziguda, Parasigutta, Secunderabad-500061.

...PETITIONER

AND

1. State of Telangana, Rep. By its Principal Secretary(Home Prisons Department), Telangana Secretariat, Hyderabad.
2. The Committee Constituted for issuing GOMS No 2 dated 24/01/2024, Rep by its Member/ Convener,Home(Services-V)Department, Government of Telangana, Hyderabad.
3. The Director General of Prisons and Correctional Services, Government of Telangana, Hyderabad .
4. The Superintendent Of Jails, Central Prison, Cherlapalli.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction seeking to declare the action of the Respondents in not releasing the petitioner's son B. Shiva Prasad Rao (Life Convict No 8553, presently lodged in the 4th respondent jail),despite he being recommended for premature release by the respondents themselves, on par with 213 other life convicts who have been released on 02/07/2024 as per the Remission Policy/Guidelines laid down in GOMS No. 2 dated 24/01/2024 issued by the respondents themselves, without assigning any cogent reasons,(written or verbal),and without considering the petitioners representation Dt 18/07/2024 as illegal, arbitrary, unconstitutional discriminatory and in gross violation of the petitioners sons Fundamental Rights under Articles 14 and 21 of the Constitution of India as held by the Honorable Supreme Court in Joseph vs State of Kerala and also in violation of Principles of Natural Justice, and consequently to direct the 1st Respondent herein to release

the petitioner's son B. Shiva Prasad Rao (Life Convict No 8553, presently lodged in the 4th respondent jail) forthwith and also to pay monetary compensation of Rs. 5 Lakhs for this patent arbitrariness and illegality which is consequent violation of principles enshrined under Article 14 of the Constitution of India, as held in the Honorable Supreme Court judgement in the case of United Air Travel Services vs Union of India, forthwith.

Counsel for the Petitioner: SRI PUSHPINDER KAUR

Counsel for the Respondents: ASST. GP FOR HOME

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.23812 OF 2024

ORDER :

This writ petition is filed by the petitioner seeking the following relief:

“... to issue a Writ of Mandamus, or any other appropriate Writ order or direction seeking to declare the action of the Respondents in not releasing the petitioner's son B. Shiva Prasad Rao (Life Convict No 8553, presently lodged in the 4th respondent jail), despite he being recommended for premature release by the respondents themselves, on par with 213 other life convicts who have been released on 02/07/2024 as per the Remission Policy/Guidelines laid down in GOMS No.2 dated 24/01/2024 issued by the respondents themselves, without assigning any cogent reasons (written or verbal), and without considering the petitioner's representation Dt 18/07/2024 as il-legal, arbitrary, unconstitutional discriminatory and in gross violation of the petitioner's son's Fundamental Rights under Articles 14 and 21 of the Constitution of India as held by the Honorable Supreme Court in Joseph vs State of Kerala and also in violation of Principles of Natural Justice and consequently to direct the 1st Respondent herein to release the petitioner's son B. Shiva Prasad Rao (Life Convict No 8553) presently lodged in the 4th respondent jail forthwith and also to pay monetary compensation of Rs. 5 Lakhs for

this patent arbitrariness and illegality which is consequent violation of principles enshrined under Article 14 of the Constitution of India as held in the Honorable Supreme Court judgement in the case of United Air Travel Services vs Union of India forthwith and pass..."

2. The case of the petitioner is that her son Mr. B. Shiva Prasad Rao, (for short 'Life Convict') was convicted by the learned Special Judge for Trial of Offences under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad, (for short 'Trial Court') in S.C. No.297 of 2008 by judgment dated 21.07.2009 under Section 302 of the Indian Penal Code 1860 (IPC) and sentenced to undergo imprisonment for life. The appeal filed by the Life Convict challenging the conviction before this Court in Crl.A.No.215 of 2011 was dismissed by judgment dated 13.10.2017, confirming the judgment dated 21.07.2009 of the Trial Court. As on today, the petitioner's son (Life Convict) has undergone total sentence of fourteen (14) years with remission. The Life Convict is not involved in any other offences and he is from a good business family. Petitioner filed W.P. No.20259 of 2020 for considering premature release of the Life Convict which

was disposed of by this Court by common order dated 01.06.2021 in W.P. No.20421 of 2019 and batch directing respondent No.1 therein to consider the directions issued by Hon'ble Supreme Court in RE: CONTAGION OF COVID 19 VIRUS IN PRISONS¹⁸ and order of the Division Bench of this Court in W.P. (PIL) No.164 of 2020 dated 14.09.2020.

3. Learned counsel for the petitioner submitted that this Court has strictly warned the respondents to consider the directions issued by the Hon'ble Supreme Court and this Court within stipulated time, however, respondents failed to comply with the orders of this Court. On the occasion of 26th January, 2024 (Republic day), the Government issued G.O.Ms.No.2 dated 24.01.2024 and granted remission of unexpired sentence to some categories of the life and non-life convicted prisoners who have been convicted for an offence or offences against laws relating to matters to which the executive power of the state extends. While relaxing the earlier G.Os., the Government issued certain guidelines giving a one-time exception for remitting the un-expired portion of sentence in cases of certain categories of prisoners who

had been convicted by various Courts of Criminal Jurisdiction. The guidelines as per G.O.Ms.No.2 dated 24.01.2024 are as follows:

- a. "All convicted women prisoners sentenced to imprisonment for life, including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) who have undergone an actual sentence of 6 years including remand period and total sentence of 8 years including remission as on 26.01.2024 shall be released.
- b. All convicted male prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and who have undergone an actual sentence of 10 years including remand period and total sentence of 14 years including remission as on 26.01.2024 shall be released.
- c. Old and decrepit prisoners as defined in Rule 320 (f) of Telangana State Prisons Rules, 1979, read with G.O.Ms.No.44, Home (Prisons.B2) Department, dated:16-03-2007;
- d. All male convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) aged more than 65 years and have undergone an actual sentence of 6 years including remand period and total sentence of 8 years including remission as on 26.01.2024 shall be released.

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- e. All woman convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) aged more than 60 years and have undergone an actual sentence of 6 years including remand period and total sentence of 7 years including remission as on 26.01.2024 shall be released.”

It is submitted that Government issued orders *vide* G.O.Ms.No.37 dated 02.07.2024 taking a policy decision to grant remission to 213 life and non-life convicted prisoners subject to certain conditions. All the convicted prisoners from different prisons who were proposed for premature release on the occasion of Republic Day, 2024 were transferred to Central Prison, Cherlapalli. Considering the long term imprisonment undergone, age of convict, character in prison, family background and situation, petitioner's son was also recommended for release.

4. It is submitted that as per the enclosed list issued *vide* Lr.No.CPH/CRC/2971/2024 dated 02.07.2024 the son of the petitioner fell within the zone of consideration for being granted the benefit of remission and numbered at Sl.No.2 of the list.

However, the State Government having released 213 Life Convicts rejected the case of petitioner's son without assigning any reasons.

5. Learned counsel for the petitioner submitted that petitioner's son has satisfied all the conditions of the relevant Government orders and was eligible for release along with 231 Life Convicts. Petitioner submitted representation dated 18.07.2024 to respondent authorities to explain the reasons as to why her son's case was not considered for remission along with 231 convicts.

6. Learned Assistant Government Pleader for Home filed counter of respondent No.4 and submitted that pursuant to the common order dated 01.06.2021 in W.P. No.20421 of 2019 and batch, the Government has considered the request of the Life Convict and denied *vide* Memo No.6555/Ser.III/A2/2021-12, Home(Services - III) Department, dated 29.07.2021. It is submitted that during confinement of Life Convict in Prisoners Agricultural Colony, Cherlapalli, from 10.07.2020 onwards, the Life Convict was allotted work in the Hospital and other Office Sections of the Prison. On 27.12.2023, Dr. Aruna Jyothi, Medical Officer (Civil Assistant Surgeon), Mrs. Shoba, Horticulture Officer

and Mr. Rajinikanth, Live Stock Assistant of the prison found a mobile phone being used by the Life Convict. When he was asked to return the mobile phone, he refused to return and they placed the matter before the Superintendent of Prison and handed over the mobile phone to Jailer for further action.

7. It is submitted that the then Superintendent of Prisons of Prisoners Agricultural Colony, Mr. T. Kalasagar, has not acted upon the matter and the Life Convict continued to work in the same hospital where female officers were working. Due to inaction of the Superintendent of Prison, the female officers i.e., Dr. Aruna Jyothi (Civil Assistant Surgeon) and Mrs. Shoba, Horticulture Officer, complained to the Deputy Inspector General (DIG) of Prisons, Hyderabad Range, that they are facing problems with the Life Convict. Immediately, the DIG of Prisons, Hyderabad, issued order transferring the Life Convict to the Central Prison, Hyderabad *vide* Order No.DIG(HR)/SA2(JA-2)/2024-136 dated 08.01.2024. Accordingly, he was transferred to Central Prison, Hyderabad, on 10.01.2024 *vide* Lr.No.PACCH/CRC/121-23/2024 dated 09.01.2024. Later, the

enquiry conducted by the Superintendent of Prisons was not conveyed to the higher officers.

8. It is submitted that the case of the Life Convict was recommended for release on remission as per the G.O.Ms.No.2, Home (Services - V) Department dated 24.01.2024. When the matter was placed before the committee, as the Life Convict was found using mobile phone in the prison which is a prohibited article as per the Rule 305 of the Telangana State Prison Rules 1979 (for short 'Rules 1979') which constitutes prison offence and calls for punishment under Rule 315 of the Rules 1979 and the matter was also published in the News Dailies widely, the committee has not recommended the case of Life Convict for premature release.

9. It is submitted that any convict cannot claim remission as a matter of right as held by the Hon'ble Supreme Court in **Swami Shraddhananda v. State of Karnataka**¹ (Crl.A.No.454 of 2006). That, there should be due application of mind and decision should

¹ 2008 (13) SCC 767

be taken by executive authorities in terms of existing provisions regarding premature release. The following three (3) factors have to be evaluated while considering the premature release of convicts i.e., (i) antecedents, (ii) conduct during incarceration and (iii) likelihood to abstain from crime. In the instant case, the Life Convict has displayed sheer misconduct by using mobile phone in the prison which violated the prisoner rules and behaved against the prisoner norms. Hence, the committee has not recommended the case of the Life Convict for premature release which is meant for good behaviour and good conduct. Consequently, on 03.07.2024, the Government of Telangana issued G.O. Ms.No.37, Home (Services - V) Department dated 02.07.2024 ordering premature release of convict prisoners which did not contain the name of Life Convict. Hence, the Life Convict was not released prematurely from the prison.

10. In the reply affidavit filed by the learned counsel for the petitioner to the counter affidavit filed by respondent No.4, it is stated that the allegations that the Life Convict was in possession of the mobile phone is false and unwarranted and not supported by

any evidence. In any case, the action of respondent No.4 is in violation of the Rule No.308 and 309 of the Rules 1979.

11. Learned counsel for the petitioner submitted that no enquiry whatsoever was conducted with regard to the allegations of misconduct said to have been committed by the Life Convict. Rule 308 of the Rules 1979 provides that enquiry has to be conducted if any offence is committed by the prisoner by giving opportunity of hearing to him. Further, the Superintendent has to conduct enquiry in his office room or separate room. Thus, the case of the Life Convict should have been considered for premature release.

12. Learned Assistant Government Pleader for Home submitted that the name of Life Convict was removed from the remission list as he was involved in misconduct and was found using mobile phone in violation of the Rules 1979. The Life Convict also misbehaved with women staff.

13. Heard Ms. Pushpinder Kaur, learned counsel for the petitioner and Mr. G. Aniketh Reddy, learned Assistant Government Pleader for Home and perused the material on record.

14. As seen from the averments in the counter affidavit filed by respondent No.4, though it is stated that the Life Convict committed misconduct by using mobile phone and misbehaved with women officers, there is no clarity, if any enquiry was conducted in accordance with the Rule 308 of the Rules 1979. In paragraph No.6 of the counter affidavit, it is vaguely stated that enquiry was conducted by the Superintendent of Prison, Central Prison, Cherlapalli, and it was not conveyed to the higher officials.

15. It is asserted by the petitioner in the reply affidavit that enquiry was not conducted as required under Rule 308 of the Rules 1959. In rebuttal of the said contention, learned Assistant Government Pleader for Home has not been able to convince this Court with regard to such enquiry.

The Rule 308 of the Rules 1959 reads as under:

308. (a) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper

opportunity of presenting his defence. The Superintendent shall conduct a thorough examination of the case.

(b) All the enquiries against prison offences by prisoners should be conducted either in the Superintendent's office room or in a separate room called orderly room, by the Superintendent and punishment awarded.

(c) Orderly room inquiries should be conducted as promptly as possible. During the Orderly room proceedings the accused should be present. Witnesses should be brought in one at a time.

(d) Every precaution should be taken to ensure that the enquiry is conducted in an orderly manner. Prisoners should be thoroughly searched before being brought in the orderly room. If necessary violent prisoners may be hand cuffed during orderly room enquiry.

(e) In cases of serious violation of prison discipline, the Superintendent may order the recording of statements of persons concerned. When the Superintendent thinks that recording of statements is not necessary, he should briefly record the salient facts of the case in the appropriate column of the orderly room register.

(f) The officer, who had conducted the preliminary investigation should present his report and witness, if any. This report should be presented in a language that is commonly under-stood in the locality or by the accused, where necessary and available, an interpreter may be provided. The accused and his witness, if any, should be heard.

(g) After the Superintendent has been satisfied that all relevant facts of the case have come to light, he should record

his decision in the orderly room register. At the conclusion of the orderly room inquiry the punishment should be promptly implemented, as per prescribed rules.

NOTE: The Orderly Room inquiry should be conducted in a fair manner. It should not become a mechanical process for the mere awarding of punishments. Disciplinary action should fit into the inmate's treatment programme. It should be just and administered in such a way that the majority of prisoners are able to understand the fairness and significance of the disciplinary action."

16. It is clear from the above Rule, a detailed procedure is prescribed for conducting enquiry by giving opportunity of defence to the convict prisoner. It is no way stated in the counter affidavit that opportunity of hearing was given to the Life Convict. Thus, decision of respondent No.1 in not including petitioner's son i.e., Life Convict suffers from violation of principles of natural justice and Article 14 of the Constitution of India.

17. In the light of the above discussion, the writ petition is disposed of, directing respondents to consider the case of the petitioner's son i.e., Mr. B. Shiva Prasad Rao (Life Convict No.8553) for remission on par with the 213 convict prisoners who

were released *vide* G.O. Ms.No.37 Home (Services - V) Department dated 02.07.2024 in accordance with law. In case, if the case of the petitioner's son i.e., Life Convict is not considered for premature release then opportunity of hearing shall be given to him to present his case. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed.

SD/- T. TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary(Home Prisons Department), State of Telangana, Telangana Secretariat, Hyderabad.
2. The Member/ Convener, Home(Services-V)Department, The Committee Constituted for issuing GOMS No 2 dated 24/01/2024, Government of Telangana, Hyderabad.
3. The Director General of Prisons and Correctional Services, Government of Telangana, Hyderabad .
4. The Superintendent Of Jails, Central Prison, Cherlapalli.
5. One CC to SRI PUSHPINDER KAUR, Advocate [OPUC]
6. Two CCs to GP FOR HOME, High Court for the State of Telangana. [OUT]
7. Two CD Copies

BN

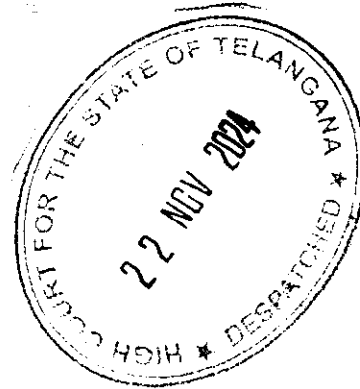
GJP

CC TODAY

HIGH COURT

BVR,J

DATED:18/10/2024



ORDER

WP.No.23812 of 2024

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

10

G.B

22/11/24