

Reserved on : 05.01.2023

Pronounced on : 12.01.2023

W.P.(MD).No.10524 of 2020

SUNDER MOHAN, J.

The Writ Petition has been filed seeking interim compensation since the petitioner's son was kept under illegal custody from 31.10.2019 to 14.07.2020.

2. The facts leading to the filing of the Writ Petition are as follows:

a) The petitioner's son was tried for the offence under Section 302 IPC along with one Mayilraj, S/o.Selvaraj in S.C.No.77 of 2012 on the file of the learned Additional District and Sessions Judge, Theni. The petitioner was Accused No.2 in the said case. The learned Additional District and Sessions Judge, Theni convicted both the accused for the offence under Section 302 IPC and sentenced them to life imprisonment.

b) Mayilraj, who was shown as A1, filed an appeal against the said judgment before this Court in CrI.A.(MD).No.264 of 2017. This Court,

by the judgment dated 31.10.2019 acquitted the said Mayilraj. While acquitting the said Mayilraj, this Court found that the petitioner's son, who is A2, had not preferred any appeal against the judgment and was languishing in jail. This Court further found that the petitioner's son was also entitled for acquittal for the very same reasons. This Court directed that the petitioner's son shall be released from the jail forthwith and passed the following order:

“37. A2, who is said to be confined at Central Prison, Madurai, shall be released from the jail forthwith, unless his confinement is required in any other case.”

c) The petitioner and his son were not aware of the above direction issued by this Court. They were informed by a lawyer and thereafter, on petitioner's representation dated 12.07.2020, the petitioner's son was released on 14.07.2020.

d) It is the case of the petitioner that his son's detention from 31.10.2019 to 14.07.2020 is due to the negligence and dereliction of duty of the prison officials and therefore, the petitioner's son is entitled to compensation for the illegal detention. He has therefore prayed for

interim compensation as per the dictum laid down by the Hon'ble Supreme Court in the case of ***Rudul Sah Vs. State of Bihar and another*** reported in ***(1983) 4 SCC 141***.

e) The second respondent had filed a counter affidavit stating that the officials had not released the petitioner's son because this Court had referred to the petitioner's son as A2 and his name was not found in the judgment. However, the second respondent would admit that it cannot be a ground or excuse for detaining the petitioner's son. In the counter, the second respondent fairly stated as follows:

“9. It is submitted that for the above lapse, disciplinary action was initiated against Tmt.M.Urmila, the then Superintendent, Central Prison, Madurai (now Central Prison, Trichy) under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, vide this office memo No.43043/CS1/2021 dated 05.08.2021 for her gross negligence of duties and slack supervision over her subordinates which resulted in the illegal detention and subsequent belated release of Life convict No. 5583 Chokkar S/o Rathinam. It is also submitted that similarly action is being contemplated against Tr.K. Elango, the then Jailor, Central Prison, Madurai (now Central Prison-1, Puzhal) under rule 17(b) of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules for not having verified the orders of the Honorable High Court and not released the Life convict No.5583 Chokkar S/o Rathinam on 06.11.2019 as per the orders of the Honorable High Court.

10. With regard to the averments made in paragraphs 9 and 10 of the affidavit, it is submitted that in a similar case, the Honorable High Court Of Madras in HCP No 2850 of 2014 dated 27.01.2016 ordered compensation of Rs 2,00,000/- to the petitioner therein, wherein the Government had compiled the orders of Honorable High Court.”

3. Mr.Henri Tiphagne, learned counsel for the petitioner submitted that the second respondent had fairly conceded that two officials were responsible for gross dereliction of duty and action has been initiated against one official and action was being contemplated as against another official. In view of the admission made by the second respondent about the dereliction of duty and gross negligence, the State is bound to compensate the convict as per the law laid down by the Hon'ble Supreme Court in the case of *Rudul Sah Vs. State of Bihar and another* reported in *(1983) 4 SCC 141*.

4. Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondents fairly conceded that the prison authorities ought to have released the petitioner's son on receipt of the directions issued by this Court and hence, the State has initiated action against the concerned officials. The learned Additional Public Prosecutor would also submit that the State would pay such interim compensation as may be awarded by this Court in the facts and circumstances of the case.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

6. It is seen that this Court, while acquitting A1, Mayilraj, had specifically directed the release of A2 in the case. The respondents cannot say that they did not release the petitioner's son as he was only referred to A2 and no name was mentioned. The direction issued by this Court has been extracted in the earlier part of this order. When such a specific direction has been issued by this Court, it is the bounden duty of the prison officials to verify as to who is A2 and in any event, if they had any doubt, they ought to have obtained clarification from this Court

immediately. Therefore, that cannot be an excuse for not releasing the petitioner's son pursuant to the direction issued by this Court on 31.10.2019. Therefore, this Court has no hesitation to hold that the detention of the petitioner's son from 31.10.2019 to 14.07.2020 is illegal.

7. This Court further finds that the petitioner's son was not aware of his rights as could be seen from the fact that no appeal was preferred by him and he was not aware of the acquittal of the co-accused in his case. This Court has to come to the aid of such citizens, who are not even aware of their basic rights. These are the citizens, who have to be compensated adequately. The Hon'ble Apex Court in the case of ***Rudul Sah Vs. State of Bihar and another*** reported in ***(1983) 4 SCC 141*** was pleased to hold as follows:

“10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover

damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the

petitioner's rights. It may have recourse against those officers.”

8. Therefore, this Court is of the opinion that the State must pay to the petitioner's son a sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) as compensation within a period of three weeks from today. However, this order will not preclude the petitioner's son to file appropriate proceedings for damages, if the petitioner's son is able to show that he is entitled to more compensation.

9. However, this Court finds that earlier when this Court heard the Writ Petition, the learned counsel for the petitioner had made several recommendations so that such incidents do not happen in future. The recommendations made by the learned counsel for the petitioner were based on the judgment of the Hon'ble Apex Court in the case of ***Sonadhar Vs. State of Chhattisgarh*** in ***Special Leave to Appeal No.529 of 2021*** and other judgments of the Hon'ble Apex Court. The recommendations have been considered by this Court and this Court had issued the following directions by the order dated 30.03.2022.

“5.As far as the recommendations sought for the interest of the prisoners, at present, this Court issue the

following directions:

1) *The Prison Authority is directed to identify the life convicts for premature release as per the dictum laid down by the Hon'ble Apex Court in **Sonadhar Vs. State of Chhattisgarh in Special Leave to Appeal No. 529 of 2021.***

2) *The Jail Superintendent of the District / Central Jail shall make a list of all eligible life convicts who are entitled for premature release. Such exercise shall be done in every four months viz., January, May and September. Such identification shall be done every year without fail, so that the eligible convicts' fate will be decided by the Advisory Board. Similarly, the respondents shall ensure that whenever an order is passed by the State Government rejecting the premature release, the said order should be immediately communicated to the prisoners and the copy of the order should be served within a week from the date of such a rejection to the prisoners, enabling the prisoners to take further action challenging the order of rejection of premature lease.*

3) *The District Legal Service Authority shall appoint advocates who have sufficient practice in the criminal side to visit the jail and collect the materials then and there. The appointment of Legal Aid Counsel should not be made in a mechanical manner, only after proper assessment of the ability of the lawyers to handle the situation by interacting the prisoners to collect the details, the appointment of legal aid*

counsel should be made.

4) It is brought to the notice of this Court by the respondents that in KIOSK machine only Hindi and English language are available. Therefore, the respondent is directed to install the user-friendly software, so that the prisoners can access in their own language. Such exercise shall be made within a period of four months.”

10. The fourth respondent has filed a status report on 08.07.2022 stating that action has been taken against the prison officials. The respondents had also issued directions to all Superintendents of Prisons to identify life convict prisoners who are eligible for premature release. The fourth respondent has filed the details of steps taken which is as follows:

“6. It is submitted that earlier based on the orders of the Honourable Supreme Court of India in Sonadhar Vs State of Chattisgarh in SLP No.529 of 2021 dated 07.07.2021 instruction were issued to all Superintendent of Prisons to take action for conducting Advisory Board meeting for those eligible prisoners by fixing time line vide this office letter No.2142/PS1/2021 dated 30.09.2021 as follows:

1	<i>Identification of eligible prisoners</i>	<i>1st to 15th of January Every year</i>
2	<i>Collection of Records</i>	<i>Before 31st of March every year</i>
3	<i>Placing of cases before Advisory Board</i>	<i>Before 30th of June every year</i>
4	<i>Proposal to be sent to Chief Office</i>	<i>Before 31st of July every year</i>

It is submitted that the Honourable Supreme Court of India vide orders in Sonadhar Vs State of Chattisgarh in SLP No. 529 of 2021 dated 09.02.2022 has included the State of Tamil Nadu also along with 4 other States for analyzing the functioning of the scheme of premature release enumerated in the respective State Prison Rules and directed these States to give their report within a period of three months. In this connection, Tr. Gaurav Agrawal, Advocate for the National Legal Services Authority and Amicus Curiae, vide his letter dated 16th February 2022 has requested relevant data from each prison of this State in respect of life convicts, who are or will be eligible for consideration of premature release as on 09.08.2022. Hence the following details alongwith other details were sent to Tr.Gaurav Agrawal, Advocate, Supreme Court of India vide letter No.2142/PS1/2021 dated. 18.05.2022 by the Director General of Police/Director General of Prisons, and Correctional Services in compliance with the orders dated 09.02.2022 of the Honorable Supreme Court of India and the matter is likely to be listed during the month of August 2022.

<i>Details of Prisoners eligible for consideration of premature release under Advisory Board Scheme</i>									
<i>Sl. No</i>	<i>Prison</i>	<i>Total Life Convict Prisoners as on 01.04.2022</i>	<i>No. of Prisoners completed 14 years of sentence (upto 09.08.2022)</i>	<i>No. of Prisoners eligible for consideration of premature release</i>	<i>No. of cases already placed before Advisory Board & rejected by Government</i>	<i>No of cases proposal sent to Government</i>	<i>No of cases Advisory Board conducted and proposal not sent to Government</i>	<i>No. of cases not placed before Advisory Board</i>	
								<i>No. of cases Advisory Board records called for</i>	<i>No. of cases records received. Waiting for meeting of Advisory board.</i>
1	C.P.-I, Puzhal	320	61	54	6	10	20	18	-
2	C.P., Vellore	228	51	44	1			20	23
3	C.P., Cuddalore	290	42	42	1	3		27	11
4	C.P., Salem	80	30	28	5	7		14	2
5	C.P., Coimbatore	537	108	96	2	15		58	21
6	C.P., Trichy	371	70	68	5	2		61	-
7	C.P., Madurai	427	99	88	5	10	38	31	4
8	C.P., Palayankotai	323	61	54	8	9	4	22	11
9	DJ & BS Pudukottai	19	4	4	-	-		4	-
10	S.P.W. Puzhal	27	3	3	-	3		-	-
11	S.P.W. Vellore	21	5	5	-	-		1	4
12	S.P.W., Trichy	29	7	6	-	1		5	-
13	S.P.W., Madurai	13	3	3	-	-	2	1	-
14	S.P.W., Coimbatore	20	1	1	-	1		-	-
Total		2705	545	496*	33	61	64	262	76

* In 155 cases proposals sent to Government for consideration of premature release as per G.O(Ms)No:488,

Home, dated:15.11.2021

7. It is further submitted that after detailed analysis of the above, the Director General of Police/Director General of Prisons and Correctional Services, has sent D.O letter to all District Collectors (Except District Collector, Thiruvallur, Ranipet, Thiruvannamalai and Dharmapuri) to give their special attention to conduct Advisory Board in due cases vide D.O. Letter No. 2142/PS1/2021, dated. 12.05.2022 (copy enclosed).

8. Further, It is submitted that the Additional Chief Secretary to Government, Department of Home has been requested vide letter No.2142/PS1/2021, dated 01.06.2022 of the Director General of Police/Director General of Prisons and Correctional Services, to instruct all the District Collectors to bestow their personal attention in the matter and send reports to the concerned Superintendent of Prisons in time and conduct the meeting of the Advisory Board early.

9. Further, it is submitted that the Government of Tamil Nadu vide G.O.(Ms) No. 488 Home (Prison-IV) Department, dated 15.11.2021 have framed certain guidelines for consideration of premature release of life convicts, who had completed 10/20 years of sentence as on 15.09.2021, on the occasion of 113th birth anniversary of former Chief Minister of Tamil Nadu, Perarignar Anna under Article 161 of the Constitution of India. As per the guidelines, proposals were sent to Government for consideration of premature release of eligible 565 prisoners. The process of

consideration of the eligible cases of prisoners is in progress and the eligible prisoners will be prematurely released shortly by the Government.

10. It is also submitted that the Government vide G.O. (Ms) No. 589 Home (Prison-IV) Department, dated 22.12.2021 and G.O.(Ms) No. 24 Home (Prison-IV) Department, dated 11.01.2021 have formed a committee under the Chairmanship of Honourable Justice Tr. N. Authinathan, Retired Judge of the High Court of Madras to suggest a mechanism/guidelines to deal with the cases of life convict prisoners, who are ineligible for consideration under the above scheme and also those cases of very old prisoners, sick prisoners with multiple co-morbid diseases, terminally ill prisoners, and prisoners with disabilities after studying the existing legal provisions in the State of Tamil Nadu and also various relevant pronouncements of the Honourable Supreme Court of India and High Court of Madras in such types of cases including various guidelines, if any, issued by Ministry of Home Affairs, Government of India.”

11. In view of the above status report filed by the respondents, no further orders are required on directions No.1 and 2 issued by this Court earlier. As regards Direction No.3, the respondents have to file a report as to the steps taken by them in that regard, namely, the appointment of

advocates as legal aid counsels to appraise the prisoners of their rights and assist them in obtaining relief. As regards the fourth direction, namely, the installation of KIOSK machine in every prison, which will enable the prisoners to know the status of their case, the fourth respondent stated in the status report that the KIOSK machine was installed in Central Prison-II, Puzhal and steps are being taken to purchase and install KIOSK machines in 8 other Central Prisons, 5 Special Prisons for Women and in Prison Headquarters and they are negotiating with M/s.Elcot for purchase of the KIOSK machines. However, in the KIOSK machine that was installed in Central Prison-II, Puzhal only Hindi and English language are available. The fourth respondent has further stated that since the prisoners in Tamil Nadu can only understand either Tamil or English, they have requested the National Informatics Centre, New Delhi to alter the language as English and Tamil for making the KIOSK more useful in Tamil Nadu.

12. It is seen from the earlier order of this Court that this Court, even on 30.03.2022, had recorded the fact that KIOSK machine was available only in Hindi and English. This Court therefore directed the respondents to install the user-friendly software so that the prisoners can

access the machine in their own language. This Court further directed that such an exercise shall be made within a period of four months. However, this Court finds from the status report filed by the fourth respondent that such exercise has not been completed as directed by this Court. To a specific query, the learned Additional Public Prosecutor stated that for this software, the State had to necessarily approach the National Informatics Centre and accordingly, they have approached the National Informatics Centre to change the language as English and Tamil for the KIOSK machines in Tamil Nadu.

13. The status report is dated 08.07.2022. The learned Additional Public Prosecutor does not have the instructions on the steps taken and the improvements made thereafter, if any. Since the earlier direction of this Court to complete the exercise within four months have not been complied with, this Court deems it necessary to issue directions to the respondents to file a status report, within a period of two (2) weeks from the date of receipt of a copy of this order, as to the steps taken for installing KIOSK machines in all the prisons and the steps taken to include Tamil language for the purpose of enabling the prisoners to access the same. This Court has taken into consideration the practical

difficulty expressed by the learned Additional Public Prosecutor though the respondents have not complied with the earlier orders. However, the respondents are bound to install the KIOSK machines in the aforesaid manner and no cause for the delay can be accepted. In the meantime, the respondents are directed to file a report as to the steps taken by them for compliance of direction No.3 in the order dated 30.03.2022 and the steps taken for the installation of KIOSK machines and for including Tamil language in the KIOSK machine within a period of two (2) weeks from the date of receipt of a copy of this order. In the meanwhile, the petitioner's son may be paid interim compensation in terms of the direction issued in paragraph No.8 of this order and the Writ Petition shall be kept pending till the respondents comply with the earlier directions issued by this Court on 30.03.2022.

14. Post the matter on 30.01.2023.

12.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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W.P.(MD).No.10524 of 2020

SUNDER MOHAN, J.

Lm

Pre-delivery Order made in
W.P.(MD).No.10524 of 2020

12.01.2023