

W.P.No.30216 of 2024, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2025

Delivered on : 19.11.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

**W.P.Nos.30216, 30212, 30505, 30514 of 2024,
31417, 31415 of 2023**

**W.P.(Crl.) Nos.1113, 1114, 1115, 1116, 1117, 1119, 1121 of 2025
and**

W.P.M.P.(Crl.) Nos.530, 531, 532, 533, 583, 584 of 2025

W.P.No.30212 of 2024 & W.P.M.P.(Crl.) No.530 of 2025 :

Zubaitha Begum

... Petitioner

Vs.

- 1.The State represented by its
Home Secretary,
Prison Department (IV) St. George Fort,
Secretariat, Chennai – 600 009.
- 2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai – 600 008.



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3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Trichy, Trichy – 620 020.

... Respondents

Prayer in W.P.No.30212 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to prematurely release the convict prisoner/husband of the petitioner namely Mr.Sarfudheen, S/o.Abdul Salam (CT No.24983) aged about 48 years in pursuance of the petitioner's representation dated 22.10.2023 and 23.09.2024.

Prayer in W.P.M.P.(Crl.) No.530 of 2025 : Writ Miscellaneous Petition filed under Article 226 of the Constitution of India for issuance of a direction for extension of leave from 22.10.2025 in W.P.M.P.(Crl.)No.139 of 2025 dated 17.07.2025 until decision taken by the 1st respondent to prematurely release to the convict namely Mr.Sarfudheen, S/o.Abdul Salam (CT No.24983) aged about 49 years.

W.P.No.30216 of 2024 & W.P.M.P.(Crl.) No.531 of 2025 :

Shakila Banu

... Petitioner

Vs.

1.The State represented by its
Home Secretary,
Prison Department (IV) St. George Fort,
Secretariat, Chennai – 600 009.

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2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai – 600 008.

3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore,
Gandhipuram, Coimbatore – 641 018.

... Respondents

Prayer in W.P.No.30216 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to prematurely release the convict prisoner/brother of the petitioner namely Mr.Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682) aged about 46 years in pursuance of the petitioner's representation dated 22.10.2023 and 23.09.2024.

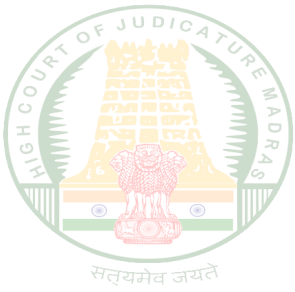
Prayer in W.P.M.P.(Crl.) No.531 of 2025 : Writ Miscellaneous Petition filed under Article 226 of the Constitution of India for issuance of a direction for extension of leave from 22.10.2025 in W.P.M.P.(Crl.)No.141 of 2025 dated 17.07.2025 until decision taken by the 1st respondent to prematurely release to the convict namely Mr.Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682) aged about 47 years.

W.P.No.30514 of 2024 & W.P.M.P.(Crl.) No.532 of 2025 :

Anisha Banu

... Petitioner

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Vs.

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1.The State represented by its

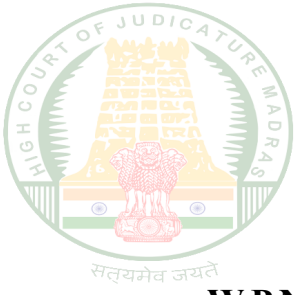
Home Secretary,
Prison Department (IV) St. George Fort,
Secretariat, Chennai – 600 009.

2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai – 600 008.

3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore, Coimbatore – 641 018. ... Respondents

Prayer in W.P.No.30514 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to prematurely release the convict prisoner/brother of the petitioner namely Mr.Abuthahir, S/o.Mohamed Yaqoob (CT No.10681) in pursuance of the petitioner's representation dated 22.10.2023 and 27.09.2024.

Prayer in W.P.M.P.(Crl.) No.532 of 2025 : Writ Miscellaneous Petition filed under Article 226 of the Constitution of India for issuance of a direction for extension of leave from 22.10.2025 in W.P.M.P.(Crl.)No.142 of 2025 dated 17.07.2025 until decision taken by the 1st respondent to prematurely release to the convict namely Mr.Abuthahir, S/o.Mohamed Yaqoob (CT No.10681) aged about 46 years.



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W.P.No.30505 of 2024 & W.P.M.P.(Crl.) No.533 of 2025 :

Noorjahan

... Petitioner

Vs.

1.The State represented by its
Home Secretary,
Prison Department (IV) St. George Fort,
Secretariat, Chennai – 600 009.

2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai – 600 008.

3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore, Coimbatore – 641 018.

... Respondents

Prayer in W.P.No.30505 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to prematurely release the convict prisoner/brother of the petitioner namely Mr.L.M.Hakkim, S/o.L.Majeedh (CT No.10680) aged about 47 years in pursuance of the petitioner's representation dated 22.10.2023 and 20.09.2024.

Prayer in W.P.M.P.(Crl.) No.533 of 2025: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India for issuance of a direction for extension of leave from 22.10.2025 in W.P.M.P.(Crl.)No.140 of

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W.P.No.30216 of 2024, etc. batch

2025 dated 17.07.2025 until decision taken by the 1st respondent to prematurely release to the convict namely Mr.L.M.Hakkim, S/o.L.Majeedh (CT No.10680) aged about 48 years.

For Petitioner : Mr.M.Mohamed Saifulla
in W.P.Nos.30216, 30212,
30505, 30514 of 2024

For R1 to R3 : Mr.E.Raj Thilak
Additional Public Prosecutor
in W.P.Nos.30216, 30212,
30505, 30514 of 2024

Amicus Curiae : Mr.R.John Sathyan
Senior Counsel
in W.P.Nos.30216, 30212,
30505, 30514 of 2024

W.P.No.31415 of 2023 & W.P.M.P.(Crl.) No.583 of 2025 :

Noorjahan

... Petitioner

Vs.

The State represented by its

1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.

2.The Superintendent of Prison,
Central Prison,
Coimbatore.

... Respondents

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Prayer in W.P.No.31415 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondent to release her brother the detinue, Mohamed Buhari, S/o.Sheik Madhar, aged about 47 years, Convict No.10717, confined at Central Prison, Coimbatore, prematurely as per G.O.(Ms) No.1155 dated 11.09.2008, G.O.(Ms) No.64, dated 01.02.2018, G.O.(Ms) No.488, dated 15.11.2021, and also under the Rules 622, 633, 634 and 635 of the Tamil Nadu Prison Rules, 1983.

Prayer in W.P.M.P.(Crl.) No.583 of 2025: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India to direct the respondents to extend the interim bail granted to the detinue, Mohamed Buhari, S/o.Sheik Madhar, aged 48 years, Convict No.10717, detained at Central Prison, Coimbatore, in W.P.M.P.(Crl.) No.202 of 2025 in W.P.No.31415 of 2023, order dated 28.07.2025, from 06.11.2025 until the disposal of the above writ petition.

W.P.No.31417 of 2023 & W.P.M.P.(Crl.) No.584 of 2025 :

Afsath Bibi

... Petitioner

Vs.

The State represented by its
1.The Secretary to Government of Tamil Nadu,
Home (Prison-IV) Department,
Fort St. George,
Chennai – 600 009.



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2.The Superintendent of Prison,
Central Prison,
Coimbatore.

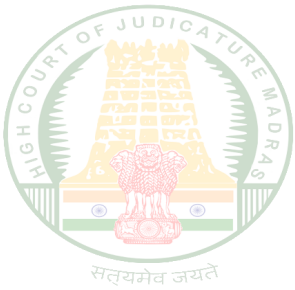
... Respondents

Prayer in W.P.No.31417 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to consider the representation dated 29.07.2023 and consecutively release the detenue, S.A.Nawab Khan, S/o.Abdul Rahmaan, aged about 54 years, Convict No.10663, confined at Central Prison, Coimbatore, prematurely as per G.O.(Ms) No.1155 dated 11.09.2008, G.O.(Ms) No.64, dated 01.02.2018, G.O.(Ms) No.488, dated 15.11.2021, and also under the Rules 632, 633, 634 and 635 of the Tamil Nadu Prison Rules, 1983.

Prayer in W.P.M.P.(Crl.) No.584 of 2025: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India to direct the respondents to extend the interim bail granted to the detenue, S.A.Nawab Khan, S/o.Abdul Rahmaan, aged about 54 years, Convict No.10663, detained at Central Prison, Coimbatore, in W.P.M.P.(Crl.) No.200 of 2025 in W.P.No.31417 of 2023, order dated 28.07.2025 from 06.11.2025 until further orders.

For Petitioner : Mr.S.Manoharan
in W.P.Nos.31417 & 31415 of 2023

For R1 and R2 : Mr.E.Raj Thilak
Additional Public Prosecutor
in W.P.Nos.31417 & 31415 of 2023



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Amicus Curiae : Mr.R.John Sathyan
Senior Counsel
in W.P.Nos.31417 & 31415 of 2023

W.P.Nos.1113, 1114, 1115, 1116, 1117, 1119 of 2025 :

Mohamed Hassan @ Monappa	... Petitioner in W.P.No.1113 of 2025
Abdul Razaak	... Petitioner in W.P.No.1114 of 2025
Santhu Mohammed @ Settu	... Petitioner in W.P.No.1115 of 2025
Mohammed Moosa	... Petitioner in W.P.No.1116 of 2025
Mohammed Azam	... Petitioner in W.P.No.1117 of 2025
Mohammed Ali	... Petitioner in W.P.No.1119 of 2025
Mohammad Ansari	... Petitioner in W.P.No.1121 of 2025

Vs.

The State represented by its
1.The Secretary to Government of Tamil Nadu,
Home (Prison-IV) Department,
Secretariat of Tamil Nadu,
Chennai – 600 009.



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2.The Superintendent,
Central Prison Coimbatore,
Coimbatore.

... Respondents
in W.P.No.1113, 1114, 1115,
1117, 1119 & 1121 of 2025

The State represented by its
1.The Secretary to Government of Tamil Nadu,
Home (Prison-IV) Department,
Secretariat of Tamil Nadu,
Chennai – 600 009.

2.The Superintendent,
Central Prison
Palayamkottai – 627 007.

... Respondents
in W.P.No.1116 of 2025

Prayer in W.P.No.1113 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detainee Mohamed Hasan @ Monappa, S/o. Moideen, aged about 46 years, Convict No.10711 confined at Central Prison, Coimbatore in W.P.(Crl.) No.344 of 2025 and W.P.M.P.(Crl.) No.156 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

Prayer in W.P.No.1114 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detainee Abdhul Razaak, S/o.S.R.Basheer Ahmed, aged about 45 years, Convict No.10710



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confined at Central Prison, Coimbatore in W.P.(Crl.) No.346 of 2025 and W.P.M.P.(Crl.) No.158 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

Prayer in W.P.No.1115 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detenue Santhu Mohammed @ Settu, S/o.Sheriff, Convict No.10708, confined at Central Prison, Coimbatore in W.P.(Crl.) No.340 of 2025 and W.P.M.P.(Crl.) No.152 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

Prayer in W.P.No.1116 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detenue Mohammed Moosa, S/o.Mohammed Haneefa, aged about 51 years, Convict No.9400, confined at Central Prison, Palayamkottai in W.P.(Crl.) No.342 of 2025 and W.P.M.P.(Crl.) No.154 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

Prayer in W.P.No.1117 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detenue Mohammed Azam, S/o.John Basha, aged about 45 years, Convict No.10709, confined at Central Prison, Coimbatore, in W.P.(Crl.) No.343 of 2025 and



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W.P.M.P.(Crl.) No.155 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

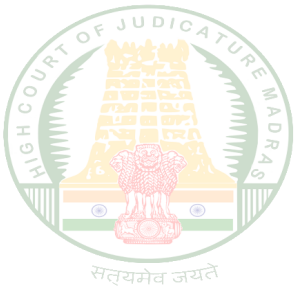
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Prayer in W.P.No.1119 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detenue Mohammed Ali, S/o.Khaja Moideen, aged about 51 years, Convict No.10727 confined at Central Prison, Coimbatore in W.P.(Crl.) No.345 of 2025 and W.P.M.P.(Crl.) No.157 of 2025 order dated 18.07.2025 for 3 months from 22.10.2025 until further orders.

Prayer in W.P.No.1121 of 2025 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to extend the ordinary leave granted to the detenue Mohammed Ansari, S/o.Mohammad Sheik, Convict No.13875 confined at Central Prison, Coimbatore in W.P.(Crl.) No.341 of 2025 and W.P.M.P.(Crl.) No.153 of 2025 order dated 18.07.2025 from 22.10.2025 until further orders.

For Petitioner : Mr.S.Manoharan
in W.P.Nos.1113, 1114, 1115, 1116,
1117, 1119 of 2025

For R1 and R2 : Mr.E.Raj Thilak
Additional Public Prosecutor
in W.P.Nos.1113, 1114, 1115, 1116,
1117, 1119 of 2025



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Amicus Curiae : Mr.R.John Sathyan
Senior Counsel
in W.P.Nos.1113, 1114, 1115, 1116,
1117, 1119 of 2025

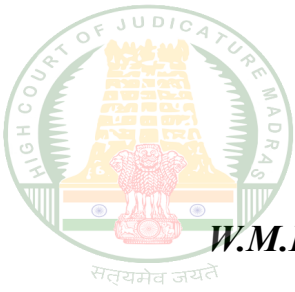
COMMON ORDER

N. SATHISH KUMAR, J.

W.P.Nos.30216, 30212, 30505, 30514 of 2024, 31417, 31415 of 2023 have been filed for a direction to the Government to release the convict prisoners prematurely, by considering the representation of the petitioners therein. The miscellaneous petitions in W.P.M.P.(Crl.) Nos.530, 531, 532, 533, 583 & 584 of 2025 and the writ petitions in W.P.(Crl.) Nos.1113, 1114, 1115, 1116, 1117, 1119, 1121 of 2025 have been filed to extend the interim bail/leave granted to the convict prisoners, pending consideration of the representation before the Government to release them prematurely.

2.The miscellaneous petitions for extension of interim bail/leave pending consideration of the representations before the Government to release the convict prisoners prematurely, have been filed on the basis of the interim bail granted by a Division Bench of this Court earlier in

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W.M.P.No.27482 of 2023 in W.P.No.16127 of 2020 [Munni v. State] by

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challenging the order rejecting the request for premature release of convict prisoner therein. During the pendency of the said writ petition, a Division Bench of this Court granted interim bail based on two orders of the Hon'ble Supreme Court. Based on such interim bail granted in the said writ petition, whenever a writ petition is filed to consider the representation of the petitioner seeking prematurely release, several miscellaneous petitions are also filed either for grant of interim bail for a specific period which are entertained by this Court, or for extension of interim bails so granted.

3.It is relevant to note that the orders of the Hon'ble Supreme Court relied upon by the earlier Division Bench of this Court to grant interim bail, are ones passed at the admission stage or immediately thereafter. One of the orders was made in ***S.L.P.(Crl.)No.12784 of 2022 [Sikkander v. The State and others]***, dated 25.07.2023, at the admission stage. It is relevant to note that, later, the Special Leave Petition in S.L.P.(Crl.)No.12784 of 2022 itself was also disposed of as infructuous, since the life convict was released



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pursuant to the order of remission passed by the Government. Similarly, the

other order of the Hon'ble Supreme Court was made in ***Sardar Khan v.***

State and others [S.L.P.(Crl.) No.10176 of 2022, dated 12.09.2023], which

was also passed at the admission stage. The said Special Leave Petition has

been filed challenging the order of the Division Bench of this Court

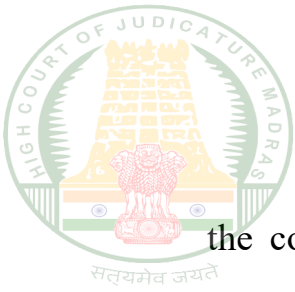
upholding the rejection of premature release. Therefore, the Hon'ble

Supreme Court has granted interim bail and the matter was adjourned to

20.02.2024.

4. Based on the above two interim orders passed by the Hon'ble Supreme Court at the admission stage, the Division Bench of this Court, in *W.M.P.No.27482 of 2023 in W.P.No.16127 of 2020* has granted interim bail, pursuant to which, several applications are being filed for interim bail and the same is also granted, and this Court has also extended the interim bail from time to time.

5. Now, the miscellaneous petitions and few writ petitions before us are also seeking similar extension of interim bail granted by this Court to



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the convict prisoners, pending consideration of the representation by the

Government for premature release. When the matter came before us on

27.10.2025, we entertained a doubt as to grant of interim bail or extension

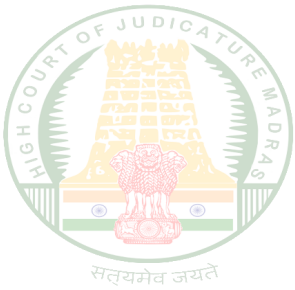
of interim bail in such matters and passed the following order in one of the

cases, i.e., W.P.M.P.(Crl) No.530 of 2025 in W.P.No.30212 of 2024, etc. :

“2.The question that arises for consideration is whether this Court can exercise its power to grant interim bail after the sentencing part is over. Though the earlier Division Bench of this Court has granted interim bail, we are of the prima facie view that once the sentencing part is over by the Court and the Government is seized of the remission proceedings, the matter in respect of grant of interim bail requires detailed deliberations. In this connection, Mr.John Sathyan, learned Senior Counsel is requested to assist the Court.”

3.The Secretary to Government, Home (Prison IV) Department, has also filed an affidavit dated 27.10.2025 and the same is taken on record.

4.The co-ordinate bench of this Court has already extended the interim bail to the convict till 22.10.2025. Hence, this Court also extends the interim bail to the convicts till 17.11.2025.



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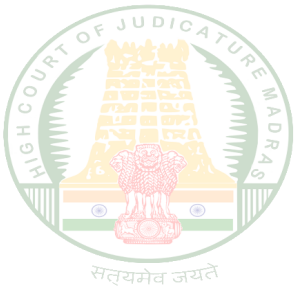
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5. Whether such petitions are maintainable or not before this Court will be decided after hearing both parties. Post the matter on 06.11.2025 “for arguments”.

6. Accordingly, Mr.R.John Sathyan, learned Senior Counsel, was appointed as *Amicus Curiae* to assist the Court in the matter. The matter was heard in length.

7. Mr.S.Manoharan, learned counsel appearing for the petitioners, in all the matters, vehemently would submit that this is the practice of this Court and this Court has granted interim bail in many matters, which have been extended from time to time and therefore, now, there cannot be any different view, in view of the law settled in various judgments of the Hon'ble Supreme Court. The learned counsel also relied upon the following cases to show that interim bail/interim leave has been granted by this Court earlier and the convict prisoners have been released by this Court on various occasions.

- i. V.Chithra v. State [H.C.P.No.1839 of 2015, dated 22.09.2015 & 28.04.2016]*
- ii. S.Glory v. State [Crl.M.P.No.6800 of 2017 in H.C.P.No.133 of*



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2017, dated 05.06.2017]

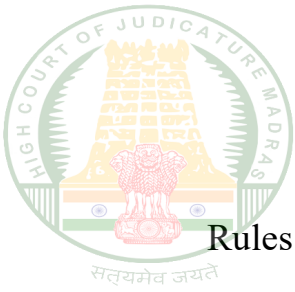
iii. *I.Sikkanthar Basha v. State* [H.C.P.No.1099 of 2018, dated 16.07.2018]

iv. *Ranganathan v. State* [H.C.P.No.214 of 2020, dated 20.02.2020 & 24.02.2023]

v. *A.Rahamath Nisha v. State* [W.P.No.853 of 2023, dated 03.02.2023]

8.Learned Additional Public Prosecutor appearing for the respondents would submit that the matters are pending consideration before the Government. The Government has expressed its No Objection for grant of bail. A common status report has also been filed by the Home, Prohibition & Excise Department, dated 27.10.2025, stating their No Objection for granting interim bail to the prisoners. The same is also taken on record.

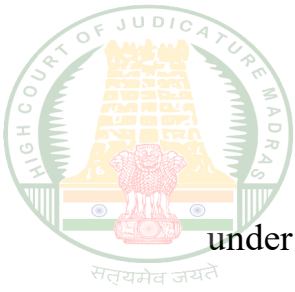
9.Whereas, Mr.R.John Sathyan, learned *Amicus Curiae*, would submit that the release of the convict prisoners is governed by Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as “Suspension of Sentence Rules”). As far as temporary release is concerned, certain categories of leave have been classified under the Suspension of Sentence



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Rules to various prisoners per year, after completion of certain period of sentence. Therefore, at present, as per law, the prisoners are entitled to be temporarily released only as per the Suspension of Sentence Rules. Further, it is his contention that Rule 40 of the Suspension of Sentence Rules gives power to the Government to exempt any person from any or all provisions of the Rules and grant leave. In this regard, the Full Bench of this Court, in *State v. Yesu @ Velaiyan* reported in *(2011) 5 CTC 353*, has clearly indicated that the entire Suspension of Sentence Rules may be exempted in respect of any prisoner for valid reasons. Similarly, the another Full Bench of this Court in *T.Ramalakshmi v. State* reported in *2025 (1) LW (Crl.) 310*, has reiterated the view of the earlier Full Bench in *Yesu's case (supra)*. Therefore, it is his contention that the Government can exempt any or all of the provisions of the Suspension of Sentence Rules to the benefit of the prisoners. Hence, it is his contention that without invoking such power of exemption retained by the Government, just burdening the Courts to grant interim bail by stating No Objection is not proper as per law. It is his contention that, once sentencing part is over and the accused is not in the custody of the Court, grant of bail by the Court by exercising its power



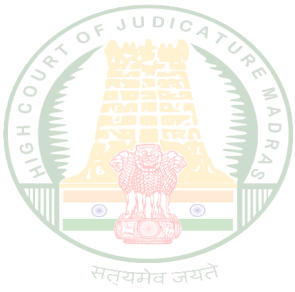
W.P.No.30216 of 2024, etc. batch

under Article 226 of the Constitution of India is not correct. Hence, it is his

contention that the interim orders passed by the Apex Court exercising its power under Article 142 of the Constitution of India, cannot be taken as precedent.

10. In the light of the submissions made on either side, the question that arises for consideration before us is, whether the High Court, in exercise of its powers under Article 226 of the Constitution of India, can grant interim bail when an application for premature release is pending consideration before the State Government or whether the same has been considered and rejected and is pending challenge before this Court.

11. It is well settled that the concept of the bail presupposes that a person is in the custody of the Court. For the Court to exercise its power of granting bail, a person must be in the custody of the Court. In this regard, the Constitution Bench of the Hon'ble Supreme Court in ***Sunil Fulchand Shah. v. Union of India*** reported in (2000) 3 SCC 409, in Para No.24 has held as follows :



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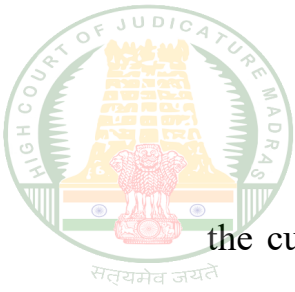
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“24.Bail and parole have different connotations in law.

Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety. In Halsbury's Laws of England [Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.], the following observation succinctly brings out the effect of bail:

“The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.”

12.From the above dictum of the Constitution Bench, it is clear that



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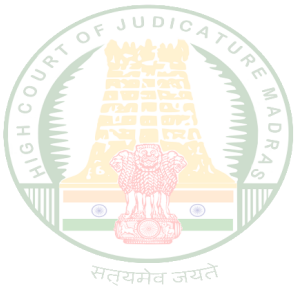
the custody of the accused is a *sine qua non* to grant bail. Therefore, the

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very concept of bail implies that the accused is released from the actual custody of the Court to the custody of the sureties through whom the Court retains constructive custody of the accused.

13.The Hon'ble Supreme Court, in ***State of Haryana v. Dinesh Kumar*** reported in **(2008) 3 SCC 222**, has held held as follows :

“25.We also agree with Mr Anoop Chaudhary's submission that unless a person accused of an offence is in custody, he cannot move the court for bail under Section 439 of the Code, which provides for release on bail of any person accused of an offence and in custody. (emphasis supplied) The precondition, therefore, for applying the provisions of Section 439 of the Code is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. This aspect of the matter was considered in Niranjana Singh case [(1980) 2 SCC 559 : 1980 SCC (Cri) 508 : AIR 1980 SC 785] where it was held that a person can be stated to be in judicial custody when he surrenders before the court and submits to its directions.”

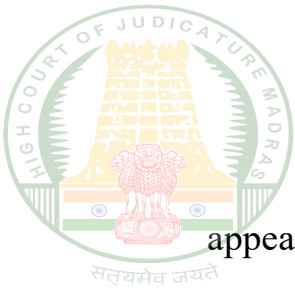


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14. Chapter XXXIII of the Code of Criminal Procedure/Chapter

XXXIV of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with

“Bail and Bonds”. This Chapter deals with grant of bail to persons other than persons accused of non-bailable offences, arrested or detained without warrant by an officer in charge of a Police Station, or appears or is brought before a Court and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail. Similarly, in respect of persons accused of committing non-bailable offences, the High Court and Sessions Court have powers to grant bail under Section 439 Cr.P.C./Section 483 BNSS. The High Court or Sessions Court can grant bail to the accused, being in the custody of the Court, as stated above. This is also reiterated in the judgment in ***Sundeep Kumar Bafna v. State of Maharashtra*** reported in ***(2014) 16 SCC 623***. Once the accused is convicted and sentenced, he may file an appeal. The Appellate Court can suspend the execution of the sentence and direct the accused to be released on bail under Section 389(1) Cr.P.C./Section 430(1) BNSS. Even during the pendency of the appeal, the accused is construed to be in judicial custody. Similar is the case where revision is filed. However, if there is no



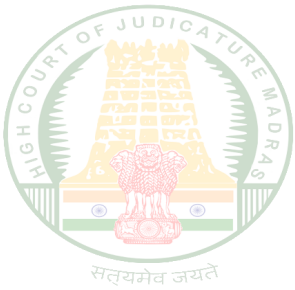
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appeal and the conviction becomes final, committal warrant would be issued

WEB COPY by the Court under Section 418 Cr.P.C./Section 458 BNSS and the Court commits the accused to jail for serving the remaining sentence of imprisonment. In case of death sentence awarded by the trial Court, the procedure under Chapter XXXII Part-A of Cr.P.C./Chapter XXXIII Part-A is followed. In either case, once the order of conviction and sentence attains finality, the accused is committed to prison. Once the accused/convict is committed to prison, the Court ceases to have the custody, either actual or constructive, over him.

15. In *State of Haryana v. Mohinder Singh* reported in (2000) 3 SCC 394, the Hon'ble Supreme Court has held as follows :

“10. The terms bail, furlough and parole have different connotations. Bail is well understood in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the Code. It is granted by the officer in charge of a police station or by the court when a person is arrested and is accused of an offence other than a non-bailable offence. The court grants bail when a person apprehends arrest in case of a non-bailable offence or is arrested for a non-bailable offence.



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When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is suspended he nevertheless remains a convict. For the exercise of powers under Section 432 it may perhaps be relevant that the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was pending at that time. Appeal in that case might have to abate inasmuch as the person convicted has to accept the conditions on which the State Government remits the whole or part of his punishment.”

16.The above judgment and the scheme of Code makes it very clear that, once the accused is sent to jail to serve the sentence imposed on him, the provision relating to bail under Chapter XXXIII Cr.P.C./Chapter XXXIV BNSS or Section 389 Cr.P.C./Section 430 BNSS ceases to apply. Therefore, after the conviction and sentence reaches finality, the release of the accused thereafter is governed only by Section 432 under Chapter-XXXII of Cr.P.C./Section 473 under Chapter XXXIV of BNSS. These Sections



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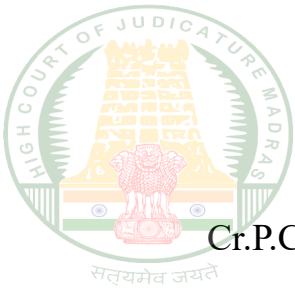
contain the provisions regarding execution, suspension, remission and commutation of sentences.

17. Section 432 Cr.P.C./Section 473 BNSS empowers the appropriate Government to suspend the execution of sentence or remit the punishment to which the accused has been sentenced. Sub-Section (1) of Section 432 Cr.P.C./Section 473 BNSS reads as follows :

“432. Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.”

Therefore, after sentencing part is over by the Court, the power to suspend the sentence or remit the sentence is within the exclusive domain of the appropriate Government.

18. However, there is a common misconception regarding the expression “suspension of sentence”, since it occurs both in Section 389



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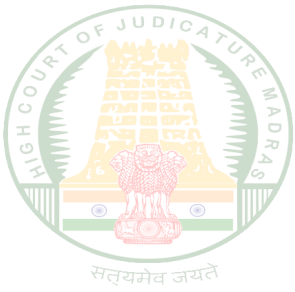
Cr.P.C./Section 430 BNSS and Section 432 Cr.P.C./Section 473 BNSS.

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Under Section 389 Cr.P.C./Section 430 BNSS, the sentence is suspended by the Appellate Court. What is suspended is the “execution of the sentence or order appealed against”. It is for this reason, the accused is released on bail, since he continues to remain in the Court custody. Whereas, under Section 432 Cr.P.C./Section 473 BNSS, what is suspended is the “execution of the sentence” and this power is exercised by the appropriate Government and not the Court, since by this stage, the accused is not in the custody of the Court at all.

19. In *State of Haryana v. Nauratta Singh* reported in (2000) 3 SCC 514, the Hon'ble Supreme Court has held as follows :

“13. Suspension of a sentence is obviously different from remission of any part of the punishment to which a person is sentenced. While Section 432 of the Code deals with power of the Government to suspend the sentence, Section 389 of the Code deals with power of the court to suspend execution of sentence pending appeal or revision. Whenever the sentence is suspended by the court the convict is entitled to be released on bail. The expression used in Section 432(1) of the Code for



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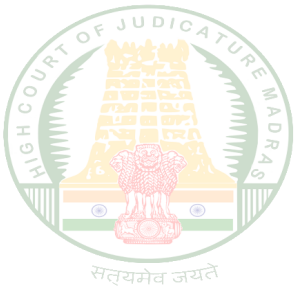
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remission is “remit ... the punishment to which he has been sentenced”. It is, therefore, clear that remission can be granted only with reference to an operative punishment. In other words, when there is no operative punishment there is no need to remit any part of such punishment.”

20.From the above judgment, it is clear that, in the context of suspension of sentence, bail can be granted only when suspension of sentence is granted by the Court and not when the sentence is suspended under Section 432 Cr.P.C./Section 473 BNSS.

21.In the State of Tamil Nadu, the power to suspend the sentence under Section 432 Cr.P.C. is governed by Tamil Nadu Suspension of Sentence Rules, 1982. This Rule has been framed in exercise of the power conferred under Sub-Section (5) of Section 432 of Code of Criminal Procedure, 1973. This Rule was elaborately discussed and dealt with by a Full Bench of this Court in ***State v. Yesu @ Velaiyan*** reported in **(2011) 5 CTC 353** and the Full Bench, in Para No.27, has held as follows :

“27.In view of the said settled position of law, so far as the State of Tamil Nadu is concerned, since there is a statutory



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Rule in the form of the Tamil Nadu Suspension of Sentence Rules, occupying the field of suspension of sentence by grant of either emergency leave or ordinary leave, the executive power of the State under Article 162 of the Constitution cannot be exercised by the State in derogation of the said Rules. To put it otherwise, outside the scope of the said Rules, the Government or any other Authority of the Government shall not grant any suspension of sentence to a prisoner.”

Further, in Para No.42 of the judgment, the Full Bench has held “*at the same time, the Government can exempt some of the provisions such as provisions relating to bond, etc., in respect of a prisoner and release him on leave. Such exercise of the power by the Government exempting some of the provisions of the Suspension Rules shall be for reasons to be recorded and the same shall not be exercised in an arbitrary manner. As rightly pointed out by Mr.P.N.Prakash, the Amicus Curiae, the entire Suspension Rules may be exempted in respect of an individual prisoner for valid reasons*”. By holding so, in Para No.46, the Full Bench has further held that “*until a legislation is made or appropriate Rules are issued by the Tamil Nadu Government regulating the grant of parole [temporary release], there shall be no temporary release of any prisoner on parole at*



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all. In the event, any statute is made or the Government frames appropriate

Rules regulating parole, the said Act or Rules may provide for the manner in which the period of parole may be treated either as part of the sentence period or not”.

Ultimately, the Full Bench summarized its conclusions in Para No.51 as follows :

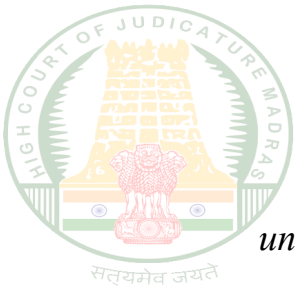
“51. In the result, we answer the question referred to us as follows:

(i) Temporary release on parole by way of administrative action and temporary release on suspension of sentence as per the Tamil Nadu Suspension of Sentence Rules are two different concepts having different connotations.

(ii) The release on parole dealt with under Chapter-XIX of the Tamil Nadu Prison Rules is not stricto sensu temporary release of a prisoner as dealt with in Sunil Fulchand Shah's case and in Avtar Singh's case. Such release on parole under the Tamil Nadu Prison Rules is nothing but remission of sentence.

(iii) Outside the scope of the Tamil Nadu Suspension of Sentence Rules, no authority has got any power to grant suspension of sentence in any form.

(iv) In the State of Tamil Nadu, neither there is any Act of the Legislature nor any administrative Rules or Regulations issued



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under the executive power of the State Government under the Constitution enabling any authority, including the Government, to grant temporary release of prisoners on parole. Therefore, until such statute or administrative Rule or Regulation is made, neither the Government nor any other authority shall grant temporary release of prisoners on parole.

(v) In the event any statutory provision or administrative Rule or Regulation is made regulating the temporary release of prisoners on parole, the same may provide the manner in which the parole period shall be treated.

(vi) In the State of Tamil Nadu, as of now, since there is no statute or administrative Rule or Regulation, to grant temporary release on parole, such release of prisoners granted hitherto shall be treated only as suspension of sentence and therefore, the same shall not be counted towards the sentence period.”

22.From the above judgment of the Full Bench, it is very clear that, in respect of a prisoner undergoing sentence, the sentence can be suspended only as per Section 432 Cr.P.C. by resorting to the Suspension of Sentence Rules framed thereunder.

23.Now, coming to the question of premature release, it is now well



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settled that no mandamus can be issued to compel the State to grant

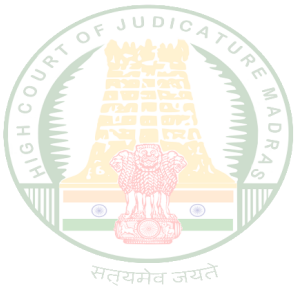
premature release. The convict has a limited right to have his case

considered. This has been clearly held by the Apex Court in ***Union of India***

v. V.Sriharan reported in ***(2016) 7 SCC 1***, wherein, the Apex Court has held

as follows :

“259.The convict undergoing the life imprisonment can always apply to the authority concerned for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably. This was settled in Godse [Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 : (1961) 1 Cri LJ 736 : (1961) 3 SCR 440] which view has since then been followed consistently in State of Haryana v. Mahender Singh [State of Haryana v. Mahender Singh, (2007) 13 SCC 606 : (2009) 1 SCC (Cri) 221] , State of Haryana v. Jagdish [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806] , Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] and Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] . The right to apply and invoke the powers under these provisions does not mean that he can claim such



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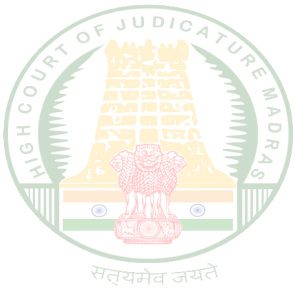
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benefit as a matter of right based on any arithmetical calculation as ruled in Godse [Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 : (1961) 1 Cri LJ 736 : (1961) 3 SCR 440]. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.”

(emphasis supplied)

24.In *State v. H. Nilofer Nisha* reported in (2020) 14 SCC 161, the Hon'ble Supreme Court, while dealing with the premature release in terms of G.O.Ms.No.64, dated 01.02.2018, has held that the Court cannot straightaway order release and that the power of judicial review would come into play only after the matter has been considered by the authorities. In Para No.31 of the said judgment, the Hon'ble Supreme Court has held as follows :

“31. ... In all these cases, the representations made by the detenus had not been decided. In our view, the proper course for the Court was to direct that the representations of the detenus be decided within a short period.



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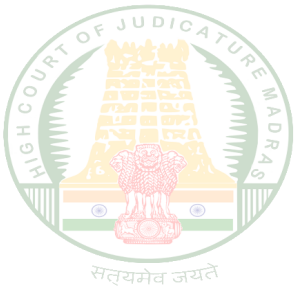
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...

We are clearly of the view that the Court itself cannot examine the eligibility of the detenu to be granted release under the Scheme at this stage. There are various factors, enumerated above, which have to be considered by the committees. The report of the Probation Officer is only one of them. After that, the District Committee has to make a recommendation and finally it is the State Level Committee which takes a final call on the matter. We are clearly of the view that the High Court erred in directing the release of the detenu forthwith without first directing the competent authority to take a decision in the matter. Merely because a practice has been followed in the Madras High Court of issuing such type of writs for a long time cannot clothe these orders with legality if the orders are without jurisdiction.”

The Hon'ble Supreme Court further held in Para No.27 as follows :

“27.We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with



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rules.”

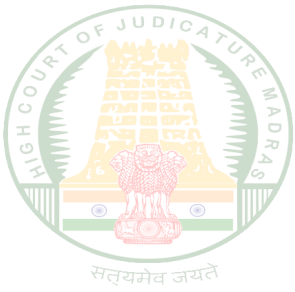
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25. In ***Rajan v. State of Tamil Nadu*** reported in (2019) 14 SCC 114, a writ petition was filed before the Hon'ble Supreme Court under Article 32 of the Constitution of India with the following prayers :

- “(a) Pass an appropriate writ or order directing the release of the petitioner from prison forthwith, and/or*
- (b) Declare that the sentence of life imprisonment imposed upon the petitioner under Section 27(3) of the Arms Act is null and void; and/or*
- (c) Alternatively direct the respondents to remit the remaining sentence and release the petitioner by considering his representation dated 5-2-2018 while this present petition is pending before this Hon'ble Court.*
- (d) Pass any such other order or orders as may be deemed fit and proper.”*

In the said case, the Hon'ble Supreme Court has held as follows :

“18. ... As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the court



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to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 CrPC, to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.”

Finally, the Apex Court concluded as follows :

“20.Thus understood, we cannot countenance the relief claimed by the petitioner to direct the respondents to release the petitioner forthwith or to direct the respondents to remit the remaining sentence and release the petitioner. The petitioner, at best, is entitled to the relief of having directions issued to the respondents to consider his representation dated 5-2-2018, expeditiously, on its own merits and in accordance with law. We may not be understood to have expressed any opinion either way on the merits of the claim of the petitioner.”

26.Even before the said decision, in ***State of Madhya Pradesh v. Ratan Singh*** reported in ***AIR (1976) SC 1552***, it was held that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence, no writ can be



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issued directing the State Government to release the prisoner. The said legal

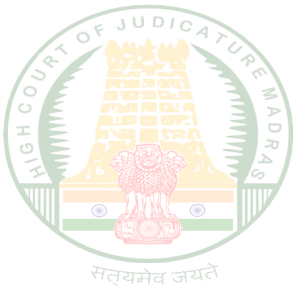
position was also followed in **Raj Kumar v. State of U.P.** reported in (2019)

9 SCC 427, wherein, it was observed as follows :

“14.A bare perusal of Section 433 CrPC shows that the powers under Section 433 can only be exercised by the appropriate Government. These powers cannot be exercised by any court including this Court. At best, the court can recommend to the State Government that such power may be exercised but the power of the appropriate Government cannot be usurped by the courts and the Government cannot be directed to pass “formal compliance order”. We are, therefore, not inclined to pass a similar order because that is beyond the jurisdiction of this Court.”

The latest view is reiterated in **Bilkis Yakub Rasool v. Union of India** reported in (2024) 5 SCC 481, wherein, the Hon'ble Supreme Court has held as follows :

“171.That while grant of remission is the exclusive prerogative of the executive, the Court cannot supplant its view. The Court can direct the authorities to reconsider the representation of the convict vide Rajan [Rajan v. State of T.N., (2019) 14 SCC 114 : (2020) 1 SCC (Cri) 219] . Therefore, while there can be no direction to release a prisoner forthwith



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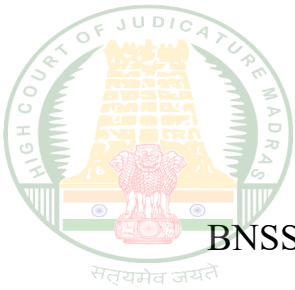


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or to remit the remaining sentence, at best there can only be a direction issued to the State to consider the representation made for remission expeditiously on its own merits and in accordance with law.”

27.From the above judgments, the law is well settled that the High Courts cannot exercise power under Article 226 of the Constitution of India to direct premature release of a prisoner. The prisoner has a limited right to seek a direction to have his case considered in terms of the policy. However, if he is unsuccessful, he may challenge the decision under Article 226 of the Constitution in a manner known to law.

28.The State of Tamil Nadu has issued G.O.Ms.No.12, dated 10.01.2025, under Rule 349(i) of the Tamil Nadu Prison Rules, 2024, laying down the detailed Standard Operating Procedure for premature release of prisoners. As per the said Government Order, identification of prisoners suitable for premature release, calling for reports from the concerned authorities, preparation of proposals by the Superintendent with his remarks, followed by obtaining remarks of the Presiding Judge under Section 473(2)

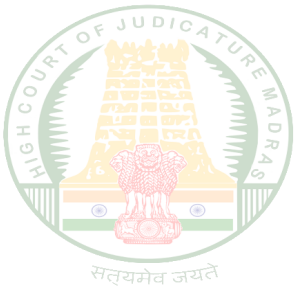


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BNSS, are required before the same is put up before the State Level Committee. Therefore, release of a prisoner prematurely involves consideration of various factors at various levels. It is for the appropriate Government to take a decision after considering relevant factors.

29. Now, coming to grant of interim bail to the prisoners during the pendency of the writ petitions, the concept of interim bail was explained in detail by the Division Bench of Delhi High Court in ***Athar Pervez v. State*** reported in **(2016) 229 DLT (CN) 12**, as follows :

"The expression "interim" bail is not defined in the Code. It is an innovation by legal neologism which has gained acceptance and recognition. The terms, "interim" bail/ "interim" suspension of sentence, have been used and accepted as part of legal vocabulary and are well known expressions. The said terms are used in contradistinction and to distinguish release on regular bail during pendency of trial or appeal till final adjudication. Applications for "interim" suspension or bail are primarily moved and prayed for, when the accused or convict is not entitled to or cannot be granted regular bail or suspension of sentence, or the application for grant of regular bail is pending consideration and is yet to be decided. "Interim" bail



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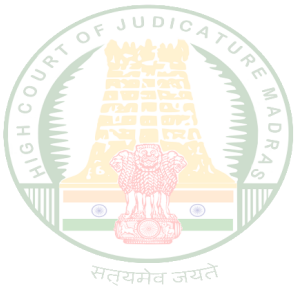
entailing temporary release can be granted under compelling circumstances and grounds, even when regular bail would not be justified. Intolerable grief and suffering in the given facts, may justify temporary release, even when regular bail is not warranted. Such situations are not difficult to recount, though making a catalogue would be an unnecessary exercise."

The aforesaid decision has been approved by the Apex Court in ***Arvind Kejriwal v. Directorate of Enforcement*** reported in ***(2024) 9 SCC 577***.

30.However, as stated *supra*, the concept of bail itself presupposes that the accused is in the custody of the Court. Where the accused is not in custody of the Court, the question of granting bail, even interim bail, does not arise.

31.From the above discussion, the following principles can be culled out :

- i. A convict prisoner serving sentence is not in the custody of the Court. Consequently, the question of granting bail, let alone interim bail, does not arise.

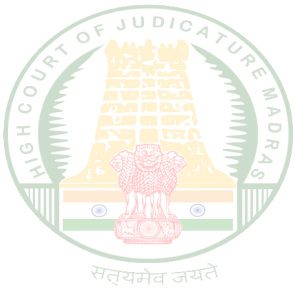


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- ii. In *Rajan v. State of T.N.* reported in (2019) 14 SCC 114, the Hon'ble Supreme Court has clearly held that a convict cannot be directed to be released from prison pending consideration of the petition for premature release. All that he is entitled to is to have his petition for premature release considered on merits in terms of G.O.Ms.No.12 or any other policy prevailing at the relevant point of time. If the same is rejected, it is open to him to challenge it under Article 226 of the Constitution of India in a manner known to law. This decision has unfortunately not been brought to the notice of the previous Division Benches.
- iii. Consequently, in such circumstances, when release of the convict prisoner from prison cannot be granted as a final relief, there is no question of granting the same in the form of interim relief. That would go against the fundamental principle of law that an interim order is granted in aid of a final order and where a relief cannot be granted by way of a final order, the same cannot be granted by way of interim orders.
- iv. The power to remit and suspend the execution of the sentence



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under Section 432 Cr.P.C./Section 473 BNSS and commute the sentence under Section 433 Cr.P.C./Section 474 BNSS lies exclusively with the Government and not the Court. In other words, premature release can be considered only by the Government and not the Court.

- v. Any temporary release in terms of ordinary or emergency leave can be considered only within the scope of the Tamil Nadu Suspension of Sentence Rules, 1982 and not otherwise, as pointed out in *State v. Yesu* reported in **2011 SCC OnLine Mad 1463**.

32.No doubt, the power under Article 226 of the Constitution of India has been invoked in rare and exceptional cases, for instance, in preventive detention cases, to seek interim bail. However, even in those situations, relief can be granted only in exceptional and rare cases when strong and compelling grounds are made out. It cannot be granted for the mere asking

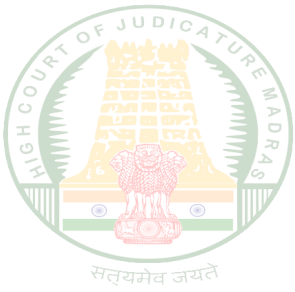


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or on sympathetic grounds, as pointed out in ***State of Bihar v. Rambalak***

WEB COPY **Singh** reported in ***AIR 1966 SC 1441***, wherein, it was observed as follows :

“It is no doubt true that a detenu is detained without a trial; and so, the courts would inevitably be anxious to protect the individual liberty of the citizen on grounds which are justifiable and within the limits of their jurisdiction. But in upholding the claim for individual liberty within the limits permitted by law, it would be unwise to ignore the object which the orders of detention are intended to serve. An unwise decision granting bail to a party may lead to consequences which are prejudicial to the interests of the community at large; and that is a factor which must be duly weighed by the High Court before it decides to grant bail to a detenu in such proceedings. We are free to confess that we have not come across cases where bail has been granted in habeas corpus proceedings directed against orders of detention under Rule 30 of the Rules, and we apprehend that the reluctance of the courts to pass orders of bail in such proceedings is obviously based on the fact that they are fully conscious of the difficulties - legal and constitutional, and of the other risks involved in making such orders. Attempts are always made by the courts to deal with such applications expeditiously; and in actual practice, it would be very difficult to come across a case where



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without a full enquiry and trial of the ground on which the order of detention is challenged by the detenu, it would be reasonably possible or permissible to the Court to grant bail on prima facie conclusion reached by it at an earlier stage of the proceedings."

If an order of bail is made by the Court without a full trial of the issues involved merely on prima facie opinion formed by the High Court, the said order would be open to the challenge that it is the result of improper exercise of jurisdiction. It is essential to bear in mind the distinction between the existence of jurisdiction and its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the courts in dealing with applications of this character.""

33.The above observations were made in a case of preventive detention where detention is made under an executive order. The case of a convict prisoner stands on a different footing. His liberty under Article 21 of the Constitution of India has been curtailed after following due process of law and it would be wholly preposterous to argue that the rights of a prisoner serving life sentence after trial and appeal before the Courts of law are being violated merely because he has undergone a certain period of



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sentence. Comparing cases of premature release with those of convict prisoners is a case of comparing the incomparable.

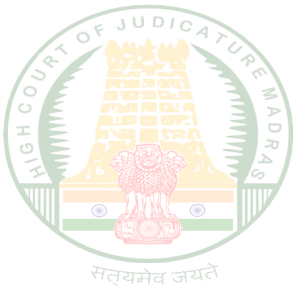
34.The earlier Division Bench of this Court, while granting interim bail, has relied upon the interim orders of the Hon'ble Supreme Court passed at the admission stage. Let us discuss the orders relied upon by the earlier Division in *W.M.P.No.27482 of 2023 in W.P.No.16127 of 2020 by order dated 29.09.2023*.

35.The Hon'ble Supreme Court, in *S.L.P.(Crl.)No.12784 of 2022 [Sikkander v. The State and others]*, at the admission stage, has passed the following order on 13.12.2022 :

“Delay condoned.

Applications for exemption from filing official translation and c/c of the impugned judgment are allowed.

Learned counsel for the petitioner submits that the petitioner is willing to undertake that he will not go to the area in question. He submits that one of the reasons cited is the security of the petitioner if he is released pre-maturely. The petitioner has already spent 24 years and 10 months in actual



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custody in which time he was released on 24 occasions. He submits that the victim's family has also moved away from the place of incident with no whereabouts known and merely because they were two families of two different religious beliefs, that cannot be a reason to ad infinitum keep the petitioner in custody.

Issue notice returnable in the first week of February, 2023.

Dasti in addition through standing counsel. A copy of the order to accompany the notice."

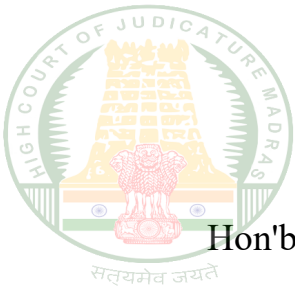
Thereafter, on 25.07.2023, the following order was passed :

"IA NO.124492/2023 IN SLP(Crl) No. 5978/2023 : Issue notice which is accepted by learned counsel for the respondent.

We have taken note of the counter affidavit, more specifically, para 4 referring to the recommendation of Justice (Retd.) Thiru. N. Authinathan Committee.

Thus, while listing the matter when other matters are listed in the month of September, 2023, we grant interim bail to the husband of the petitioner, namely, Ibrahim @ Netti Ibrahim, Life Convict, Convict No.10900, lodged at Central Prison, Coimbatore, Tamil Nadu who has already spent 23 years of incarceration."

Thereafter, the matter was listed to get the report on the proceedings of the



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Hon'ble Governor. On 01.04.2024, the Hon'ble Supreme Court passed the

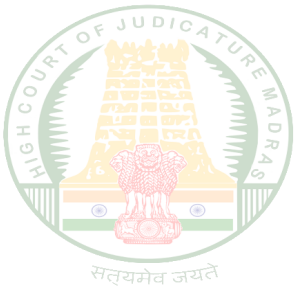
WEB COPY following order :

“Learned senior counsel appearing for the respondent(s)/State has brought to our notice two orders passed by Home (Prison-IV) Department dated 06.02.2024 and Home (Prison-IVA) Department of even date to submit that the Life Convict Prisoner No.4661, Koolai Ibrahim @ Ibrahim, S/o Abdul Rasak has been released pursuant to an order of remission and similarly Life Convict Prisoner No.10900, Nettai Ibrahim @ Ibrahim, son of Mohammed Ussain, husband of petitioner Rabiya has also been released pursuant to order passed by the Hon'ble Governor of the State in exercise of powers under Article 161 of the Constitution of India respectively. Therefore, he submitted that these special leave petitions have been rendered infructuous.

The aforesaid facts have not been disputed by learned counsel for the petitioner(s).

The aforesaid orders submitted by learned senior counsel for the respondent/State are taken on record and in view of the aforesaid submissions made by him, the special leave petitions are disposed of as infructuous.

Pending application(s) shall stand disposed of.”

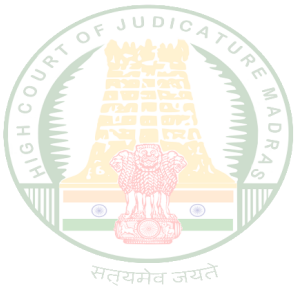


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WEB COPY 36.Thus, with the dismissal of the matter, all the interim orders have merged with the final order and the matter itself has been finally disposed of as infructuous. Therefore, an interim order passed in *S.L.P.(Crl.)No.12784 of 2022* will not come to the aid of the petitioners. In fact, *W.P.No.16127 of 2020*, in which the earlier Division Bench granted interim bail in *W.M.P.No.27482 of 2023* itself was later dismissed as infructuous by order dated 08.02.2024 by another Division Bench.

37.The second order relied upon by the Division Bench in *W.M.P.No.27482 of 2023 in W.P.No.16127 of 2020 by order dated 29.09.2023* is the order passed by the Hon'ble Supreme Court in ***Sardar Khan v. State and others [S.L.P.(Crl.) No.10176 of 2022, dated 12.09.2023]***, which reads as follows :

“The son of the petitioner (Ashique) was convicted by the Additional District and Sessions Judge, FTC-II, Madurai in S.C.No.456 of 2000 on 02.05.2003 under Sections 120B, 148, 341, 302 read with Section 34 of the Indian Penal Code, 1860 and was sentenced to life imprisonment. His Criminal Appeal



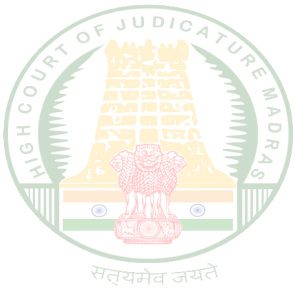
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No.953 of 2003 was dismissed by the High Court of Judicature at Madras. The petitioner's son (convict no.13112), alongwith his two co-accused was held guilty of committing murder of Tr. Jayaprakash, Assistant Jailor of Central Prison, Madurai. The said Assistant Jailor was murdered only because he searched one of the prisoner Sahul Hammed during his admission in Central Prison, Madurai in the year 1997. The crime was committed in the year 1997, which was duly registered in Madurai CB-CID Police Station as Crime No.1861 of 1997. As per the custody certificate dated 14.09.2022, issued by the office of Central Prison, Coimbatore, the petitioner's son had undergone 24 years and 21 days imprisonment as on 10.09.2022 and no other criminal case was pending against him.

2.The State of Tamil Nadu, as a one time measure, issued Government Order No.1155 on 11.09.2008, whereunder it was decided that all the life convicts, who had completed seven years of actual imprisonment as on 15.09.2008 were to be released prematurely subject to certain conditions mentioned therein. It appears that the petitioner's son was not released under that Government Order on the ground that the prisoner would not be safe. Thereafter, Government Order No.64 dated 01.02.2018 was issued but the benefit thereof was not extended



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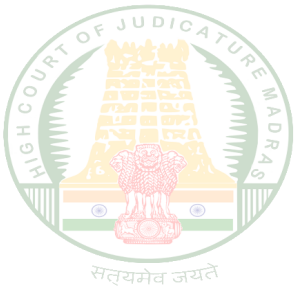
W.P.No.30216 of 2024, etc. batch

to the petitioner's son as he did not satisfy the conditions stipulated in paragraph 5(II)(2)(A)(v) and (vi). It followed another Government Order No.488 dated 15.11.2021 but the petitioner's son was not found eligible for premature release as per the said Government Order also.

3.The denial of premature release to his son prompted the petitioner to approach the High Court of Judicature at Madras but his writ petition seeking such relief has been turned down by the High Court vide impugned order dated 25.03.2022, giving rise to this special leave petition.

4.The respondents in their counter affidavit assigned three reasons for not releasing the petitioner's son prematurely. Those reasons were briefly discussed and repelled by this Court vide interim order dated 25.01.2023 observing as follows:

“1.The son of the petitioner is a life convict. He has spent more than 24 years in jail. As per the policy decisions taken from time to time by the State Government, the petitioner's son was entitled to premature release from jail. However, it appears from the record that the benefit of premature release was denied to him firstly in the year 2008 and then again in the year 2018-19. The second time, the son of the petitioner was denied the benefit of premature release on the grounds that “he was involved in heinous crime of murder; that he is a sympathizer and the follower of a leader of a banned outfit” and that “as per the Report of the Commissioner of Police, Coimbatore, his release will create serious law and Orders problem in the



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communally sensitive city of Coimbatore”.

2.As regard to the first reason, namely, that the petitioner was involved in a heinous crime, it cannot be disputed that several convicts under Section 302 IPC have since been released prematurely.

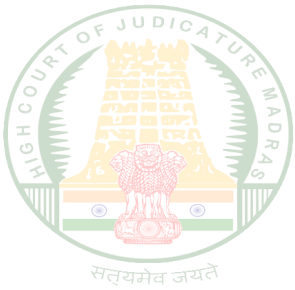
3.The second ground, namely, that the son of the petitioner is a sympathizer of a banned outfit, it appears can be effectively addressed by releasing the petitioner’s son initially on temporary basis and then taking a final call after evaluating his activities while he is released.

4.The third ground i.e. the apprehension of law and order situation does not appear to have any factual basis.

5.In our considered view, the son of the petitioner deserves to be treated at par with similarly placed convicts. We, however, instead of expressing any final view, are inclined to grant one more opportunity to the competent authority to reconsider the matter - taking a holistic view and then pass appropriate orders.”

5.Thereafter, a detailed additional affidavit has been filed by Principal Secretary, Home Department of the State of Tamil Nadu.

6.It is not necessary for us at this stage to delve upon the reasons assigned by the respondents for denial of premature release to the petitioner’s son. We say so, for the reason that co-accused of the petitioner’s son, namely, Jabroo @ Sayed Jafer Ahmed s/o Syed Habeeb, who was life convict no.1484 was ordered to be released prematurely by the High Court of Judicature at Madras vide order dated 14.12.2017. The Special



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Leave petition(Crl.) Diary No.34953 of 2018 preferred by State of Tamil Nadu against the said order of the High Court was disposed of by this Court on 12.10.2018 in the following terms:

“1.Heard the learned counsel for the petitioners and perused the relevant material.

2.Delay condoned.

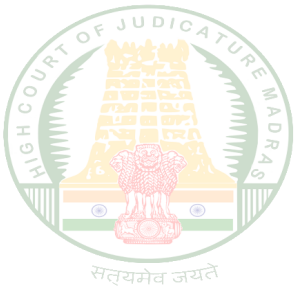
3.Having regard to the long period of custody suffered by the respondent (i.e. about 20 years) and also having regard to the peculiar facts of the case we decline to entertain the present Special Leave Petition. However, our refusal to entertain the present petition may not be understood to be an approval of the view taken by the High Court which is kept open for examination in an appropriate case.

4.The Special Leave Petition is disposed of in the above terms.”

7.It is an admitted fact that as against the custody period of 20 years of his co-accused, the petitioner’s son has undergone actual sentence of more than 25 years.

8.Similarly the third co-accused, namely, Abhuthahir was also prematurely released on health ground, though he subsequently passed away after a prolong illness.

9.The conduct of the petitioner’s son while in jail is reported to be satisfactory. He is not involved in any other case. It is further revealed from the record that the petitioner’s son has involved himself in academic and vocational pursuits while undergoing sentence and has earned various academic



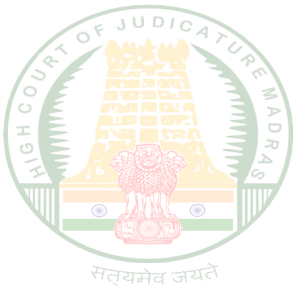
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qualifications and vocational training certificates including Diploma in computer hardware, tailoring and embroidery, electrical wiring, computer fundamentals etc. He has also completed course in Hindi speaking besides obtaining degree of Rashtrabhasha Visarad as well as M.A. (Tamil). It is also on record that he was released on parole with police escort and on those occasions there was no threat caused to him or his family members.

10. Taking into account the totality of the circumstances, it appears to us that the petitioner's son can be, to begin with, released on an interim basis for a specified period subject to his good behaviour. We, therefore, direct that let the petitioner's son i.e. Ashique (convict no.13112) be released as an interim measure for a period of six months subject to his furnishing bail bonds with two solvent sureties to the satisfaction of the Trial Court at Coimbatore. The petitioner's son (Ashique) is directed to report once in a month to the local police station. The State authorities shall submit a report with regard to the conduct and behaviour of the son of the petitioner, Ashique (convict no.13112), before 5 expiry of the period of six months. The convict will not leave the State of Tamil Nadu without informing the local police station in writing at least three days in advance and shall keep them posted about his whereabouts.



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11.Post the matter for hearing on 20.02.2024.”

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38.On a perusal of the above orders, it is clear that these two orders are only interim orders and it is also held by the Apex Court that interim orders are not precedents. In ***State of Assam v. Barak Upatyaka D.U.Karmachari Sanstha*** reported in ***(2009) 5 SCC 694***, the Hon'ble Supreme Court has held as follows :

“21.A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.”

39.It is pertinent to note that, after granting interim bail, the main SLP was also subsequently disposed of as infructuous. Therefore, the interim



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order cannot be construed as a precedent. Though interim bail has been granted by the Apex Court invoking its power under Article 142 of the Constitution of India, the same cannot be applied mechanically to all the matters where premature release is pending consideration before the appropriate Government. Therefore, we are of the view that, since the accused/convict is not in the custody of the Court and the sentencing part is already over, merely because the request for premature release is pending consideration before the appropriate Government, interim bail cannot be granted to the accused/convict by this Court by exercising its power under Article 226 of the Constitution of India. At the most, the convicts are entitled to suspension of sentence as provided under the Tamil Nadu Suspension of Sentence Rules, 1982.

40. Though much reliance has been placed on the judgment of the Hon'ble Supreme Court in *Sukhdev Yadav @ Pehalwan v. State [Criminal Appeal No.3271 of 2025, dated 29.07.2025]*, it is relevant to note that, in the said case, the accused therein was sentenced to life imprisonment which shall be 20 years of actual imprisonment without consideration of remission



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and fine of Rs.10,000/-. As the accused in the said case had completed the

actual imprisonment of 20 years on 09.03.2025, which was without any

remission, the Hon'ble Supreme Court has held that the accused was entitled

to be released. Taking note of the fact that the sentencing period of sentence

is already over, the Apex Court has held, *“release of the appellant from jail*

does not depend upon further consideration as to whether he has to be

released or not and as to whether remission has to be granted to him or not

by the Sentence Review Board. In fact, the Sentence Review Board cannot

sit in judgment over what has been judicially determined as the sentence by

the High Court which has been affirmed by this Court. There cannot be any

further incarceration of the appellant herein from 09.03.2025 onwards.”

Only in such background, the prisoner was released in that case. While

disposing the case, the Apex Court further held that, where an

accused/convict has completed his period of jail term, he shall be entitled to

be released forthwith and not continued in imprisonment if not wanted in

any other case and directed all the States/Union Territories to ascertain

whether any accused/convict has remained in jail beyond the period of

sentence and if so, to issue directions for release of such accused/convicts, if



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not wanted in any other case. Therefore, it is clear that, only because the period of sentence was already over, the Apex Court has released the convict in that case. Therefore, that judgment will not be useful to the petitioners herein.

41. Though an order granting extension of leave, passed by one of us while sitting in a Division Bench earlier, in *H.C.P.No.2302 of 2017, dated 24.01.2018*, is now brought to our notice, we are of the view that the same will not be a binding precedent, as the Bench had not discussed the provisions of the law in that matter while granting such relief.

42. In the present cases on hand, the petitioners seek remission of sentence and premature release of the convict prisoners, which has to be considered by the appropriate Government by considering various factors as detailed above. Therefore, as a matter of right, premature release cannot be sought before this Court. As already held, when the sentencing part is already over and the Court is ceased to have the custody of the



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accused/convict, bail or interim bail cannot be sought before this Court. At

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the most, the prisoners are entitled to seek suspension of sentence as per

Tamil Nadu Suspension of Sentence Rules, 1982. If the Government is benevolent enough in giving “No Objection” for grant of interim bail before this Court, the Government, if is really of the view that the accused/convict prisoners are entitled to temporary release, having retained their power under Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982, to exempt any or all the provisions of the Suspension of Sentence Rules, may invoke such power and exempt any or all the provisions in favour of any accused/convicts, taking note of their eligibility, and grant temporary release for any period as they decide. Instead of doing so, the Government, by allowing the prisoners to stay outside by just giving “No objection” before this Court to grant interim bail, in the view of this Court, is in fact, shirking its responsibility rather than addressing the grievance of the prisoners. When the Government has retained the power under Rule 40 of the Suspension of Sentence Rules to exempt the provisions under the Rules, such power can be exercised in deserving cases to temporarily release any convict prisoner or to extend their period of leave to a longer period, which

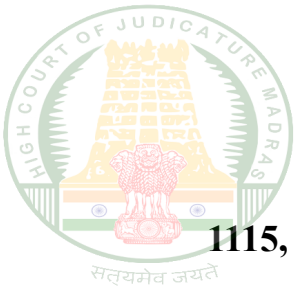


W.P.No.30216 of 2024, etc. batch

has not been done at any point of time, not even in a single case.

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43. Therefore, as the Full Bench of this Court in *Yesu's case (supra)*, has clearly held that, it is the Government who can exercise its discretionary power under Rule 40 of the Suspension of Sentence Rules to exempt any or all the provisions under the Rule, it is high time for the Government to exercise such power in deserving cases to grant temporary release or suspension of sentence for any period of time to the convict prisoners undergoing sentence, taking note of the various factors, instead of relegating the matters to the Court for grant of interim bail, as we have already held that power to grant interim bail after sentencing part is over, is not with the Court. In view of the above discussion, we are of the view that the miscellaneous petitions or writ petitions seeking interim bail/leave or extension of interim bail/leave before this Court by invoking its jurisdiction under Article 226 of the Constitution of India, particularly when the matter is pending consideration before the Government for premature release of the convict prisoner, are not maintainable. Accordingly, **W.P.M.P.(Crl.) Nos.530, 531, 532, 533, 583, 584 of 2025 and W.P.(Crl.) Nos.1113, 1114,**



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1115, 1116, 1117, 1119, 1121 of 2025 are dismissed.

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44.As far as premature release is concerned, at the risk of repetition, this Court cannot issue a mandamus and it is for the Government to exercise its power reasonably as held in various authorities stated *supra*. The only power this Court can exercise under Article 226 of the Constitution is to question the validity of the order rejecting such request for premature release, as already discussed above, but not to grant interim bail in every case where representations for premature release are pending before the Government. Therefore, the writ petitions seeking premature release of the convict prisoners cannot be entertained by this Court. Accordingly, **W.P.Nos.30216, 30212, 30505, 30514 of 2024, 31417, 31415 of 2023 are dismissed.** However, there shall be a direction to the respondents/State to consider the representation of the petitioners for premature release and pass orders strictly as per law, within a period of three months from the date of receipt of a copy of this order without any further delay. No costs.

45.Registry is directed not to number any writ petition or writ



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miscellaneous petition seeking interim bail/leave or extension of interim

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Constitution when the matter is pending consideration before the

Government for premature release of the convict prisoners.

(N.S.K., J.) (M.J.R., J.)
19.11.2025

mkn

Internet : Yes

Index : Yes

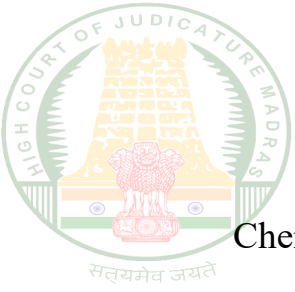
Speaking Order

Neutral Citation : Yes

To

- 1.The Home Secretary,
Prison Department (IV) St. George Fort,
Secretariat, Chennai – 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.
- 3.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,

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Chennai – 600 008.

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4.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Trichy,
Trichy – 620 020.

5.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore,
Gandhipuram, Coimbatore – 641 018.

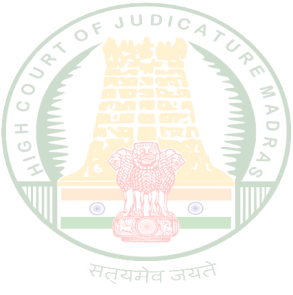
6.The Superintendent,
Central Prison
Palayamkottai – 627 007.

7.The Registrar General,
High Court, Madras.

8.The Public Prosecutor,
High Court, Madras.

N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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Common Order in
W.P.Nos.30216, 30212, 30505, 30514 of 2024,
31417, 31415 of 2023
W.P.(Crl.) Nos.1113, 1114, 1115,
1116, 1117, 1119, 1121 of 2025

19.11.2025