INDU BAI & ORS. A

v.

STATE OF TELANGANA & ORS.

(Civil Appeal No. 483 of 2020)

JANUARY 21, 2020 B

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Tenancy:

Allotment of land in question – To persons displaced after partition of India-Pakistan – Challenged by State Government – Also challenged by appellants claiming to be pre-partition tenants – High Court upheld the challenge by the State Appeal to Supreme Court – Held: The challenge in the writ petition of the appellants before High Court was not to seek establishment of any right of the appellant being pre-partition tenants – Therefore, the matter is remitted to High Court to decide the writ petitions in accordance with law. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 483 of 2010.

From the Judgment and Order dated 12.02.2016 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition No. 14066 of 2006. E

With

Civil Appeal Nos. 477-478, 486-487, 492-493, 568, 569-570, 571-572, 573, 479-480, 481 of 2020. F

Guru Krishna Kumar, Pallav Sishodia, Ranjit Kumar, C.S. Vaidyanathan, V. Giri, Sr. Advs., Mullapudi Rambabu, N. Eswara Rao, Ms. Prity Kumari, Ms. Vijayshree Pattanaik, B.K. Prasad, M/S. M. Rambabu And Co., Saurabh Mishra, Abhishek Singh, Ms. Samridhi Pal, Ms. Aashna Bhatia, Srinivasa Rao Putluri, Varun Thakur, Tripurari Roy, Ms. Shraddha Saran, Varinder Kumar Sharma, Hitendra Nath Rath, Dr. E. Seshagiri Rao, G.V.R. Choudary, K. Shivraj Choudhuri, Harsh Singhal, Hitesh Kumar Sharma, A. Sudhakar Rao, Kakra Venkata Rao, Tanmaya Agarwal, T. V. Ratnam, P. Venkat Reddy, Prashant Kr. Tyagi, P. Srinivas G H

A Reddy, Raja Ram, M/s. Venkat Palwai Law Associates, Prashant Singh, A.K. Kaul, Raj Bahadur Yadav, Venkateshwar Rao Anumolu, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B **HEMANT GUPTA, J.**

1. The present appeals are directed against a common order passed by the High Court of Judicature for the States of Telangana and Andhra Pradesh at Hyderabad on 12th February, 2016 whereby the writ petitions filed by the State of Telangana were allowed.

C 2. Civil Appeal No. 7477 of 2019 (*Ramesh Parsram Malani & Ors.* v. *The State of Telangana & Ors.*) arising out of the said order stands dismissed by this Court on 22nd October, 2019 wherein it has been held that the Central Government has transferred land to the State Government and that the State can allot land for settlement of displaced persons.

D 3. The appellants claim themselves to be pre-partition tenants on the land situated in Village Poppalguda, District Ranga Reddy. The grievance of the appellants is that their right to continue in possession has been put in jeopardy when the State issued an auction notice on 25th April, 2016.

E 4. This Court in its judgment dated 22nd October, 2019 has not examined the claim of the alleged pre-partition tenants. This Court in Ramesh Parsram Malani's case set aside the finding of the High Court wherein it was held that transfer of land to the State Government takes such transferred land out of compensation pool. The observations of this F Court in the following para are in the context of the finding recorded by the High Court, which reads as under:

> "31. However, we are unable to agree with the High Court that transfer of land to the State Government takes such transferred land out of compensation pool. The land transferred to the State G Government continues to be part of compensation pool but it is required to be disposed of by the Officers of the State who have been conferred the powers of the Managing Officer or of the Settlement Commissioner for the settlement of the displaced persons alone. It is only after the displaced persons are settled, the State Government may utilize the land for other purposes."

H

5. In Civil Appeals arising out of Special Leave Petition (Civil) Nos. 23613-23614 of 2016, the order of the High Court in Writ Petition Nos. 29274 of 2014 and 29436 of 2014 is subject matter of challenge. Before the High Court, the appellants have challenged the allotment of land to Ramesh Parsram Malani (the appellant in Civil Appeal No. 7477 of 2019) and also claimed Patta being pre-partition tenants. The appellants have claimed, *inter alia,* the following relief:

> "…direct the respondents No. 1 to 5 to grant patta rights in respect of the subject lands admeasuring Ac.18.00 Gts in Sy. No. 301, 303, 327, situated at Poppalguda Village, Rajendra Nagar Mandal, Ranga Reddy District, in favour of the petitioners herein."

6. In Civil Appeals arising out of Special Leave Petitions (CC Nos. 15550-15551 of 2016), the appellants have filed miscellaneous application for claiming interim directions not to interfere with the possession and enjoyment of the appellants over the land comprising in Survey No. 331 of Poppalguda Village, Rajendra Nagar Mandal, Ranga Reddy District. Therefore, the challenge in the writ petitions was not to seek establishment of any right of the appellants being pre-partition tenants.

7.In other appeals, the appellants have not invoked the writ jurisdiction or any other competent forum for redressal of their grievances in relation to vesting of land in them.

8. In view of the above, the order dated 12th February, 2016 passed by the High Court in Writ Petition Nos. 29274 of 2014 and 29436 of 2014 is set aside and the matter is remitted to the High Court to decide the writ petitions in accordance with law. All other appellants are at liberty to invoke such other jurisdiction as may be available to them for redressal of their grievances in accordance with law.

9. All the appeals stand disposed of accordingly.

Kalpana K. Tripathy Appeals disposed of.

A THE HOME SECRETARY (PRISON) & ORS.

v.

H. NILOFER NISHA

(Criminal Appeal No. 144 of 2020)

B JANUARY 23, 2020

[S. ABDUL NAZEER AND DEEPAK GUPTA, JJ]

Writs:

Writ of Habeas Corpus – Whether maintainable – For C *premature release of person, in terms of a scheme for premature release by a Government orders/ Rules, who is undergoing sentence of imprisonment imposed by a Court of competent jurisdiction – Held: Writ of* Habeas Corpus *is a processual writ to secure liberty of the citizen from unlawful and unjustified detention by the State or by a private person – Such writ will not lie where detention is in* D *accordance with the decision of a court of law or by an authority in accordance with law – In the present case, the detenus having been imprisoned for life, their detention cannot be said to be illegal – The court cannot exercise power to grant remission or parole which is descretion exercised by the authorities concerned – Rules framed* E *by High court cannot confer jurisdiction which is not conferred by the Constitution – Rules cannot override the Constitution – It was not correct for the High Court to direct release of the petitioners under the Government order without first directing the competent authority to take decision in the matter – In respect of 2 detenus State/ Competent Authority is directed to consider their representation* F *– Other detenus in the facts of their respective cases, are directed to be released forthwith, in exercise of power under Article 142 of the Constitution.*

Disposing of the appeals, the Court

G **HELD : 1.1 A writ of *habeas corpus* is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. A writ of *habeas corpus* will not lie where detention or imprisonment of the person whose release is**

H

sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law. [Para 14] [468-A-C]

1.2 A writ of *habeas corpus* can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase *habeas corpus* is 'to produce the body', over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. *Habeas corpus* is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of *habeas corpus* has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of *habeas corpus* must come to the conclusion that the detenu is under detention without any authority of law. [Para 17] [468-E-G; 469-A]

1.3 In the present cases, the detenus have been sentenced to imprisonment for life and as such their detention cannot be said to be illegal. It is not for the writ court to decide whether a prisoner is entitled to parole or remission and these matters lie squarely in the domain of the Govenment. [Para 18] [469-B]

Maru Ram v. Union of India **(1981) 1 SCC 107 : [1981] 1 SCR 1196 – followed.**

Col. Dr. B. Ramachandra Rao v. The State of Orissa & Ors. **(1972) 3 SCC 256 ;** *Kanu Sanyal v. District Magistrate, Darjeeling* **(1973) 2 SCC 674 : [1974] 1 SCR 621 ;** *Manubhai Ratilal Patel v. State of Gujarat and Others* **(2013) 1 SCC 314 : [2012] 8 SCR 993 ;** *Saurabh Kumar v. Jailor, Koneila Jail* **(2014) 13 SCC 436 : [2014] 8 SCR 909 ;** *State of Maharashtra*

A *and Others v. Tasneem Rizwan Siddiquee* **(2018) 9 SCC 745 : [2018] 11 SCR 374 ;** *Gopal Vinayak Godse v. The State of Maharashtra and Others* **[1961] 3 SCR 440 – relied on.**

Sunil Batra (II) v. Delhi Administration **(1980) 3 SCC 488 : [1980] 2 SCR 557 ;** *Mohd. Ikram v. State of U.P.* **AIR 1964 SC 1625 : [1964] SCR 86 ;** *Ranjit Singh v. State of Pepsu* **AIR 1959 SC 843 : [1959] Suppl. SCR 727 ;** *Ummu Sabeena v. State of Kerala* **(2011) 10 SCC 781 : [2011] 13 SCR 185 ;** *In the matter of-Madhu Limaye and Others* **(1969) 1 SCC 292 : [1969] 3 SCR 154 ;** *Talib Hussain v. State of Jammu & Kashmir* **(1971) 3 SCC 118 ;** *Sanjay Dutt v. State (II)* **(1994) 5 SCC 410 : [1994] 3 Suppl. SCR 263 – referred to.**

Introduction to the Study of the Law of the Constitution by A.V. Dicey, Macmillan and Co., Limited, p. 215 (1915); Halsbury's Laws of England, (4th Edn.) Vol. 11; V.G. Ramachandran's Law of Writs, revised by Justice C.K. Thakker & M.C. Thakker, 6th Edn. (2006) – **referred to.**

2. 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 rules. [Para 27] [473-D-E]

3.1 The High Courts are empowered to frame rules in terms of Article 225 of the Constitution of India but this power is subject to the provisions of the Constitution of India and to the provisions of any law of the appropriate legislature. What description has to be given to a writ is for the High Court to decide. But the Rules cannot confer jurisdiction which is not conferred by the Constitution. The Rules obviously deal with cases of detention/ preventive detention where the detenu is under custody. If that

custody is legal then obviously no writ of *habeas corpus* can be issued for release of the detenu. Merely because the Rules provide that in the petition details of the detention order, prison etc., have to be given, does not mean that the writ of *habeas corpus* cannot be issued where the Rules are silent. The Rules cannot override the Constitution. [Paras 28 & 29] [475-B, F-H; 476-A]

3.2 If the Rules are to be the masters and not the Constitution, then, probably in the Madras High Court no writ of *habeas corpus* would be entertained in the case of private detention. This would be against the spirit of the Constitution of India. Therefore, reference to the Rules is of no aid whatsoever. [Para 30] [476-B]

4.1 The High Court cannot direct the release of a petitioner under G.O.(Ms.) No.64 dated 01.02.2018. In the present cases, the representations made by the detenus had not been decided. The proper course for the Court was to direct that the representations of the detenus be decided within a short period. Keeping in view the fact that the Scheme envisages a report of the Probation Officer, a reference by the District Level Committee and thereafter the matter has to be placed before the concerned Range Deputy Inspector General and before Regional Probation Officer and thereafter before the State Level Committee, it would be reasonable to grant 2-3 months depending on the time when the representation was filed for the State to deal with them. When the petition is filed just a few days before filing the representation then the Court may be justified in granting up to 3 months' time to consider the same. However, if the representation is filed a couple of months earlier and the report of the Probation Officer is already available then lesser time can be granted. No hard and fast timelines can be laid down but the Court must give reasonable time to the State to decide the representation. The Court itself cannot examine the eligibility of the detenu to be granted release under the Scheme at this stage. [Para 31] [476-C-G]

4.2 There are various factors 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

A **recommendation and finally it is the State Level Committee which takes a final call on the matter. the High Court erred in directing the release of the detenus 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. Past practice or the fact that the State has not challenged some of the orders is not sufficient to hold that these orders are legal. [Para 31] [476-G; 477-A-B]**

C **4.3 In case, a petition is filed without any decision(s) of the State Level Committee in terms of Para 5(I) of the G.O. in question, the Court should direct the concerned Committee/authority to take decision within a reasonable period. Obviously, too much time cannot be given because the liberty of a person is at stake. This order would be more in the nature of a writ of *mandamus*** D **directing the State to perform its duty under the Scheme. The authorities must pass a reasoned order in case they refuse to grant benefit under the Scheme. Once a reasoned order is passed then obviously the detenu has a right to challenge that order but that again would not be a writ of *habeas corpus* but would be more** E **in the nature of a writ of *certiorari*. In such cases, where reasoned orders have been passed, the High Court may call for the record of the case, examine the same and after examining the same in the context of the parameters of the Scheme decide whether the order rejecting the prayer for premature release is justified or not. If it comes to the conclusion that the order is not a proper** F **order then obviously it can direct the release of the prisoner by giving him the benefit of the Scheme. There may be cases where the State may not pass any order on the representation of the petitioner for releasing him in terms of the G.O.(Ms) No.64 dated 01.02.2018 despite the orders of the Court. If no orders have** G **been passed and there is no explanation for the delay then the Court would be justified in again calling for the record of the case and examining the same in terms of the policy and then passing the orders. [Para 32] [477-B-F]**

5. So far as the present cases are concerned, the High Court though it had the report of the Probation Officer before it, has

H

only noted one line of the order of the Probation Officer and not the entire report(s). [Para 33] [477-G]

6. The detenu has in Criminal Appeal No. 144 of 2020 obtained various degrees and various other Vocational Diplomas. The learning which he has obtained in jail must be put to use outside. The jail record shows that his behaviour in jail has been satisfactory. The only ground against him is that he had murdered a person from another community and, therefore, it is said that some religious enmity may still prevail. It has come on record that on various occasions, he has gone back to his native place though under police escort. In these circumstances this is a fit case where this respondent should not be sent to another round of litigation. Therefore, in exercise of power under Article 142 of the Constitution release of the respondent/ detenu is directed. [Para 35] [480-A-C]

7. The detenu in Criminal Appeal No. 145 of 2020 is about 43 years of age now and that during the period of incarceration in jail, he has completed the eleven educational courses. He had gone on emergency leave 42 times (89 days) and by Court order, he has been granted leave 2 (37 days) times and during the said occasions, neither life threat to him nor was there any law and order problem. In these circumstances this is a fit case where he should not be sent to another round of litigation. Therefore, in exercise of power under Article 142 of the Constitution his release is directed. [Paras 36 & 37] [480-E; 481-C-D]

8. The detenu in Criminal Appeal No. 146 of 2020 is about 38 years of age now and during the period of incarceration in jail, has completed three educational courses. In these circumstances this is a fit case where this respondent should not be sent to another round of litigation. Therefore, in exercise of power under Article 142 of the Constitution his release is directed. [Paras 38 & 39] [481-D-G]

9. The detenu in Criminal Appeal No. 148 of 2020 is about 39 years of age now and during the period of incarceration in jail, he has completed seven educational courses. In these

circumstances this is a fit case where the Court should not send this respondent to another round of litigation. Therefore, in exercise of power under Article 142 of the Constitution his release is directed. [Paras 40 & 41] [481-G-H; 482-A-D]

10. The detenu in Criminal Appeal No. 147 of 2020 is about 46 years of age and during the period of incarceration in jail, he has completed the seven educational courses. The detenu in this case was convicted in another case under Section 120(B) of the Indian Penal Code, 1860 and sentenced to imprisonment for 5 years and was convicted under Section 4(a) and 4(b) of the Explosives Substances Act, 1908 and was awarded 5 years imprisonment and 4 years imprisonment under each of these sections vide judgment dated 28.12.2018. This judgment of conviction and sentence is after the date of the G.O.(Ms.) No. 64 dated 01.02.2018 in question and this will also have to be taken into consideration. Therefore, as far as this case is concerned, the competent authority is directed to consider the representation of the detenu keeping in view the facts and circumstances of the case and decide the same within 6 weeks. In case the State rejects the plea of the detenu then a reasoned order has to be passed and, in that eventuality, the detenu shall be at liberty to challenge the order before the High Court. The State is directed to consider and decide the representation of the detenu within 6 weeks from the date of this judgment. [Paras 42, 43 and 45] [482-E-H; 483-A-C, F]

Case Law Reference

[1964] SCR 86	**referred to**	**Para 14**
[1980] 2 SCR 557	**referred to**	**Para 19**
(1972) 3 SCC 256	**relied on**	**Para 21**
[1974] 1 SCR 621	**relied on**	**Para 22**
[2012] 8 SCR 993	**relied on**	**Para 23**
[2014] 8 SCR 909	**relied on**	**Para 24**
[1959] Suppl. SCR 727	**referred to**	**Para 23**
[2011] 13 SCR 185	**referred to**	**Para 23**

[1969] 3 SCR 154	**referred to**	**Para 23**	A
(1971) 3 SCC 188	**referred to**	**Para 23**	
[1994] 3 Suppl. SCR 263	**referred to**	**Para 23**	
[2018] 11 SCR 374	**relied on**	**Para 25**	
[1961] 3 SCR 440	**relied on**	**Para 26**	B
[1981] 1 SCR 1196	**followed**	**Para 26**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 144 of 2010.

From the Judgment and Order dated 04.01.2019 of the High Court C of Judicature at Madras in H.C.P. No. 2956 of 2018.

With

Criminal Appeal Nos. 145, 146, 147 and 148 of 2020.

Mukul Rohatgi, V. Giri, S.Nagamuthu, Ratnakar Dash, Sr. Advs., D M. Yogesh Kanna, M. Thanga Thurai, S. Raja Rajeshwaran, Karthihk R., Ms. Uma Prasuna Bachu, Muthu Chharan, Ms. Suvetha Shankar, Rishabh Sancheti, Suyash Rawat, Anchit Bhandari, Vishnu Unnikrishnan, K. Paari Vendhan, P. A. Noor Muhamed, Mokamed Yusuff, S.A.S Alaudeen, Abdul Rahman, Shereef K.A., Sheik Moulali Basha, Mr. Ansar Ul Haq, Hardik Gautham, G. Sivabalamurugan, Selvaraj Mahendran, E M. Vivek Bharathi, T. Harish Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J. 1. Delay condoned.

2. Leave granted. F

3. The main issue which arises for decision is as follows:

"Whether a writ of habeas corpus would lie, for securing release of a person who is undergoing a sentence of imprisonment imposed by court of competent jurisdiction praying that he be released in terms of G some Government orders / Rules providing for pre-mature release of prisoners?"

4. At the outset, we may mention that on 17.10.2019 we had framed two issues. We have reframed the first issue and on closer

H

examination we are of the view that the second issue does not arise for decision in this case.

5. The Governor of Tamil Nadu exercising powers under Article 161 of the Constitution of India got issued G.O.(Ms.) No.64 dated 01.02.2018 through the Home (Prison-IV) Department, Government of Tamil Nadu wherein a Scheme was framed for considering the cases of pre-mature release of convicted prisoners on the occasion of the Birth Centenary of Shri M.G. Ramachandran, former Chief Minister of Tamil Nadu. The relevant portion of the Scheme reads as follows:-

"**5**.The Government after careful examination have decided to frame the following guidelines for considering the cases of life convict prisoners for releasing them prematurely under Article 161 of the Constitution of India, in commemoration of the Birthday Centenary of 'Bharat Ratna', Puratchi Thalaivar Dr. M. G. Ramachandran, former Chief Minister of Tamil Nadu, based on the announcement of Hon'ble Chief Minister:-

(I) The following committees are constituted for examining the premature release of the life convict prisoners, case to case basis, on the above lines.

(i) the State level committee headed by the Inspector General of Prisons and the Deputy Inspector General of Prisons (Hqrs), Legal officer, Administrative officer (Hqrs) shall be members of the committee.

(ii) the Second level/District committee wherein the Central Prisons/Special Prisons for Women located, headed by the Superintendent of Prisons of the concerned Central Prison and the Additional Superintendent of Prison, Jailor, Administrative Officer and Probation Officer shall be members of the committee.

(iii) the concerned Range Deputy Inspector General of Prisons and Regional Probation officer of the concerned region shall examine the proposal of the second level committee and send the same to State Level committee along with recommendation.

xxx xxx xxx

6. Under the Scheme, a State level committee and District committees were constituted. The District committees were to consider

the cases of the prisoners and send their recommendations to the Range Deputy Inspector General of Prisons and Regional Probation Officer who, after examination of the same, were to send the same to the State level committee along with the recommendations. The Scheme further provided as follows:-

> (II) The life convicts who have completed **10 years** of actual imprisonment as on 25.02.2018 and the life convicts who are aged **60 years** and above and who have completed **5 years** of actual imprisonment on 25.02.2018 including those who were originally sentenced to death by the Trial Court and modified to life sentence by the Appellate Court (other than those whose convictions have been commuted), may be considered for premature release subject to satisfaction of the following conditions:-
>
> 1) The prisoner's behaviour should be satisfactory.
>
> 2) Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence namely:"

Thereafter, the Scheme provides that prisoners convicted for certain offences or for offences under certain Acts would not be eligible for benefit under the Scheme. The Scheme also lays down the following amongst other conditions:-

> 4) That there is safety for the prisoner's life, if released.
>
> 5) That the prisoner will be accepted by the members of their family.
>
> 6) That there is safety of life of the family which was affected by the prisoner, if released.
>
> xxx xxx xxx
>
> 8) The life imprisonment prisoners cannot claim premature release as a matter of right."

7. As far as the present cases are concerned, the detenus whose release were sought were convicted for various offences including the offences under Section 302 of the Indian Penal Code, 1860. In all cases,

A they have been sentenced for life and their conviction and sentences have been upheld till this Court. The petitions for *habeas corpus* were filed on the ground that the State has not given benefit of the premature release referred to above to the petitioners whereas many others have been given the benefit.

B 8. In all the cases representations were made by the petitioners a few months before filing the petitions in the High Court praying that they be released in terms of G.O.(Ms) No.64 dated 01.02.2018. These representations were pending but the High Court in almost identical terms has held in all the cases that *"There is no dispute over the fact that the convict prisoner would be entitled to release under G.O.(Ms). No.64, Home [Prison-IV] Department dated 01.02.2018. However, he has been denied the benefit thereof, since the Probation Officer's report informs danger to the life of the Convicts Prisoner, if he be let at large."* Thereafter, the High Court was of the opinion that the detenu could not be denied release on the ground that life of the detenu
C was in danger. However, it directed that the detenu be informed that his life may be in danger while releasing him. In all the cases, reference has been made to the report of the Probation Officer. These petitions have been allowed by the High Court of Madras and allowing the writ of *habeas corpus*, the detenus have been ordered to be released forthwith in terms of G.O.(Ms) No. 64 dated 01.02.2018 unless their presence is
D required in any other case.

9. These orders are under challenge before us. We have heard Shri Mukul Rohatgi and Shri V. Giri, learned senior counsel for the appellants, Shri Yogesh Kanna, learned counsel for the State of Tamil Nadu and Shri S. Nagamuthu and Shri Ratnakar Dash, learned senior
E counsel for the private respondents.

10. It has been urged on behalf of the State that the High Court has transgressed the jurisdiction conferred upon it under Article 226 of the Constitution of India while issuing the writ of *habeas corpus.* It is contended that in all the cases the petitioners were convicted of the
F offences of murder which conviction was upheld till this Court and, therefore, by no stretch of imagination, can it be urged that the detention of the detenus was illegal. It is further submitted that the High Court could have at best directed consideration of the cases of the detenus by the authorities under the G.O.(Ms) No.64 dated 01.02.2018 but could not itself have directed release of the detenus. It is also submitted that
G
H

the High Court has only noted one portion of the report of the Probation Officer and ignored many other relevant considerations. A

11. On the other hand, it is contended by learned senior counsel appearing on behalf of the detenus that the High Court of Madras has passed hundreds of orders of this nature but the State has selectively chosen to challenge only a few of them. As far as jurisdiction is concerned, B it is submitted by learned senior counsel for the detenus that in terms of the Rules to Regulate the Proceedings under Article 226 of the Constitution of India framed by the High Court of Madras, the writs of this type are described as *habeas corpus* writs and a writ of this nature would not be entertained unless it is described as a writ of *habeas corpus* under the Rules. It is further submitted that a writ of *habeas* C *corpus* would lie in such circumstances and it is also urged that in the peculiar facts and circumstances of the case, this Court should not interfere with the discretion exercised by the High Court. It was lastly urged by learned senior counsel for the detenus that the prisoners have been behind the bars for a very long period of time and even under the D normal rules of remission, they would be entitled to be released. It has also been urged that many other detenus who were similarly situate have already been released. He has brought to our notice a number of orders passed by this Court in this regard. We may note that in many of these orders this Court has not approved of the manner in which the E Madras High Court has ordered the release of prisoners but has upheld the order of release on account of the long incarceration of the detenu.

12. We feel that a quietus has to be given to this matter and the legal issue must be decided. As far as the objection of selective filing of petitions by the State against orders of release by the High Court is F concerned, that objection is meaningless. We are not aware of the other orders and, in any event, there can be no claim of negative discrimination under Article 14 of the Constitution of India.

13. Article 226 of the Constitution of India empowers the High Courts to issue certain writs including writs in the nature of *habeas corpus, mandamus,* prohibition*, quo warranto* and *certiorari* for the G enforcement of any right conferred under Part III of the Constitution dealing with the fundamental rights. In this case, we are concerned with the scope and ambit of the jurisdiction of the High Court while dealing with the writ of *habeas corpus*.

H

A 14. It is a settled principle of law that a writ of *habeas corpus* is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As Justice Hidayatullah (as he then was) held; *"The writ of habeas corpus issues not only for release from* B *detention by the State but also for release from private detention"*[1]. At the same time, the law is well established that a writ of *habeas corpus* will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an C authority in accordance with law.

15. According to Dicey, -"if, in short, any man, woman, or child is, or is asserted on apparently good grounds to be, deprived of liberty, the Court will always issue a writ of *habeas corpus* to anyone who has the aggrieved person in his custody to have such person brought before the D Court, and if he is suffering restraint without lawful cause, set him free."[2]

16. In Halsburry's Laws of England, a writ of habeas corpus is described as "a remedy available to the lowliest subject against the most powerful."[3] It is a writ of such a sovereign and transcendent authority that no privilege of person or place can stand against it[4].

E 17. A writ of *habeas corpus* can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase *habeas corpus* is 'to produce the body', over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under F illegal detention or not. *Habeas corpus* is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims G that his/her spouse has been illegally detained by the parents. This writ

[1] Mohd. Ikram v. State of U.P., AIR 1964 SC 1625

[2] A.V. Dicey, Introduction to the Study of the Law of the Constitution, Macmillan And Co., Limited, p. 215 (1915)

[3] Halsbury's Laws of England, (4th Edn.) Vol. 11, para 1454 p. 769

[4] V.G. Ramachandran's Law of Writs, revised by Justice C.K. Thakker & M.C. Thakker, H Eastern Book Company, , p.1036, 6th Edn. (2006)

is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of *habeas corpus* must come to the conclusion that the detenu is under detention without any authority of law.

18. In these cases, the detenus have been sentenced to imprisonment for life and as such their detention cannot be said to be illegal. It is not for the writ court to decide whether a prisoner is entitled to parole or remission and these matters lie squarely in the domain of the Government.

19. Reliance has been placed by learned senior counsel for the detenus on the judgment of this Court in the case of ***Sunil Batra (II)*** v. ***Delhi Administration***[5]**,** wherein Justice Krishna Iyer in his inimitable style has dealt with the expanding scope of *habeas corpus* jurisdiction. However, before referring to his views on the scope of *habeas corpus,* one has to refer to the factual situation which led to the filing of the case. Sunil Batra came to know that some other prisoners were being tortured by the Head Warder Jail Superintendent to extract money from the visiting relatives. He brought this to the notice of this Court and this Court entertained his petition under Article 32 of the Constitution holding that *"these proceedings which, though not strictly traditional, are clearly in the nature of habeas corpus writs and, therefore, within the widest sweep of Article 32".* The Court dealt with the very sensitive issue of the manner in which prisoners in jail were deprived of their basic human rights and it is in this context that the Court held as follows:-

> "**5**….Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials 'dressed in a little, brief authority', when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the court takes cognizance of such violence and violation, it does, like the Hound of Heaven, 'But with unhurrying chase, and unperturbed pace, Deliberate speed and Majestic instancy' follow the official offender and frown down the outlaw adventure."

20. This Court referred to the development of law in the United States of America and held that the writ in the nature of *habeas corpus* could be issued going beyond the conventional blinkers and the Court

[5] (1980) 3 SCC 488

must examine the manner in which the inmate is held and treated during the currency of a sentence. One must remember that any person can be deprived of his liberty only in accordance with the procedure established by law. Therefore, when a person is sent to prison; whether during the investigation under an order of remand, issued under Section 167 of the Code of Criminal Procedure,1973, or as an undertrial by denying him the facility of bail, or after conviction; he is behind bars because of the orders of the Court. The Court which deprives a person of his liberty in accordance with law also has the responsibility to ensure that such a person though under incarceration is not denied the other fundamental rights which he is entitled to. Therefore, there can be no dispute with the proposition that anybody who is behind bars and is ill-treated or is deprived of his liberties, may approach the Court for a writ of *habeas corpus.* In the apposite words of Justice Krishna Iyer:-

> "**26**. Where injustice, verging on inhumanity, emerges from hacking human rights guaranteed in Part III and the victim beseeches the court to intervene and relieve, this Court will be a functional futility as a constitutional instrumentality if its guns do not go into action until the wrong is righted. The court is not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope. We hold that the court can issue writs to meet the new challenges. Lord Scarman's similar admonition, in his ENGLISH LAW — THE NEW DIMENSIONS, is an encouraging omen. The objection, if any, is obsolete because in a prison situation, a Constitution Bench of this Court [Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 and Sobraj (1978) 4 SCC 494] did imprison the powers of prison officials, to put an under trial under iron fetters or confine in solitary cells convicts with death sentences under appeal.
>
> **27**. Once jurisdiction is granted — and we affirm in unmistakable terms that the court has, under Article 32 and so too under Article 226, a clear power and, therefore, a public duty to give relief to sentences in prison settings — the next question is the jurisprudential backing for the play of that jurisdiction. Here again, Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 has blazed a trail, and it binds.
>
> **28**. Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of

dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent. In Sunil Batra v. Delhi Admn., (1978) 4 SCC 494, this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our constitutional culture has now crystallised in favour of prison justice and judicial jurisdiction : (SCC p. 504, para 4)

> "The jurisdictional reach and range of this Court's writ to hold prison caprice and cruelty in constitutional leash is incontestable, but teasing intrusion into administrative discretion is legal anathema, absent breaches of constitutional rights or prescribed procedures."

A writ petition by a prisoner is maintainable if his fundamental rights are violated.

21. Having held that a writ of *habeas corpus* is maintainable by a person who is under detention if his rights are violated, the question that remains to be answered is whether in the present case any right of the detenus was violated which could have led to the issuance of an order directing his release from prison. We may make reference to the judgment of this Court in the ***Col. Dr. B. Ramachandra Rao*** v. ***The State of Orissa & Ors.***[6]**,** wherein it was urged before this Court that the orders of the Court directing the detention of the petitioner were illegal. In this case, the Court has held as follows:

> "**5**.…This Court does not, as a general rule, go into such controversies in proceedings for a writ of habeas corpus. Such a writ is not granted where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal and we are not satisfied that the present is not such a case."

22. In ***Kanu Sanyal*** v. ***District Magistrate, Darjeeling***[7] this Court while dealing with the writ of *habeas corpus* has held as follows:

> "**4**. It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the

[6] (1972) 3 SCC 256
[7] (1973) 2 SCC 674

A machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty...."

23. In ***Manubhai Ratilal Patel*** v. ***State of Gujarat and Others***[8], an order of remand was challenged before this Court. After referring to a large number of judgments[9], which we are not referring in detail since they have all been considered in this judgment, this Court held as follows:

B

"**31**....It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal...."

C

24. In ***Saurabh Kumar*** v. ***Jailor, Koneila Jail***[10], this Court came to the conclusion that the petitioner was in judicial custody by virtue of an order passed by the judicial magistrate and, hence, could not be said to be in illegal detention. Justice T.S. Thakur, as he then was, in his concurring judgment held as follows:

D

"**22**. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced..."

E

F

25. The same view has been taken in the ***State of Maharashtra and Others*** v. ***Tasneem Rizwan Siddiquee***[11] wherein it was observed that no writ of *habeas corpus* could be issued when the detenu was in detention pursuant to an order passed by the Court. As far as the present cases are concerned, it is not disputed that the detenus are behind bars

G

[8] (2013) 1 SCC 314

[9] Ranjit Singh v. State of Pepsu, AIR 1959 SC 843,Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781, in the matter of-Madhu Limaye and Others, (1969) 1 SCC 292, Talib Hussain v. State of Jammu & Kashmir, (1971) 3 SCC 118, Sanjay Dutt v. State (II), (1994) 5 SCC 410

[10] (2014) 13 SCC 436

H [11] (2018) 9 SCC 745

pursuant to conviction and sentence imposed upon them by a court of competent jurisdiction and confirmed by this Court, whereby they were sentenced to undergo imprisonment for life.

26. Dealing with the meaning of life imprisonment in ***Gopal Vinayak Godse*** v. ***The State of Maharashtra and Others***[12] this Court held :-

> "…Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison".

Thereafter, a Constitution Bench in ***Maru Ram*** v. ***Union of India***[13] approved the view in ***Gopal Vinayak Godse's case*** (supra) and held *that "imprisonment for life lasts until the last breath…"*

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 rules. In support of his contention learned senior counsel for the detenus relied upon the Rules of the High Court of Madras and referred to Rule 1 of the Rules which reads as follows:-

> "A petition for direction, Order or Writ, including a Writ of *Habeas Corpus*, *Mandamus*, *Certiorari*, *Quo Warranto*. *Prohibition* or *Certiorarified Mandamus* or any other Writ shall be in the form of a Petition accompanied by an Affidavit containing facts, grounds and the Prayer…"

He has also referred to Rules 11, 12 and 13 of the Rules which specifically deal with *habeas corpus* petitions and read as under:

Rule 11:-

> "In all *Habeas Corpus* Petitions, in the Cause Title of the petition as well as in the accompanying Affidavit, the following clause

[12] (1961) 3 SCR 440
[13] (1981) 1 SCC 107

should be incorporated just below the case number and above the name of the petitioner, at the right-hand side:

"(In the matter of detenue) (Full Name of the detenue as found in the Order of Detention)". Full Cause Title should be set out both in the *Habeas Corpus* Petition and supporting Affidavit."

Rule 12:-

"Every *Habeas Corpus* Petition should contain a Schedule in the following format:

(i) Name of the Detenue :

(ii) Father's/Husband's Name :

(iii) Age :

(iv) Permanent Address :

(v) Identification Marks/(As found in the order of Detention) :

(vi) Date of Detention Order :

(vii) Reference Number of the Detention Order :

(viii) Name of the Prison, where the Detenue is lodged :

(ix) Prison Number :

…."

Rule 13:-

"Following declaration by the Petitioner or Deponent of the Affidavit should be incorporated as penultimate paragraph of the supporting Affidavit:

"The Petitioner declares that no other *Habeas Corpus* Petition had been filed or moved before this court or before any other High Court or before the Supreme Court of India simultaneously seeking for the production of the body of the person or person of the very same detenue or challenging the Impugned Order of

Detention. The Petitioner further declares that the facts set out above are true and correct to the best of his knowledge and no material has been concealed or suppressed."

28. The High Courts are empowered to frame rules in terms of Article 225 of the Constitution of India but this power is subject to the provisions of the Constitution of India and to the provisions of any law of the appropriate legislature. Article 225 reads as follows:-

"**225**. **Jurisdiction of existing High Courts.-** Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

29. Learned senior counsel for the detenus while referring to Rules 11, 12 and 13 submitted that unless the petitioners in terms of Rule 12 mentions the detention order, name of the prison where the detenu is detained, prison number and does not challenge the order of detention, the writ would not be entertained. What description has to be given to a writ is for the High Court to decide. But the Rules cannot confer jurisdiction which is not conferred by the Constitution. We are even otherwise unable to accept the argument of learned senior counsel for the detenus because the Rules obviously deal with cases of detention/ preventive detention where the detenu is under custody. If that custody is legal then obviously no writ of *habeas corpus* can be issued for release of the detenu. We are also of the view that merely because the Rules provide that in the petition details of the detention order, prison

A etc., have to be given does not mean that the writ of *habeas corpus* cannot be issued where the Rules are silent. The Rules cannot override the Constitution.

30. As already mentioned above, it is well settled law that even if the detenu is in private detention then also a writ of *habeas corpus* B would lie. If the Rules are to be the masters and not the Constitution, then, probably in the Madras High Court no writ of *habeas corpus* would be entertained in the case of private detention. This would be against the spirit of the Constitution of India. Therefore, we are clearly of the view that reference to the Rules is of no aid whatsoever.

C 31. The issue before us in the present case is whether the High Court can direct the release of a petitioner under G.O.(Ms.) No.64 dated 01.02.2018. We do not think so. 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. Keeping in view the fact that the D Scheme envisages a report of the Probation Officer, a reference by the District Level Committee and thereafter the matter has to be placed before the concerned Range Deputy Inspector General and before Regional Probation Officer and thereafter before the State Level Committee, we feel that it would be reasonable to grant 2-3 months E depending on the time when the representation was filed for the State to deal with them. When the petition is filed just a few days before filing the representation then the Court may be justified in granting up to 3 months' time to consider the same. However, if the representation is filed a couple of months earlier and the report of the Probation Officer is already available then lesser time can be granted. No hard and fast F timelines can be laid down but the Court must give reasonable time to the State to decide the representation. 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. G 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

H

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. Past practice or the fact that the State has not challenged some of the orders is not sufficient to hold that these orders are legal.

32. In case, as pointed out above, a petition is filed without any decision(s) of the State Level Committee in terms of Para 5(I) of the G.O. in question, the Court should direct the concerned Committee/ authority to take decision within a reasonable period. Obviously, too much time cannot be given because the liberty of a person is at stake. This order would be more in the nature of a writ of *mandamus* directing the State to perform its duty under the Scheme. The authorities must pass a reasoned order in case they refuse to grant benefit under the Scheme. Once a reasoned order is passed then obviously the detenu has a right to challenge that order but that again would not be a writ of *habeas corpus* but would be more in the nature of a writ of *certiorari*. In such cases, where reasoned orders have been passed the High Court may call for the record of the case, examine the same and after examining the same in the context of the parameters of the Scheme decide whether the order rejecting the prayer for premature release is justified or not. If it comes to the conclusion that the order is not a proper order then obviously it can direct the release of the prisoner by giving him the benefit of the Scheme. There may be cases where the State may not pass any order on the representation of the petitioner for releasing him in terms of the G.O.(Ms) No.64 dated 01.02.2018 despite the orders of the Court. If no orders have been passed and there is no explanation for the delay then the Court would be justified in again calling for the record of the case and examining the same in terms of the policy and then passing the orders.

33. As far as the present cases are concerned, we find that the High Court though it had the report of the Probation Officer before it, has only noted one line of the order of the Probation Officer and not the entire report(s). The report of the Probation Officer in all the cases is almost identical. One of the reports reads as follows:-

"Report of the Probation Officer regarding premature release of a prisoner

ME No		39/2018	Date	07.02.2018
Prisoner Number & Name		4346, Abuthahir S/o Hussain, Central Prison, Coimbatore		
1	If the above mentioned prisoner if prematurely released			
	(a)	What will be the effect in that place		It was known during the enquiry that some problems may arise
	(b)	What will be mental feelings of the relatives of the deceased		Enmity still prevails
	(c)	Are the family members/relatives likely to accept him into their fold and renew their old relationship		Yes
	(d)	Will the life of the prisoner be safe		There is a danger to the life
2		Report of the local Sub Inspector of Police with regard to loss of peace If the prisoner is prematurely released, on account of previous enmity		The Commissioner of Police, Coimbatore City has opined that the premature release of the prisoner will create tension on religious grounds
3		Previous conduct of the prisoner and gist of the history of the prisoner		Satisfactory
4		Has the prisoner been awarded any punishment previously		No
5		Does the prisoner have any property and permanent residence in his name? If so, please furnish their details and its value.		Permanent address is available and not owning any property
6		Are any relatives standing surety for the prisoner? If yes, complete address and status may be furnished		Yes
7		Will the prisoner be able to earn a livelihood if prematurely released		Yes
8		Was the murder committed due to any social or religious animosity or self satisfaction and does the enmity still exist or not?		The incident of murder occurred due to religious problems and the enmity still exists
9		What was his behaviour during the period he was released on leave on the promise of good behaviour?		He was released on leave with police escort
10		Is the premature release for the prisoner recommended		not recommended
11		Remarks of the Probation Officer on the premature release of the prisoner		For the above said reasons, I am to inform that the prisoner is not recommended for the premature release
				Sd/- Probation Officer, Division I, Prison Department, Coimbatore 641037

Though the relevant columns are Column No. 1(b), 1(d), 2, 8, 9, 10 and 11, the High Court has only dealt with what is stated in 1(d) and has not dealt with the other observations made in the report of the Probation Officer. We are constrained to observe that this was not at all proper. In the other cases also, there are similar observations but these are not being repeated just to avoid repetition.

34. We have examined the record of each case and now we shall deal with each case separately.

CRIMINAL APPEAL NO(S). 144 OF 2020
(@ SPECIAL LEAVE PETITION (CRL) NO(S). 626 OF 2020)
(@ SPECIAL LEAVE PETITION (CRL) D. NO. 18046 OF 2019)

35. The detenu was aged about 21 years when he was detained. More than 17 years have elapsed and he is about 38 years of age now. We are informed that during the period of incarceration in jail, he has completed the following educational courses:

Sl. No.	Period	Course
1)	May 2007	Bachelor of Computer Applications
2)	06.03.2009 to 05.09.2009	Radio & T. V. Repairing
3)	May 2010	Master of Computer Applications
4)	January 2013	Desk Top publishing
5)	May 2013	Master of Business Administration in Human Resources
6)	July 2013	PG Diploma
7)	07.10.2013	Information and Communication Technology
8)	04.09.2013 to 03.12.2013	Electrical Wiring
9)	January 2014	MA (Criminology & Criminal Justice Administration)
10)	January 2014	Diploma in Computer Hardware Servicing
11)	May 2014	MA (Journalism & Mass Communication)
12)	June 2014	Diploma in Media Art
13)	10.03.2014 to 09.09.2014	Tailoring & Embroidery
14)	19.02.2015 to 25.02.2015	Mushroom Cultivation
15)	May 2015	PG Diploma in International Business
16)	July 2016	Program : MTM
17)	July 2016	Certificate in Guidance
18)	July 2016	Program : PGDDM
19)	July 2016	Program : ACISE
20)	May 2016	Fire & Safety Management
21)	June 2016	Degree of Master of Arts in Sociology

A This young man who may have committed a heinous crime, has obtained various degrees including Masters in Computer Application, Masters of Business Administration, Master Degree in Criminology & Criminal Justice Administration and M.A. in Journalism & Mass Communication and various other Vocational Diplomas. The learning which he has obtained in jail must be put to use outside. The jail record shows that his behaviour in jail has been satisfactory. The only ground against him is that he had murdered a person from another community and, therefore, it is said that some religious enmity may still prevail. It has come on record that on various occasions, he has gone back to his native place though under police escort. We are clearly of the view that in these circumstances this is a fit case where we should not send this respondent to another round of litigation. Therefore, in exercise of our power under Article 142 of the Constitution we direct the release of the respondent.

CRIMINAL APPEAL NO(S). 145 OF 2020
(@ SPECIAL LEAVE PETITION (CRL) NO(S). 627 OF 2020)
(@ SPECIAL LEAVE PETITION (CRL) D. NO. 18016 OF 2019)

36. The detenu in this case is about 43 years of age now and we are informed that during the period of incarceration in jail, he has completed the following educational courses:

(i) B.B.A., from Madras University, May, 2008;

(ii) Diploma in Hardware Servicing from Tamil Nadu Open University, January, 2014;

(iii) Hindu Course from Dakshina Hindi Prachar Saba;

(iv) Workshop and Bakery and Confectionary dated 12 13.09.2008;

(v) Degree of Master of Arts and Political Science [First Class] from Tamil Nadu Open University, June 2014;

(vi) National Certificate in Modular Employable Skills from Ministry of Labour and Employment, 18.11.2003;

(vii) Certificate in Electrical Wiring from Govt. Polytechnic, 03.12.2013;

(viii) Undergone training for two wheeler repairing, 18.03.2010;

(ix) Certificate course in Diploma in Four Wheeler Mechanism dated 30.04.2013 done in Tamil Nadu Open University;

(x) Done Vocational Diploma in DTP Operator dated January, 2013 in Tamil Nadu Open University;

(xi) Diploma in Computer Hardware servicing in Tamil Nadu Open University, January, 2014.

We are also informed that the detenu in this case has gone on emergency leave 42 times (89 days) and by Court order, he has been granted leave 2 (37 days) times and during the said occasions, neither life threat to him nor was there any law and order problem.

37. We are clearly of the view that in these circumstances this is a fit case where we should not send this respondent to another round of litigation. Therefore, in exercise of our power under Article 142 of the Constitution we direct the release of the respondent.

Crl.Appeal No. 146 /2020 @ SLP(Crl)No.7697 of 2019

38. The detenu in this case is about 38 years of age now and we are informed that during the period of incarceration in jail, he has completed the following educational courses:

1. Diploma in Computer Hardware Servicing from Tamil Nadu Open University;
2. Bachelor of Business Administration from University of Madras;
3. Master of Business Administration from University of Madras.

39. We are clearly of the view that in these circumstances this is a fit case where we should not send this respondent to another round of litigation. Therefore, in exercise of our power under Article 142 of the Constitution we direct the release of the respondent.

Crl.Appeal No. 148 of 2020 @ SLP(Crl) No.11494 of 2019

40. The detenu in this case is about 39 years of age now and we are informed that during the period of incarceration in jail, he has completed the following educational courses:-

A

1. Higher Secondary Course from State Board of School, Tamil Nadu;
2. Bachelor of Arts in History from University of Madras;
3. Master of Arts in Political Science from University of Madras;

B

4. Post Graduate Diploma in Human Rights from Tamil Nadu Open University;
5. Post Graduate Diploma in International Business;
6. Master of Business Administration (Human Resources) from Bharathiar University, Coimbatore;

C

7. M. A. Criminology and Criminal Justice Administration from Tamil Nadu Open University.

41. We are clearly of the view that in these circumstances this is a fit case where we should not send this respondent to another round of litigation. Therefore, in exercise of our power under Article 142 of the Constitution we direct the release of the respondent.

D

Crl.Appeal No. 147 of 2020 @ SLP(Crl)No.6159 of 2019

42. The detenu in this case is about 46 years of age now and we are informed that during the period of incarceration in jail, he has completed the following educational courses:-

E

(i) Completed 8th Standard;

(ii) Course of Preparatory Programme for Secondary (PPS) dated 23.11.2012 in Tamil Nadu Open University;

F

(iii) Completed 10th Standard;

(iv) Completed 12th Standard;

(v) Certificate course in Diploma in Four Wheeler Mechanism dated 30.04.2013 done in Tamil Nadu Open University;

G

(vi) Done B. Literature dated May, 2017 & June, 2018 in Bharathiar University, Coimbatore;

(vii) Done Vocational Diploma in DTP Operator dated June, 2017 in Tamil Nadu Open University;

H

43. We find that the detenu in this case was convicted in another case under Section 120(B) of the Indian Penal Code, 1860 and sentenced to imprisonment for 5 years and was convicted under Section 4(a) and 4(b) of the Explosives Substances Act, 1908 and was awarded 5 years imprisonment and 4 years imprisonment under each of these sections vide judgment dated 28.12.2018. This judgment of conviction and sentence is after the date of the G.O.(Ms.) No. 64 dated 01.02.2018 in question and this will also have to be taken into consideration. Therefore, as far as this case is concerned, we direct the competent authority to consider the representation of the detenu keeping in view the facts and circumstances of the case and decide the same within 6 weeks from today. In case the State rejects the plea of the detenu then a reasoned order has to be passed and, in that eventuality, the detenu shall be at liberty to challenge the order before the High Court.

44. The detenu was also convicted in TADA case but that conviction has been set aside by this Court and, therefore, that cannot be taken into consideration.

45. In view of the above discussion, we set aside the judgment(s) of the High Court. As far as the Criminal Appeal No. 144 of 2020 @ SLP(Crl.)No. 626 of 2020 @ SLP(Crl.) D.No.18046 of 2019, Criminal Appeal No. 145 of 2020 @ SLP(Crl.)No. 627 of 2020 @ SLP(Crl.) D.No.18016 of 2019, Criminal Appeal No. 146 of 2020 @ SLP(Crl).No.7697 of 2019 and Criminal Appeal No. 148 of 2020 @ SLP(Crl.)No.11494 of 2019, are concerned the detenus are ordered to be released forthwith unless wanted in any other case. As far as detenu in Criminal Appeal No. 147 of 2020 @ SLP(Crl)No. 6159 of 2019 is concerned the State is directed to consider and decide the representation of the detenu within 6 weeks from today.

46. The appeals are disposed of in the aforesaid terms. Pending application(s), if any, stand(s) disposed of.

Kalpana K. Tripathy Appeals disposed of.