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W.P. Nos.31478 of 2024, etc. (premature release) b ...



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.03.2026

DELIVERED ON: 02.04.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA  
THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN  
AND  
THE HON'BLE MR. JUSTICE SUNDER MOHAN

W.P. Nos.31478 of 2024, 107, 127, 267, 777, 2208, 13778 and 19566 of 2025  
and W.P. (Crl.) No.800 of 2025

and

W.M.P. Nos.126, 127, 141, 143, 306, 946, 947, 2558, 15477, 15478, 21898 and  
21902 of 2025 and W.P.M.P. (Crl.) No.595 of 2025

**W.P. No.31478 of 2024:**

Eswaran

Petitioner

vs.

1. The State represented by its  
Home Secretary (Prison-IV)  
Home Department  
Secretariat  
Fort St. George  
Chennai 600 009
2. The Director General of Prisons  
Gandhi Irwin Road  
CMDA Building  
II Tower, Egmore, Chennai 600 008
3. The Superintendent of Prison  
Central Prison at Vellore  
Thorapadi, Vellore 632 002

Respondents



**W.P.No.19566 of 2025:**

A. Narkis Banu

Petitioner

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vs.

1. The State represented by its  
Additional Chief Secretary to Government  
Home Department  
Secretariat, Chennai 600 009
2. The Director General of Prison  
Gandhi Irwin Road  
Egmore, Chennai 600 008
3. The Superintendent of Prison  
Central Prison at Salem  
Hasthampatti

Respondents

**W.P.No.267 of 2025:**

Devaki

Petitioner

vs.

The State represented by

1. The Additional Chief Secretary to Government  
Home (Prison-IV) Department  
Tamil Nadu Government  
Chief Secretariat, St. George Fort, Chennai 600 009
2. The Director General of Prisons and Correctional Services  
T.N. Prison Headquarters  
Whannels Road  
Egmore, Chennai 600 008
3. The Deputy Inspector General of Prisons (Chennai Range)  
T.N. Prison Headquarters  
Whannels Road  
Egmore, Chennai 600 008
4. The Superintendent  
Central Prison – I  
Puzhal  
Chennai 600 066

Respondents



**W.P.No.127 of 2025:**

Arjunan

Petitioner

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vs.

1. The Additional Chief Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat  
Chennai 600 009

2. The Director General of Police and  
Director General of Prisons & Correctional Service  
Whannels Road  
Egmore, Chennai 600 008

3. The Superintendent of Prisons  
Central Prison – I  
Puzhal, Chennai 600 066

Respondents

**W.P.No.13778 of 2025:**

G. Ramya

Petitioner

vs.

1. The State of Tamil Nadu  
represented by the Additional Chief Secretary to Government  
Home (Prison-IV A) Department  
Secretariat  
Chennai 600 009

2. The Director General of Prisons & Correctional Service  
Whannels Road  
Egmore  
Chennai 600 008

3. The Superintendent of Prisons  
Central Prison  
Vellore 632 002

Respondents



**W.P.No.2208 of 2025:**

Pachayammal

Petitioner

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vs.

1. The Additional Chief Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai 600 009

2. The Director General of Police &  
Director General of Prisons & Correctional Service  
Whannels Road  
Egmore, Chennai 600 008

3. The Superintendent of Prison  
Central Prison  
Vellore – 2

Respondents

**W.P. (Crl.) No.800 of 2025:**

G. Punniyavathi

Petitioner

vs.

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

2. The Director General of Prisons and Correctional Services  
Egmore  
Chennai 600 008

3. The Deputy Inspector General of Prisons & Correctional Services  
Coimbatore Central Prison Campus  
Coimbatore 641 018

4. The Superintendent of Prison  
Central Prison  
Coimbatore

5. The Superintendent of Prison  
Central Prison  
Salem

Respondents



**W.P.No.107 of 2025:**

WEB Dr. Esther

Petitioner

vs.

The State represented by its

1. The Additional Chief Secretary to Government  
Department of Home (Prison-IV)  
Fort St. George  
Chennai 600 009
2. The Superintendent of Prisons  
Central Prison – 1  
Puzhal  
Chennai 600 006

Respondents

**W.P.No.777 of 2025:**

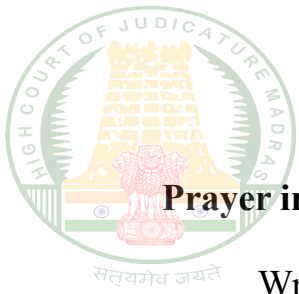
R. Selvam

Petitioner

vs.

1. The Principal Secretary to Government  
Home, Prohibition & Excise Department  
Secretariat  
Chennai 600 009
2. The Director General of Police &  
Director General of Prisons & Correctional Service  
Whannels Road  
Egmore  
Chennai 600 008
3. The Superintendent of Prison  
Central Prison – 1  
Puzhal, Chennai 600 066

Respondents



**Prayer in W.P. No.31478 of 2024:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in impugned order in G.O. (D) No.1453 dated 02.12.2024 passed by the first respondent and quash the same and directing the respondents to release the petitioner/convict namely Eswaran, S/o Jaganatha Chettiar (CT No.11249) who is confined by the third respondent. (Prayer amended as per order dated 16.12.2024 in W.M.P. No.41463 of 2024)

**Prayer in W.P. No.19566 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order in No.G.O. (D) No.645 dated 26.05.2025 passed by the first respondent and quash the same and direct the respondents to prematurely release the husband of the petitioner/convict, viz., Ahamed Basha @ Neethinathan, S/o Thiyagarajan (CT No.7577).

**Prayer in W.P. No.267 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the impugned order in G.O. (D) No.1509, Home (Prison-IV) Department dated 17.12.2024 passed by the first respondent which arbitrarily rejected the premature release of the petitioner's husband from life imprisonment and quashing the same as illegal and consequently directing the respondents to prematurely release the petitioner's husband (Veera Bharathi, S/o, Ponniah, aged about 53/2025 years, L.C.P. No.7209, Central Prison-1, Puzhal, Chennai) from life imprisonment by giving the benefit of the policy G.O. (Ms.) No.430, Home (Prison-IV) Department dated 11.08.2023 as well as under the provisions of Articles 14, 20(1) and 21 of the Constitution of India.

**Prayer in W.P. No.127 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in the order in G.O. (D)



No.1511 dated 17.12.2024 passed by the first respondent and quash the same and directing the respondents to release the petitioner, viz., Arjunan, Son of Madasamy, aged about 46 years, Ct. No.4004, now confined in the Central Prison-I, Puzhal, Chennai 600 066 under the scheme of G.O. (Ms.) No.488 for premature release of life convicts.

**Prayer in W.P.No.13778 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records in the order in G.O. (D) No.306, Home (Prison-IVA) Department dated 13.03.2025 passed by the first respondent and quash the same and directing the respondents to release the petitioner's father, namely Sekar @ Gunasekar, Son of Chachithanandam, aged 59 years, life convict, Convict No.21210, confined in the Central Prison, Vellore, immediately under G.O.Ms.No.488.

**Prayer in W.P.No.2208 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records in the order in G.O. (D) No.1537, Home (Prison-IVA) Department dated 23.12.2024 passed by the first respondent and quash the same and directing the respondents to release the petitioner's brother, namely Thepori Perumal, Son of Govindasamy, aged 63 years, Convict No.19892, Convict Prisoner, Central Prison, Vellore.

**Prayer In W.P.No.800 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 26.07.2025 passed by the fourth respondent in No.909/Thakul/2025 and quash the same as illegal and consequently directing the respondents 1 to 3 to release the petitioner's son by name Gobu, L.C.T. No.15219, aged 40 years, Son of late Govindaraj, aged about 40 years confined at Salem Central Prison as per G.O. (Ms.) No.488 dated 15.11.2021 issued by the first respondent.



**Prayer in W.P.No.107 of 2025:**

**WEB COPY** Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned order G.O. (D) No.1479/2024 dated 06.12.2024 issued by the first respondent and to quash the same and consecutively direct the first respondent to release the detenu John David, S/o David Marimuthu, Life Convict No.4897, aged about 46 years, now confined at the Central Prison, Puzhal – 1, prematurely as per G.O. (Ms). No.430 of 2023 dated 11.08.2023.

**Prayer in W.P.No.777 of 2025:**

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling the records in the order bearing no. in with order in G.O. (D) No.1512, Home (Prison-IV) Department dated 17.12.2024 passed by the first respondent and quash the same and directing the respondents to release the petitioner's son namely Vijayababu, Son of Selvam, CT No.2836, Life Convict, now confined in the Central Prison-1, Puzhal, Chennai 600 066 (now released on interim bail).

For petitioner in  
W.P. Nos.31478 of 2024  
and 19566 of 2025

Mr. M. Mohamed Saifulla

For petitioner in  
W.P.No.267 of 2025

Mr. D. Mario Johnson  
for Mr. R. Sankarasubbu

For petitioner in  
W.P.No.127 of 2025

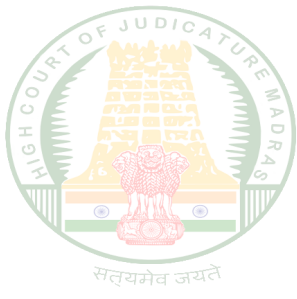
Ms. S. Nadhiya

For petitioner in  
W.P. (Crl.) No.800 of 2025

Mr. M. Murugesan and  
Ms. M. Madhumitha  
for Mr. S. Arivazhagan

For petitioner in  
W.P.No.107 of 2025

Dr. S. Manoharan



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W.P. Nos.31478 of 2024, etc. (premature release) b ...

For petitioners in  
W.P. Nos.777, 2208 and  
13778 of 2025

Mr. M. Radhakrishnan  
for Mr. P. Pugalenth

For respondents in  
all cases

Mr. Hasan Mohamed Jinnah  
State Public Prosecutor  
assisted by  
Mr. E. Raj Thilak  
Addl. Public Prosecutor  
Mr. S. Santhosh  
Govt. Adv. (Crl. Side)  
Ms.V. Sumi Arnica  
Mr. S. Arun Pandi and  
Mr. A. Mohammed Imran

## COMMON ORDER

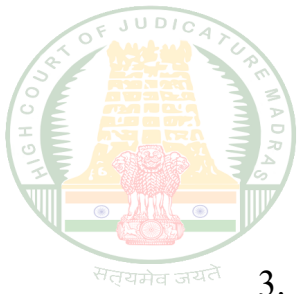
**A.D. JAGADISH CHANDIRA, J.**

All the above cases relate to premature release of convict prisoners.

2. When a Division Bench of this Court, in **Eswaran v. State**<sup>1</sup>, took up the above cases for hearing, the plea raised by the petitioners was that their case for premature release had been considered by the State Cabinet and thereafter, the papers relating thereto were sent to the Governor, who had acted in his discretion and rejected the same, which is unsustainable in the eyes of the law.

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<sup>1</sup> W.P. No.31478 of 2024, etc. batch *vide* order dated 20.08.2025



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3. While considering the above plea, the aforesaid Division Bench noticed an apparent dichotomy in the views taken by two Division Benches of this Court in **Veera Bharathi v. State**<sup>2</sup> and **Murugan @ Thirumalai Murugan v. State**<sup>3</sup>.

4. *Ergo*, the aforesaid Division Bench framed two issues and directed the Registry to place the above matters before the Hon'ble Chief Justice to constitute a Larger Bench for an authoritative pronouncement. Upon the directions of the Hon'ble Chief Justice, this Full Bench was constituted to decide the aforereferred two issues which are extracted below:

- i. Whether His Excellency The Governor is bound by the advice given by the Council of Ministers in matters relating to remission and premature release?
- ii. If he is so bound, under what circumstances, does the Governor have the discretion to take a view different from that taken by the Council of Ministers?

5. Mr. Hasan Mohamed Jinnah, learned State Public Prosecutor made the following submissions:

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<sup>2</sup> W.P. No.14908 of 2024 decided on 17.10.2024

<sup>3</sup> W.P.(MD).No.13468 of 2024 decided on 06.11.2024



a. The Division Bench, in **Veera Bharathi, supra**, had followed the ruling in **A.G.Perarivalan v. State through Superintendent of Police<sup>4</sup>** and **State of Haryana and others v. Raj Kumar @ Bittu<sup>5</sup>** and held that the advice of the State Cabinet binds the Governor in exercise of his power under Article 161 of the Constitution of India and that *per contra*, another Division Bench, in **Murugan @ Thirumalai Murugan, supra**, had placed reliance on the ruling of the Constitution Bench in **M.P. Special Police Establishment v. State of M.P.<sup>6</sup>** and held that the same permits the Governor to act in his own discretion when, on facts, bias becomes apparent or the decision of the Council of Ministers is shown to be irrational and based on the non-consideration of relevant factors.

b. **Perarivalan, supra**, was rendered, *inter alia*, on the basis of the ratio laid down by a 7 Judge Bench in **Samsher Singh v. State of Punjab<sup>7</sup>** and the Constitution Bench decision in **Maru Ram v. Union of India<sup>8</sup>**. In **Maru Ram, supra**, it was categorically held that the Governor was the formal head and sole repository of the executive power but is incapable of acting except on and according to the advice of his Council of Ministers, regardless of whether

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4 (2023) 8 SCC 257

5 (2021) 9 SCC 292

6 (2004) 8 SCC 788

7 (1974) 2 SCC 831

8 (1981) 1 SCC 107



the Governor likes that advice or not. The relevant portion in **Perarivalan**,

*supra*, reads thus:

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“22. In **Maru Ram**, *supra*, the Constitution Bench authoritatively summed up the position with respect to Article 161, as reproduced below:

“61. ... the Governor is the formal head and sole repository of the executive power but is incapable of acting except on, and according to, the advice of his Council of Ministers. The upshot is that the State Government, whether the Governor likes it or not, can advise and act under Article 161, the Governor being bound by that advice. The action of commutation and release can thus be pursuant to a governmental decision and the order may issue even without the Governor's approval although, under the Rules of Business and as a matter of constitutional courtesy, it is obligatory that the signature of the Governor should authorise the pardon, commutation or release.”

(emphasis supplied by us)

c. The question of law for consideration in **M.P. Special Police Establishment**, *supra*, was whether the Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code. While deciding the said question, the Constitution Bench categorically held that when on facts, bias becomes apparent or the decision of the Council of Ministers is shown to be irrational and based on the non-consideration of relevant factors, the Governor would be right to act in his own discretion and grant sanction. The relevant paragraphs from the said judgment read thus:

“8. The question for consideration is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers



in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Penal Code, 1860.

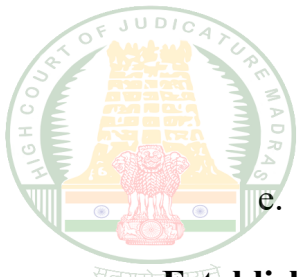
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33. Mr Tankha also pressed into play the doctrine of necessity to show that in such cases of necessity it is the Council of Ministers which has to take the decision. In support of this submission he relied upon the cases of *J. Mohapatra and Co. v. State of Orissa* [(1984) 4 SCC 103], *Institute of Chartered Accountants v. L.K. Ratna* [(1986) 4 SCC 537 : (1986) 1 ATC 714], *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613], *Badrinath v. Govt. of T.N.* [(2000) 8 SCC 395 : 2001 SCC (L&S) 13], *Election Commission of India v. Dr. Subramaniam Swamy* [(1996) 4 SCC 104], *Ramdas Shrinivas Nayak* [(1982) 2 SCC 463 : 1982 SCC (Cri) 478] and *State of M.P. v. Dr. Yashwant Trimbak* [(1996) 2 SCC 305 : 1996 SCC (L&S) 510 : (1996) 33 ATC 208]. In our view, the doctrine of necessity has no application to the facts of this case. Certainly, the Council of Ministers has to first consider grant of sanction. We also presume that a high authority like the Council of Ministers will normally act in a bona fide manner, fairly, honestly and in accordance with law. However, on those rare occasions where on facts the bias becomes apparent and/or the decision of the Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, the Governor would be right, on the facts of that case, to act in his own discretion and grant sanction.” (emphasis supplied by us)

d. In **M.P. Special Police Establishment**, *supra*, the act of granting sanction by Governor was a statutory function of the Governor under Section 197 of the Criminal Procedure Code and therefore, the ruling rendered in that context would not be applicable while considering the exercise of powers of the Governor under Article 161 of the Constitution of India. If it appears that the Council of Ministers have acted irrationally or have acted in non-consideration of relevant factors, it is the Court that has to exercise the power of judicial review in accordance with the ruling of **Epuru Sudhakar v. Government of A.P.**<sup>9</sup> and it is not open for the Governor to act in his discretion therein.

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<sup>9</sup> (2006) 8 SCC 161



e. In **Perarivalan**, *supra*, the ruling in **M.P. Special Police**

**Establishment**, *supra*, was considered at paragraph 29 and the same was distinguished as not applicable to the facts arising out of the exercise of the powers of the Governor under Article 161 of the Constitution of India. Thus, there is no conflict between the said two rulings, (*i.e.* **Perarivalan**, *supra*, and **M.P. Special Police Establishment**, *supra*,) as it was not the case that the ruling in **Perarivalan**, *supra*, was rendered without reconciling with the ratio in **M.P. Special Police Establishment**, *supra*. Paragraph 29 alluded to above reads thus:

“29. We are afraid that the judgment of this Court in M.P. Special Police Establishment [M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788 : 2005 SCC (Cri) 1] is not applicable to the facts of the present case. No arguments have been put forth to make out a case of non-consideration of relevant factors by the State Cabinet or of the State Cabinet having based its recommendation on extraneous considerations. Moreover, in the said case, the Governor had taken a decision which was subsequently challenged, unlike the present case, where the Governor has merely forwarded the recommendation made by the State Cabinet to the President of India.”

(emphasis supplied by us)

f. The ruling in **Perarivalan**, *supra*, was considered and accepted in the Constitution Bench ruling in **IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE GOVERNOR AND THE PRESIDENT OF INDIA**<sup>10</sup> and therefore, the question of whether the Governor could act in his discretion and against the advice of the Council of Ministers while in exercise of his powers under Article 161 of the Constitution of India is

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<sup>10</sup> (2026) 1 SCC 1



no longer *res integra*. Ever since the ruling in **Maru Ram, supra**, it is clear that

the Governor cannot act in his discretion and against the advice of the Council

of Ministers while acting in exercise of his powers under Article 161 of the

Constitution of India. The relevant paragraphs in **IN RE: ASSENT,**

**WITHHOLDING OR RESERVATION OF BILLS BY THE GOVERNOR**

**AND THE PRESIDENT OF INDIA, supra**, reads as under:

“139. Much emphasis has been placed on A.G. Perarivalan v. State of T.N. [A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257 : (2023) 3 SCC (Cri) 536 (3-Judge Bench)] in the judgment of State of T.N. [State of T.N. v. Governor of T.N., (2025) 8 SCC 1] to arrive at the conclusion that inexplicable delay on the count of the Governor in exercising his function under Article 200, is both justiciable and that on account of such unexplained delay, the power under Article 142 can be deployed to substitute the Governor's actions with a judicial order. This line of reasoning has also been adopted by the counsel opposing the reference.

140. We find this approach to be erroneous for the following reasons:

140.1. Firstly, the decision in A.G. Perarivalan [A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257 : (2023) 3 SCC (Cri) 536 (3-Judge Bench)] was tendered in the context of Article 161 of the Constitution, dealing with the executive power of pardon.

140.2. Secondly, this Court came to the conclusion that the Governor is bound by the aid and advice of the Council of Ministers in this regard, and advice having been so tendered after an inexplicable delay of over 2 years, is subject to judicial review.

141. The conclusions of this Court in A.G. Perarivalan [A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257 : (2023) 3 SCC (Cri) 536 (3-Judge Bench)] at paras 38.1 to 38.3 and 38.6 are to be noticed in this regard: (A.G. Perarivalan case [A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257 : (2023) 3 SCC (Cri) 536 (3-Judge Bench)] , SCC pp. 272-73)

“38. ... 38.1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.



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38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, *whereby "the Governor is but a shorthand expression for the State Government"* as observed by this Court [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112].

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emphasis in original

38.6. Taking into account the appellant's prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments from his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for two-and-a-half years after the recommendation of the State Cabinet, we do not consider it fit to remand the matter for the Governor's consideration. In exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The appellant, who is already on bail, is set at liberty forthwith. His bail bonds are cancelled."

The relief that the Court in effect moulded is evident from the conclusion in para 38.6 where it neither deemed a pardon, nor did it direct a pardon. It did, however, deem that the appellant had served his sentence towards Crime No. 329/1991. What is significant is that this Court did not deem to pardon at the expiry of a timeline, nor did it fix any uniform, rigid and absolute timelines.

142. In our consideration, it is quite a leap of constitutional logic to use the decision in A.G. Perarivalan [A.G. Perarivalan v. State of T.N., (2023) 8 SCC 257 : (2023) 3 SCC (Cri) 536 (3-Judge Bench)], as a springboard for prescribing universal and absolute timelines on Governors and the President for the exercise of their functions under Articles 200 and 201, respectively. Even more so given that the expiry of such timelines, was used as the path that paved the way to judicial review of functions under Articles 200 and 201."

(emphasis supplied by us)



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The Division Bench of this Court which dealt with **Murugan @ Thirumalai Murugan**, *supra*, by following **M.P. Special Police Establishment**, *supra*, had thereafter, in the following cases, continued to rely on the ruling in **Perarivalan**, *supra*, and held that the Governor cannot act in his discretion and against the advice of the Council of Ministers while acting in exercise of his powers under Article 161 of the Constitution of India.

- a) Vanaraj v. State<sup>11</sup>
- b) S. Sudha v. State<sup>12</sup>
- c) S. Kumar @ Pushpakumar v. State<sup>13</sup>

6. While reiterating the submissions of the learned State Public Prosecutor, Mr. M. Radhakrishnan, learned counsel representing Mr.P.Pugalenti, learned counsel on record for the petitioners in W.P.Nos.777, 2208 & 13778 of 2025, submitted that the law regarding the Governor's discretion while exercising his powers under Article 161 of the Constitution of India, has been settled as early as in the ruling of **Maru Ram**, *supra*, and that therefore, the Governor is bound by the advice of the Council of Ministers while exercising his powers under Article 161 of the Constitution of India.

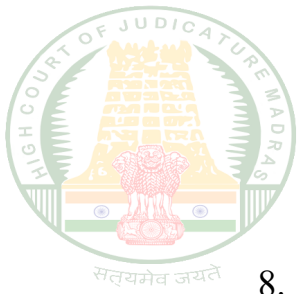
7. There were no contra submissions made by the learned counsel for the petitioners to the submissions of the learned State Public Prosecutor.

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11 W.P.(MD).No.13512 of 2024 decided on 13.11.2024

12 W.P.(MD).No.15921 of 2024 decided on 28.11.2024

13 W.P.(MD).No.20447 of 2024 decided on 20.01.2025



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8. On hearing the submissions of both sides and having perused the authorities cited at the bar, this Court finds that the ruling in **Perarivalan, supra**, has merely reiterated the position of law laid down in the Constitution Bench ruling in **Maru Ram, supra**, and therefore, it is well settled that the Governor is bound by the advice given by the Council of Ministers in matters relating to remission and premature release, which are indeed powers exercised by him by virtue of Article 161 of the Constitution of India.

9. It is not the case that in **Perarivalan, supra**, the ruling in **M.P.Special Police Establishment, supra**, was ignored. The ratio laid down in **M.P.Special Police Establishment, supra**, was argued at length before the Supreme Court in **Perarivalan, supra**, and the same has been duly considered at paragraph 29 in **Perarivalan, supra**. Further, since **Perarivalan, supra**, was rendered following the ratio laid down by the 7 Judge Bench in **Samsher Singh, supra**, and the Constitution Bench ruling in **Maru Ram, supra**, this Court has no hesitation in holding that there is no conflict between the ratios laid down in **Perarivalan, supra**, and **M.P. Special Police Establishment, supra**.

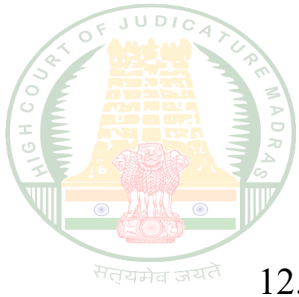
10. Further, it is also notable that the Division Bench of this Court in **Murugan @ Thirumalai Murugan, supra**, which had held that the ruling in



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**M.P. Special Police Establishment, supra**, permits the Governor to act in his own discretion in exercise of powers under Article 161 of the Constitution of India, when on facts, bias becomes apparent or the decision of the Council of Ministers is shown to be irrational and based on the non-consideration of relevant factors, had thereafter, in two other occasions in **Vanaraj, supra** and **S. Kumar @ Pushpakumar, supra**, followed the ruling in **Perarivalan, supra** and held that the advice of the Council of Ministers was clearly binding on the Governor. Therefore, it is clear that the ruling in **Murugan @ Thirumalai Murugan, supra**, is *per incuriam* to the limited extent that it holds that the ruling in **M.P.Special Police Establishment, supra**, permits the Governor to act in his own discretion in exercise of powers under Article 161 of the Constitution of India.

11. In the light of the above discussion, this Court answers both the issues under reference cumulatively by holding that while exercising powers under Article 161 of the Constitution of India in matters relating to remission and premature release of convict prisoners, the Hon'ble Governor is bound by the advice of the Council of Ministers regardless of whether the Hon'ble Governor likes that advice or not and under no circumstance, the Hon'ble Governor can exercise discretion to take a different view from the one taken by the Council of Ministers.



W.P. Nos.31478 of 2024, etc. (premature release) b ...

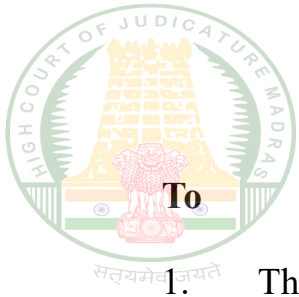
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12. Having answered the issues under reference as above, we direct the Registry to place all the above cases before the Bench having roster for independent consideration.

**(A.D.J.C., J.) (G.K.I., J.) (S.M., J.)**  
**02.04.2026**

cad

Neutral Citation: Yes



W.P. Nos.31478 of 2024, etc. (premature release) b ...

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- To
1. The Home Secretary (Prison-IV)  
Home Department  
Secretariat  
Fort St. George  
Chennai 600 009
  2. The Additional Chief Secretary to Government  
Home Department  
Secretariat, Chennai 600 009
  3. The Director General of Prisons  
Gandhi Irwin Road  
CMDA Building  
II Tower, Egmore, Chennai 600 008
  4. The Superintendent of Prison  
Central Prison  
Thorapadi, Vellore 632 002
  5. The Superintendent of Prison  
Central Prison at Salem  
Hasthampatti
  6. The Superintendent  
Central Prison – I  
Puzhal  
Chennai 600 066
  7. The Deputy Inspector General of Prisons & Correctional Services  
Coimbatore Central Prison Campus  
Coimbatore 641 018
  8. The Superintendent of Prison  
Central Prison  
Coimbatore
  9. The Superintendent of Prison  
Central Prison  
Salem



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W.P. Nos.31478 of 2024, etc. (premature release) b ...

**A.D. JAGADISH CHANDIRA, J.**

**G.K. ILANTHIRAIYAN, J.**

and

**SUNDER MOHAN, J.**

cad

Pre-delivery common order in

W.P. Nos.31478 of 2024, 107, 127, 267, 777,  
2208, 13778 and 19566 of 2025  
and W.P. (Crl.) No.800 of 2025

(Reference *qua* Premature Release)

02.04.2026