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W.P.No.33397 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**  
**AND**  
**THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

W.P.No.33397 of 2024

and

W.M.P.No.36186 of 2024

K.Athinarayanan

... Petitioner

*Vs.*

1.The State of Tamil Nadu  
rep by the Additional Chief Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai 600 009.

2.The Commissioner of Police,  
Greater Chennai, Vepery,  
Chennai 600 007.

3.Mr.Kuthalingam IPS.,  
Deputy Commissioner of Police,  
T.Nagar District,  
T.Nagar, Chennai 600 017.

4.Mr.P.Vijayan,  
Assistant Commissioner of Police,  
T.Nagar Range,  
T.Nagar, Chennai 600 017.

5.Ms.V.Veerammal,  
Inspector of Police,  
R-4, Sountharapandiyanar Police Station,  
T.Nagar, Chennai 600 017.



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6.Mr.K.Senthil Murugan,  
Inspector of Police,  
E-3, Thenampet Police Station,  
Chennai 600 018.

7.Mr.Rafeek Hussain,  
Sub Inspector of Police,  
R-4, Sountharapandiyanar Police Station,  
T.Nagar, Chennai 600 017.

8.The Inspector of Police,  
R-4, Sountharapandiyanar Police Station,  
T.Nagar, Chennai 600 017.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents 1 & 2 to consider the representation of the petitioner's daughter dated 16.10.2024 and further direct the respondents 1 & 2 to take appropriate action against the respondents 3 to 7, who were involved in the illegal assault of the petitioner and violated the guidelines laid down by the Hon'ble Supreme Court in D.K.Basu Vs. State of West Bengal (1997) 1 SCC 416.

For Petitioner : Mr.M.Radhakrishnan  
For Mr.P.Pugalenth

For R1, R2 & R8 : Mr.R.Muniyapparaj  
Additional Public Prosecutor

For R3 to R7 : Party in person.

### **ORDER**

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Writ of Mandamus has been instituted directing the respondents 1 & 2 to consider the representation of the petitioner's daughter, dated 16.10.2024,



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and to direct the respondents 1 & 2 to take appropriate action against the respondents 3 to 7, who have involved in violating the guidelines issued in D.K.Basu's case reported in (1997) 1 SCC 416.

2.The writ petitioner/accused has instituted the present writ petition. The relief sought for is to direct the respondents 1 & 2 to consider the representation submitted by his daughter for initiation of action against the respondents 3 to 7.

3.The case of the writ petitioner is that, on 12.10.2024, he arrived to Chennai from Madurai by Air and reached his residence at 7.00 p.m. On 13.10.2024, at 9.00 a.m., a meeting was scheduled at Pasumpon Devar Mahal, located at Habbibullah Road, T.Nagar, Chennai. On 13.10.2024, Ms.V.Veerammal, Inspector of Police, R4 Soundarapandiyanar Police Station, informed the petitioner that he should not participate in the meeting. Around 11.45 a.m., the special team led by the Inspector of Police, Teynampet Police Station, visited the residence of the petitioner, when the petitioner was with his wife, daughter Ms.Lalitha (Advocate) and friends Lakshmanan and Palani. The police officials had took the petitioner in a Car. Two police vehicles followed the car belonging to the petitioner. The daughter of the petitioner Ms.Lalitha



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(Advocate) followed them in her Maruti Swift Car. The petitioner was arrested by the police nearby Pondybazaar Police Station, T.Nagar and the petitioner was remanded to judicial custody.

4.Mr.Radhakrishnan learned counsel for the petitioner would mainly contend that the directions issued by the Hon'ble Supreme Court in D.K.Basu's case have been violated. Therefore, the arrest became illegal. In this context he relied on the directions issued in Paragraph No.35 (1) to (5) & (10) of the judgment.

5.The learned counsel relied on the First Information Report registered in FIR No.191 of 2024. In the said report, it is stated that Mr.S.Rafeek Hussain, Sub Inspector of Police, submitted a special report on 13.10.2024 at about 2.00 p.m. However, in the last paragraph of the FIR, it is stated that the special report was received from the Sub Inspector of Police on 12.10.2024 at 14.00 hours. Citing the discrepancies, the learned counsel for the petitioner would submit that no arrest intimation was provided to the family members of the petitioner and the respondents have violated the directions issued in D.K.Basu's case.



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6.It is stated that the petitioner came from Madurai to attend a meeting at Chennai and he was arrested, when he was standing nearby DMS campus. His daughter was also with him and she has taken videograph. Under these circumstances, the police have wrongly stated the date in the FIR registered and arrest intimation was not provided. Therefore, the entire process adopted by the police authorities are not in consonance with the guidelines issued by the Supreme Court. Therefore, the relief as such sought for is to be considered.

7.The learned Additional Public Prosecutor would oppose by stating that the typographical error in the FIR has been taken undue advantage by the petitioner with an idea to escape from the criminal proceedings. The petitioner is a history sheeter and involved in many number of criminal cases including four murder cases. The petitioner is classified as A+ category in police records. Therefore, the police arrested him on the basis of some information and there was a likelihood of commission of crime. The arrest intimation was immediately provided to the wife of the petitioner in Cell Phone No.9176136572. However, in the arrest memo, the phone number of the wife of the petitioner has been mistakenly typed as 9176136570 instead of 9176136572. The said typographical error in the arrest memo has been taken undue advantage by the petitioner for filing the present writ petition. Though



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the date in the arrest memo was initially typed as 12.10.2024, it was corrected by the police authorities as 13.10.2024 at 16.45 hours. The corrected arrest memo produced before this Court by the learned Additional Public Prosecutor would reveal that the petitioner was arrested on 13.10.2024 at 16.45 hours.

8.Considered the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis.

9.The representation submitted by the daughter of the petitioner/accused dated 16.10.2024 would be sufficient to form an opinion that the grounds raised by the petitioner are untenable. Pertinently, the daughter of the petitioner in her representation has categorically stated that the petitioner/accused on 12.10.2024 during evening hours came from Madurai to Chennai through flight. He had reached his residence at Chennai at 7.00 p.m. Therefore, the daughter of the petitioner herself know that the petitioner had not been arrested on 12.10.2024. She has stated in her representation that the petitioner was arrested on 13.10.2024. The daughter of the petitioner has mentioned that the petitioner was arrested. when the petitioner and his daughter was standing. Therefore, the date of arrest and the time of the arrest have been categorically stated by the daughter of the petitioner in her representation dated 16.10.2024. When the



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daughter of the petitioner has narrated the facts in clear terms in her representation, the typographical error committed by the police authorities, while preparing the First Information Report and arrest memo initially cannot be a ground to grant exoneration from the clutches of the criminal proceedings or relief sought for to consider the representation as such sought for in the present writ petition.

10.The learned counsel for the petitioner questioned the arrest by the police and the procedures followed.

11.Section 170 of BNSS, 2023 provides powers to the authorities to prevent commission of cognizable offences. Sub Section (1) of Section 170 enumerates that “a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented”. Therefore, power of arrest to prevent commission of cognizable offence has been conferred to the police authorities. Police authorities are not expected to be mute spectators, when there is likelihood of commission of any crime by any person. They are expected to act prudently, efficiently, to protect the public and act swiftly in the manner known



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to law. While preparing documents in such circumstances, there is a possibility of typographical errors. Court has to consider the state of mind of the police officers, when they are in the process of apprehending the A+ category accused and the surrounding circumstances prevailed during the relevant point of time.

12.The learned Additional Public Prosecutor made a submission that during the arrest of petitioner, his relatives and followers surrounded the police officials, caused panic and created unrest. Even in the police station, the followers have gathered and created pressure in the mind of the police officials, which may result in committing certain typographical errors and such typographical errors or wrong mentioning of date would not be a ground to grant exoneration or any other reliefs allowing such an accused person to escape from the clutches of criminal proceedings.

13.Procedures are contemplated for the purpose of execution. Procedural violations no doubt are to be taken into consideration by the Courts. However, certain mitigating circumstances and the typographical errors, if any, committed during the process of following the procedures, the same cannot be taken undue advantage by the accused persons. Such errors are to be construed as condonable errors.



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14.In the present case, the daughter of the petitioner/accused in her representation dated 16.10.2024 has narrated the facts stating that the petitioner/accused through flight came from Madurai to Chennai on 12.10.2024 at 7.00 p.m. and he was arrested on 13.10.2024 at around 01.40 p.m. When the family members have knowledge about the arrest and the daughter of the petitioner was very much present during the arrest of the petitioner, he cannot raise the ground that the arrest was not intimated to the family members of the accused. The very ground is fictitious and untenable.

15.We have perused the antecedents of the petitioner as submitted by the learned Additional Public Prosecutor by way of a typed set of papers. The details of the cases against the petitioner are as under:

| <i>S.No.</i>   | <i>Police Station</i>         | <i>Crime No &amp; Section</i>                                | <i>Stage</i>                                                                          |
|----------------|-------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <b>302 IPC</b> |                               |                                                              |                                                                                       |
| 1.             | Virudhunagar Rural PS         | Cr.No.399/2010 u/s 109, 120, 147, 148, 149, 302 IPC          | Acquittal 29.04.2013                                                                  |
| 2.             | Sathur PS                     | Cr.No.11/2017 u/s 147, 148, 302, 506 (ii) IPC                | SC No.57/2018<br>Acquittal 04.09.2024<br>Addl.Sessions<br>Srivilliputhur.             |
| 3.             | Thirumangalam Town PS         | Cr.No.1227/2020 u/s 341, 114, 109, 148, 149, 302, 120(B) IPC | PT (PRC.04/2022)<br>Judicial Magistrate,<br>Thirumangalam CD<br>date – Next hearing - |
| 4.             | Sivagangai Dist. Karaikudi PS | Cr.No.162/2023 u/s 147, 148, 302, 109, 120(B), 202, 115,     | PT (PRC.24/24)<br>Judicial Magistrate                                                 |



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| <b>S.No.</b>      | <b>Police Station</b>  | <b>Crime No &amp; Section</b>                                                                | <b>Stage</b>                                                     |
|-------------------|------------------------|----------------------------------------------------------------------------------------------|------------------------------------------------------------------|
|                   |                        | 149, 34 IPC                                                                                  | Karaikudi CD date – (FS) Next Hearing 16.11.2024.                |
| <b>307 Case</b>   |                        |                                                                                              |                                                                  |
| 5.                | Kallikudi PS           | Cr.No.55/2024 u/s 147, 148, 307 IPC & 25 (1) A Arms Act                                      | UI Accused Manibharathi not arrest                               |
| 6.                | Thirumangalam Town PS  | Cr.No.185/2019 u/s.109, 147, 148, 294 (b), 307, 323 IPC                                      | NTF 10.10.2024                                                   |
| 7.                | Sivagangai PS          | Cr.No.628/2021 u/s.109, 147, 148, 149, 294(b), 307, 332, 506(2), IPC r/w 3 of TNPPDL Act.    | PRC No.25/2022 20.09.2022 CD Date (FS) Next Hearing – 16.11.2024 |
| 8.                | Sivagangai PS          | Cr.No.633/2021 u/s.109, 147, 148, 149, 294(b), 307, 332, 506(2), IPC.                        | C.C.No.378/2022 20.09.2021                                       |
| <b>Other case</b> |                        |                                                                                              |                                                                  |
| 9.                | Kallikudi PS           | Cr.No.174/2009 u/s.365 IPC                                                                   | AD                                                               |
| 10.               | Kallikudi PS           | Cr.No.233/2013 u/s 294 (b) 506 (i)IPC                                                        | Acquittal 23.10.2020                                             |
| 11.               | Kallikudi PS           | Cr.No.04/2020 u/s.147, 148, 149, 294(b),323, 324, 506(ii) IPC                                | PRC No.78/2023 dt.13.07.2023 Judicial Magistrate Thirumangalam   |
| 12.               | Kallikudi PS           | Cr.No.56/2020 u/s.188, 269, 270, 271 IPC & 3 of Epidemic Disease Act 134, 135 TN HP Act 1939 | Refereed 16.05.2022                                              |
| 13.               | Kallikudi PS           | Cr.No.1528/2020 u/s 143, 341, 286, 290 IPC                                                   | Refereed 16.05.2022                                              |
| 14.               | Kallikudi PS           | Cr.No.1544/202 u/s 504 IPCr/w 4 of TNOPDL Act                                                | LB.No.1731 dt.11.06.2024                                         |
| 15.               | Madurai dist Villur PS | Cr.No.89/2023 u/s 147, 148, 452, 468, 471, 506(2) IPC                                        | MF 21.03.2018                                                    |
| 16.               | Madurai dist Villur PS | Cr.No.91/2013 u/s 147, 148, 452, 468, 471, 506 (2) IPC                                       | MF 25.08.2014                                                    |



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| <b>S.No.</b> | <b>Police Station</b>        | <b>Crime No &amp; Section</b>                                           | <b>Stage</b>           |
|--------------|------------------------------|-------------------------------------------------------------------------|------------------------|
| 17.          | Madurai dist Villur PS       | Cr.No.04/2014 u/s143, 120(b), 447, 427, 379, 468, 471, 420 IPC          | UI (No investigation)  |
| 18.          | Thirumangalam Taluk PS       | Cr.No.257/2020 u/s 188, 270 IPC                                         | Refereed 16.05.2022    |
| 19.          | Thirumangalam Taluk PS       | Cr.No.310/2020 u/s.143, 188, 269, 270 IPC & 151 Cr.P.C.                 | Refereed 24.01.2022    |
| 20.          | Thirumangalam Taluk PS       | Cr.No.1159/2020 u/s.143, 145, 341, 188, 269 IPC r/w 184 MV Act.         | Refereed 17.05.2022    |
| 21.          | Nagapattinam – Keevalur PS   | Cr.No.1492/2020 u/s.143, 269, 270, 341 IPC                              | Refereed 11.12.21      |
| 22.          | Thirumangalam Taluk PS       | Cr.No.107/2024 u/s.147, 341, 294 (b), 506 (i) IPC r/w 3 of TNPPDL Act.  | UI (Accused no arrest) |
| 23.          | Madurai Dist T.Kallupatti PS | Cr.No.77/2021 u/s.147, 148, 294 (b), 448, 506 (2) IPC.                  | Refereed               |
| 24.          | Karupppaiyurani PS           | Cr.No.1213/2020 u/s.147, 148, 290, 451, 436, 109 IPC & 4 of TNPPDL Act. | UI (Accused no arrest) |

16. During the arrest, the police have recovered arms and deadly weapons, which were in possession of the petitioner/accused person. Since deadly weapons and arms were recovered during the course of arrest, we are of the considered opinion that the arrest made by the police authorities would squarely fall under the powers conferred on them under Section 170 of BNSS. Cognizable offence has been defined under Section 2(g) of BNSS and a conjoint reading would reveal that the arrest by the police authorities are in accordance with the procedures as contemplated and the grounds raised by the petitioner are neither convincing nor tenable. Thus, we are not inclined to consider the



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present petition. Since a case has been registered and investigation is in progress, we are not inclined to consider other facts. It is for the investigating agency to continue the investigation by following the procedures.

17. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [M.J.R., J.]  
13.11.2024

sli  
Index: Yes/No  
Speaking/Non-speaking order

To

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

2.The Commissioner of Police,  
Greater Chennai, Vepery,  
Chennai 600 007.

3.Mr.Kuthalingam IPS.,  
Deputy Commissioner of Police,  
T.Nagar District,  
T.Nagar, Chennai 600 017.

4.Mr.P.Vijayan,  
Assistant Commissioner of Police,  
T.Nagar Range,  
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R-4, Sountharapandiyanar Police Station,  
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8. The Inspector of Police,  
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9. The Public Prosecutor  
High Court of Madras.



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**S.M.SUBRAMANIAM, J.**  
**AND**  
**M.JOTHIRAMAN, J.**

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