



CRL RC(MD)No.556 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.556 of 2025

Koolu @ Kalidoss

... Petitioner

Vs.

1.The Tahsildar and
Executive Magistrate,
Avudaiyarkovil Taluk,
Pudukottai District.

2.The Inspector of Police,
Avudaiyarkovil Police Station,
Pudukottai District.

...Respondents

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records pertaining to the order of the 1st respondent passed in M.C.No. 02/2025/A9 dated 28.03.2025 and set aside the same.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.S.Ravi,

Additional Public Prosecutor



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ORDER

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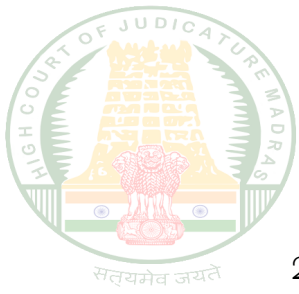
This Criminal Revision Case is filed assailing the order of preventive detention dated 24th January 2025 passed by the first respondent in M.C. No. 2/2025/A9 , seeking to set aside the order by which the petitioner has been kept in custody up to 24 July 2025 in Central Prison , Trichy— as being without jurisdiction and in violation of the procedure established by law.

2. Factual Matrix:

2.1.On 28 March 2025 the first respondent, purporting to act under Section 141 BNSS (pari materia Section 122(1)(b) CrPC), issued an order directing the detention of the petitioner on the allegation that he had breached a bond for good behaviour.

2.2.The order is founded upon: (a) a recommendation of the second respondent police, (b) statements of unnamed witnesses, and (c) a revenue-officials' enquiry report.

2.3.No copy of those materials was furnished to the petitioner either before or during the enquiry.



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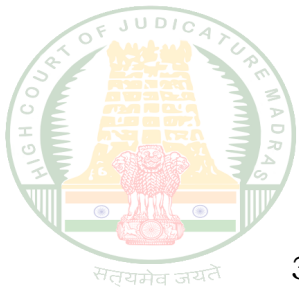
2.4.The “notice” relied on by the Executive Magistrate was served when the petitioner was already in custody; it merely informed him of the result, not the grounds, thereby denying a meaningful opportunity of defence.

2.5.Consequently, the petitioner was detained on 24 July 2025, and continued to remain in custody by virtue of the impugned order, till the same was suspended by the order of this court dated 30.04.2025.

3. Submissions on behalf of the Petitioner:

3.1.Impugned order is *ultra vires* Section 141 BNSS because the Magistrate recorded neither any specific grounds nor his subjective satisfaction.

3.2.Mandatory safeguards laid down in **P. Sathish @ Sathish Kumar v. State** (2019 (2) MWN (Cr.) 136) and reiterated in **Selvam @ Selvaraj** (CDJ 2017 MHC 4350) have been ignored—chiefly, supply of relied-upon documents, right to counsel, and right of cross-examination.



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3.3.The proceeding, though before an Executive Magistrate, is judicial in character (*Bibhuti Bhusan Chatterjee v. State of Bihar*, AIR 1960 SC 128); violation of principles of natural justice vitiates it ab initio.

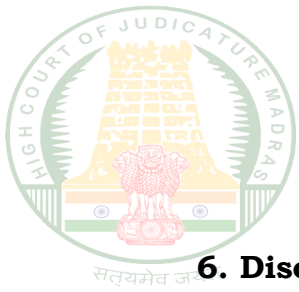
4. Submissions on behalf of the State:

The learned Additional Public Prosecutor Mr.S.Ravi fairly conceded that the impugned order has go following the mandates of the Hon'ble Division Bench of this Court in Crl.R.C.No.137 of 2018 etc., cases.

5. Points for Consideration:

5.1.Whether the first respondent followed the mandatory procedure under Sections 110–117 CrPC and Section 141 BNSS before ordering detention.

5.2.Whether denial of basic procedural safeguards amounts to absence of jurisdiction, rendering the order liable to be set aside.



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6. Discussion:

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6.1. Nature of Proceedings:

Chapter VIII proceedings, though executive in form, are judicial in substance as mandated by the Hon'ble Apex Court in *Bibhuti Bhusan Chatterjee case*. Personal liberty, a facet of Article 21, cannot be curtailed save by “procedure established by law” which must be *just, fair and reasonable* in terms of the judgment of the Hon'ble Supreme Court in *Maneka Gandhi v. Union of India*¹.

6.2. Statutory Mandate:

Section 141 (2) BNSS obliges the Executive Magistrate to:

“(a) record in writing the grounds of his satisfaction, and

(b) furnish to the person the substance of those grounds and the material relied on, enabling him to show cause.”

The impugned order contains only a recital that “materials have been perused” without narrating *what* those materials are, *how* they establish breach, or *why* preventive detention—an extreme measure—was indispensable.

¹(1978) 1 SCC 248



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6.3. Violation of Natural Justice:

The ten-point guidelines in **P. Sathish** case (accepted by this Court as binding on all Executive Magistrates) require supply of documents, right to legal representation, and an opportunity of cross-examination. The record is silent on compliance. Service of a bare notice upon a person already incarcerated is, at best, post-decisional information and at worst, a farce.

6.4. Settled Proposition of Law:

The *lis* in hand is no more *res integra* and the same is covered by the judgment of the Hon'ble Division Bench of this Court in CrI.R.C.Nos. 137 of 2018 etc., batch in **P.Sathish** case dated 13.03.2023 and the relevant portion of the same is extracted as follows:

“88.(c) Violation of a bond executed under Section 110 of the Cr.P.C., can be dealt with under Section 446 of the Code and not under Section 122(1)(b) of the Cr.P.C. Consequently, we affirm the judgment of Mr. Justice P.N Prakash in **Devi v Executive Magistrate** (2020 6 CTC 157) in its entirety. The decision of the learned single judge to the contrary in **Vadivel @ Mettai Vadivel v The State** (CrI.R.C.No. 982 of 2018 etc., batch) will stand overruled.



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(e) In the light of the law laid down in paragraph 24 of the three judge bench decision of the Supreme Court in **Gulam Abbas v State of Uttar Pradesh** (1982) 1 SCC 71, an Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) for violation of a bond under Section 107 Cr.P.C. A person who has violated the bond executed before the Executive Magistrate under the said provision will have to be challaned or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b) Cr.P.C.”

6.5. Consequences of Non-Compliance:

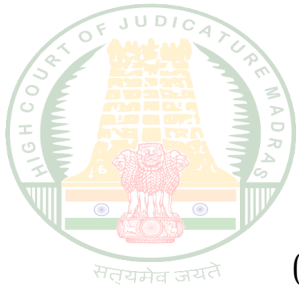
Failure to observe mandatory safeguards strikes at the root of jurisdiction .The impugned order, passed mechanically and without recorded reasons, is *void* and not merely *voidable*.

7. Conclusion:

Fully fortified by the judgment extracted supra, the order dated 24 January 2025 in M.C. No. 2/2025/A9 suffers from illegality, procedural irregularity, and violation of natural justice. It cannot stand judicial scrutiny.

8. In Final,

(i) The Criminal Revision Petition is allowed.



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(ii) The impugned detention order dated 24 January 2025 passed by the Tahsildar-cum-Executive Magistrate, Avudaiyarkovil Taluk, is set aside.

(iii) Liberty is reserved to the respondents to initiate fresh proceedings, if warranted, strictly in conformity with Chapter VIII CrPC / Section 141 BNSS and the guidelines in CrI.R.C.(MD)No.137 of 2018 batch, and allied judgments. No costs.

13.06.2025

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

To

- 1.The Tahsildar and
Executive Magistrate,
Avudaiyarkovil Taluk,
Pudukottai District.
- 2.The Inspector of Police,
Avudaiyarkovil Police Station,
Pudukottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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