



Crl.O.P.(MD) No.17081 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2025

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.17081 of 2025

and

Crl.M.P.(MD) No.13933 of 2025

S.M.T. @ Kaleeswaran

... Petitioner

Vs.

1.The II Class Executive Magistrate cum
Revenue Divisional Officer,
Virudhunagar.

2.The Inspector of Police,
Civil Supplies C.I.D.,
Virudhunagar.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the order of the first respondent passed in M.C./155/2025 (129 Pa.Ku.Pa.Sa) dated 25.08.2025 and set aside the same.

For Petitioner : Mr.T.Leninkumar

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed seeking to set aside the impugned notice dated 25.08.2025, bearing reference No.M.C./155/2025 (129 Pa.Ku.Pa.Sa), issued by the first respondent under Section 129 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

2. By the impugned notice, the petitioner has been called upon to show cause as to why proceedings under Section 129 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, should not be initiated against him.

3. The learned counsel for the petitioner would submit that the impugned notice does not state how the petitioner could be treated as a habitual offender; and that, in the absence of any material setting forth the circumstances for the issuance of the impugned notice, the impugned notice purportedly issued under Section 129 of the BNSS, 2023 is liable to be set aside.



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4. The learned Government Advocate (Criminal Side) for the respondents would submit that the petitioner is involved in three other cases.

5. However, it is seen that there is no reference to any of the other cases said to have been filed against the petitioner in the impugned notice. This Court is of the view that the provisions under Section 129 of the BNSS, 2023, cannot be invoked without sufficient material to hold that the persons against whom action is sought to be taken fall within any of the clauses in Section 129 of the BNSS, 2023. The show cause notice must disclose the nature of the information received to hold that the recipient is a habitual offender.

6. Section 129 of BNSS, 2023 reads as follows:

“129. When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or



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(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Bhartiya Nyaya Sanhita, 2023, or under section 176, section 177, section 178 or section 179 of that Sanhita, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940; (b) the Foreigners Act, 1946;

(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952;

(d) the Essential Commodities Act, 1955;

(e) the Protection of Civil Rights Act, 1955;

(f) the Customs Act, 1962;

(g) the Food Safety and Standards Act, 2006;
or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or



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(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

Clauses (a) to (f) would suggest that the person from whom security for good behaviour is sought must have committed the offences habitually.

Clause (g) states that the person must be so desperate and dangerous that allowing him to remain at large without security would be hazardous to the community.

7. Therefore, this Court is of the view that the impugned notice, issued without any reference to the cases, cannot be sustained. Accordingly, the impugned notice dated 25.08.2025 is set aside. However, it is made clear that if the respondents have material to suggest that the petitioner falls within any of the clauses in Section 129 of BNSS, 2023, they are at liberty to issue a fresh notice.



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8. With the above observations, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

Copy To:

- 1.The II Class Executive Magistrate cum
Revenue Divisional Officer,
Virudhunagar.
- 2.The Inspector of Police,
Civil Supplies C.I.D.,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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