



HCP(MD). No.270 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23/03/2026

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

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Anitha

... Petitioner

Vs

1. The State of Tamilnadu Through
Rep. Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2. The District Collector and District Magistrate,
Tirunelveli, Office of the District Collector
and District Magistrate,
Tirunelveli.

3. The Superintendent of Prison,
Tirunelveli District, Palayamkottai
Central Prison,
Tirunelveli.

... Respondents

PRAYER :-

To detention order of the respondent No.2 in M.H.S. Confdl.No.
81/2025 dt. on 09.07.2025 and quash the same and direct the respondents
to produce the body or person of the detenu by name Thiru. Anthony

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Prakash son of Alexander, 32 yrs, now detained as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Murugesan
for Mr. M. Sathish Kumar,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. ANAND VENKATESH,J.)

The petitioner is the wife of the detenu viz., Anthony Prakash, Son of Alexander, 32 years. The detenu has been detained by the second respondent by his order in M.H.S. Confdl.No. 81/2025 dt. on 09.07.2025, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the order passed by the Detaining Authority.



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3. Apart from the other grounds that were raised by the learned counsel for the petitioner, the main ground that was raised by the learned counsel is that the detaining authority was aware of the fact that the detenu had not filed any bail applications in 4 adverse cases and having taken note of the same, the detaining authority considered an order passed in CrI.MP.No.2572 of 2024 dated 18.11.2024 and came to the conclusion that bail was granted in that case and therefore there was likelihood of the detenu coming out on bail in those 4 adverse cases. Learned counsel for the petitioner submitted that the bail order that was relied upon by the detaining authority is not a similar case and the same reflects non application of mind.

4. We have carefully considered the submissions made on either side and gone through the detention order dated 09.07.2025.

5. In the case in hand, there were 9 adverse cases and one ground case. Insofar as the ground case is concerned, the same was registered in Crime No.287 of 2025 for the offences under Section 296(b), 115(1), 109(1), and 351(3) of the BNS 2023. On going through the detention



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order, it is seen that the detaining authority has taken note of the fact that the detenu had filed a bail petition in CrI.MP.No.2695 of 2025 in the ground case and bail was also granted by an order dated 30.06.2025 by the Principal Sessions Court, Tirunelveli. By the time the sureties were produced. The detention order came to be passed.

6. In view of the above, one of the contention that was raised is that the detaining authority ought not to have passed the detention order when bail has already been granted by a competent Court.

7. We are not in agreement with the above submission. The law is no longer res integra and it is squarely covered by the judgement of the Hon'ble Apex Court in **Abdul Sathar Ibrahim Manik Etc vs Union Of India** reported in 1992(1) SCC 1 and the relevant portion is extracted hereunder :

12. The Constitution Bench in Rameshwar Shaw case held thus: (SCR p. 929)

"... whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely



to be released.

Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.'

Following the above principles, another bench of three Judges of this Court in *N. Meera Rani v. Government of T.N.*¹⁸, after reviewing the various other decisions, it was observed that: "A review of the above *b* decisions reaffirms the position which was settled by the decision of a Constitution Bench in *Rameshwar Shaw case*" and that "none of the observations made in any subsequent case can be construed at variance with the principle indicated in *Rameshwar Shaw case*....." Having so observed the bench summarised the principle thus: (SCC p. 434, para 22)

"Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody, the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to



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prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.

In Chelawat case after examining the various decisions of this Court dealing with preventive detention of a person in custody, it is held thus: (SCC p. 754, para 21)

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression 'compelling reasons' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

In Sanjay Kumar Aggarwal v. Union of India" after reviewing all the relevant cases including Chelawat case, this Court observed as under:

(SCC p. 316, para 11)



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"I could thus be seen that no decision of this Court has gone to the extent of holding that no order of detention can validly be passed against a person in custody under any circumstances. There-fore the facts and circumstances of each case have to be taken into consideration in the context of considering the order of detention passed in the case of a detenu who is already in jail. We have already, in the instant case, referred to the grounds and the various circumstances noted by the detaining authority and we are satisfied that the detention order cannot be quashed on this ground."

In a very recent judgment of this Court in Kamarunnissa v. Union of India all the abovementioned decisions dealing with the detention of a person in custody have been reviewed and it is finally held as under: (SCC p. 140, para 13)

"From the catena of decision referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court."



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Having regard to the various above-cited decisions on the points often raised we find it appropriate to set down our conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detain-ing authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail



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application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

8. The above judgement was subsequently reiterated in the judgment of the Hon'ble Supreme Court in **Union Of India vs Ankit Ashok Jalan** reported in 2020 (16) SCC 185.



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9. It is clear from the above judgements that in a case where the detenu is released on bail, that does not in anyway tie the hands of the detaining authority from passing a detention order. Provided that, the bail application and the order granting bail also forms part of the materials that are placed before the detaining authority. The detaining authority is only expected to apply his mind on those materials and assign reasons as to how he is arriving at a subjective satisfaction. Therefore the mere grant of bail in a case, does not stop the detaining authority from passing a detention order.

10. The other ground that has been raised by the learned counsel for the petitioner is that the the detaining authority was aware of the fact that bail application was not filed in 4 adverse cases and inspite of the same, came to the conclusion that there is likelihood of the detenu coming out on bail, since bail has been granted in a similar case.

11. It is seen that the detenu has not filed any bail petition in 4 cases, namely Crime No.235/24, Crime No.178/25, Crime No.211/25 and Crime No.264/25. In all these cases, theft was the main offence. The



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detailing authority, placed reliance upon the order passed in CrI.MP.No. 2572 of 2024 dated 18.11.2024. While going through this order, it is seen that the accused therein was arrested for offence under Section 331(4) and 305(a) of BNS, 2023. While granting bail, the Court took into consideration, two previous cases - (i) involving an offence under Section 75(1) of the City Police Act and; (ii) involving an offence under Sections 353 and 427 of IPC. The Court also took into consideration the fact that the stolen property had been recovered by the police and the Court also took into consideration the incarceration suffered by the accused therein.

12. In the case in hand, all the 4 adverse cases pertains to the offence of theft. In all those 4 cases, admittedly bail petitions have not been filed. The similar case that was relied upon by the detaining authority is certainly not similar, since the facts in that case is entirely different and that case did not pertain to a theft case. Accordingly, there were no cogent materials for the detaining authority to come to a conclusion that there is likelihood of the detenu being let out on bail in 4



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adverse cases. This clearly reflects non application of mind.

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13. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S. Confdl.No. 81/2025 dt. on 09.07.2025 passed by the second respondent is set aside. The detenu, viz., Anthony Prakash, Son of Alexander, 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(N.A.V.,J..) (K.K.R.K.,J.)
23.03.2026

Index : Yes / No
Internet : Yes / No

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To

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Chennai-600 009.
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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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N.ANAND VENKATESH, J.
AND
K.K.RAMAKRISHNAN, J.

ORDER
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