



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 25-06-2026**

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**THE HON'BLE DR.JUSTICE ANITA SUMANTH**

**AND**

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**HCP No. 2547 of 2025**

M.Nithya  
D/o.Murugan,  
No.25,Richi Street,  
Chintadripet, Chennai.

..Petitioner(s)

Vs

1. The State of Tamil Nadu,  
Rep. by its Additional Chief Secretary to  
Government,  
Department of prohibition and excise (Home),  
Fort St.George,  
Chennai -600009.
2. The Commissioner of Police,  
Greater Chennai Police,  
Vepery, Chennai-600007
3. The Superintendent of Prison,  
Central Prison,  
Puzhal, Chennai.
4. The Inspector of Police,  
F-1, Chintadripet Police Station,  
Chennai.

..Respondent(s)

Petition filed under Article 226 of the Constitution of India, to issue a  
Writ or order or orders or direction particularly in the nature of WRIT OF



HABEAS CORPUS to call for the records in No.760/BBCDEFGISSSV/2025 dated 06.10.2025 on the file of second respondent herein and set aside the same as illegal and produce the detenu Santhosh @ Vellai Santhosh, Son of Babu, aged about 27 years, who is confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner(s): Mr.Ilayaraja Kandasamy

For Respondent(s): Mr.C.R. Malarvannan,  
Counsel for Government of Tamil Nadu  
(Criminal Side)

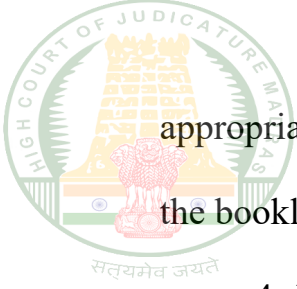
### **ORDER**

**(Order of the Court was made by Dr.Anita Sumanth J.)**

The cousin sister of the detenu – Santhosh @ Vellai Santhosh, S/o. Babu, branded as Drug Offender and confined in Central Prison, Puzhal, Chennai under detention order dated 06.10.2025 has challenged the order of detention in this HCP.

2. We have heard Mr.Ilayaraja Kandasamy, learned counsel for the petitioner and Mr.C.R.Malarvannan, learned Counsel for Government of Tamil Nadu (Criminal Side), learned counsel for the respondents.

3. One of the grounds in the detention order dated 06.10.2025 is that the detenu may be enlarged on bail. The detaining authority has referred to the statement allegedly recorded from the sister of the detenu under Section 180(3) of the BNSS to the effect that she has not filed bail petition at that time, but in due course of time, she will make an attempt to file a bail application before the



appropriate Court. A copy of the statement has been placed at page No.86 of the booklet.

4. However, we find that the statement is not signed and hence there is nothing to support the satisfaction of the detaining authority that there are efforts on-going to secure bail for the detenu. If at all the authority wishes to rely on the document, it would necessarily have to be signed by the relative to support the apprehension of the authority.

5. We have, in fact, taken a similar view in our order dated 03.03.2026 in HCP Nos. 2129, 2179 and 2340 of 2025 and the relevant paragraphs are extracted below:

*8. On the first question whether bail applications have been filed at all, we have perused the booklets that contain the avowed statements of M.Pitchaiammal at page 147, Nagomi at page 146 and Mohan at page 148 of the booklet.*

*9. According to the petitioners, there are three flaws in the statements recorded. Firstly, they are unsigned, secondly, they are undated and thirdly, the crime number mentioned therein is incorrect, insofar as the crime number mentioned is 332 of 2025, whereas the crime number in the ground case in all three cases is 378 of 2025.*

*10. Having considered the rival contentions, we agree with the petitioners that the statements relied upon by the respondents do not support their case. Firstly, the statements are indeed unsigned and undated. There is hence absolutely no clarity, much less certainty, as to when they were recorded.*

*11. The description of the statements on the top of the page refers to Section 180(3) of the BNSS which corresponds to Section 161 of the Criminal Procedure Code, 1973. A statement under Section 161 is recorded in the course of investigation and the provisions of Section 162 stipulate that such a statement is not expected to be signed. That may be so. However, since in the*



*present cases, the respondents seek to draw the benefit of those statements, it is necessary for the statements to have been signed in order to support the conclusion that Pitchaiammal, Nagomi, and Mohan are taking steps to obtain bail in the cases of the respective detenus. In the absence of a signature, these statements cannot be relied upon for this purpose.*

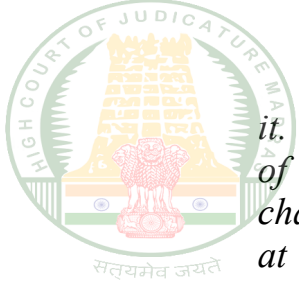
12. ....

13. .... We hence eschew the statements in toto for the purposes of the present cases. As a sequitur, subjective satisfaction of the Sponsoring Authority that M.Pitchaiammal, Nagomi and Mohan are taking steps to obtain bail, based on the above statements stands vitiated and the argument of the petitioners on this count is accepted.

6. Incidentally, our attention is drawn to an order passed in HCP (MD) N0.369 of 2026 dated 19.06.2026 passed by the co-ordinate Bench sitting at Madurai, wherein an order passed by this Bench in HCP Nos. 2129, 2179 and 2340 of 2025 dated 03.03.2026 was relied upon by that petitioner. The Bench has opined that the order is per incuriam and has rendered the following observations:

*11. We have carefully gone through the order passed in HCP.Nos. 2129, 2179 and 2340 of 2025 dated 03.03.2026. The Division Bench of this Court, after taking into consideration the bar contained under Section 162 of Cr.P.C., which provides that such statement recorded under Section 161 of Cr.P.C., need not be signed, proceeded to hold that when such statements are relied upon while passing the detention order, it has to be necessarily signed failing which such statement cannot be relied upon by the Detaining Authority.*

*12. In our considered view, the above finding of the Division Bench is not in line with Sections 161 and 162 of Cr.P.C., / 180 and 181 of BNSS. The provisions of Cr.P.C., / BNSS makes it clear that the Police Officer may reduce into writing any statement made to him in the course of an investigation and such statement recorded by the Investigation Officer need not be signed by the person, who makes*



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*it. Thus, there is a bar provided under Section 162 of Cr.P.C., / 181 of BNSS. An exception cannot be carved out while dealing with a challenge to the detention order. The finding of the Division Bench at Paragraph No.11 of the order runs contrary to the statutory provision and therefore, it has to be necessarily held to be per incuriam.*

7. We believe that our order has been misconstrued and has not been understood in proper perspective. It was never the intention of the Bench to conclude that a statement under Section 180(3) of BNSS or Section 161 of the Cr.P.C., 1973 should be signed by the deponent, being conscious of the statutory requirement that obviates a necessity of signature on the statements recorded under the aforesaid provisions.

8. Our intention was to state that if at all those statements were sought to be taken advantage of, to buttress the subjective satisfaction of the sponsoring/detaining authority while passing an order under Act 14 of 1982, then it is necessary that the material relied upon by that authority must be seen to emanate from the deponent himself/herself, to be credible.

9. A statement under Section 180(3) of the BNSS or Section 161 of the Cr.P.C. would thus not come to the aid of the sponsoring/detaining authority, and would not contribute credible material that would support his subjective satisfaction.

10. In fact, both Sections 180(3) of BNSS and Section 161 of the Cr.P.C. relate to the examination of witnesses in the course of investigation of a case and such statements would hence be of no avail for the purpose of supporting



subjective satisfaction in cases of detention. We, hence, reiterate our view in the present matter as well.

11. That apart, the subjective satisfaction of the detaining authority is vitiated for the reason that reliance upon an order passed in CrI.M.P.No.1414 of 2021 dated 04.06.2021 by the Principal Sessions Judge under EC & NDPS Act, Chennai is misplaced. The inference that the detenu is likely to come out on bail is based on a comparison of the detenu with the accused in CrI.M.P.No.1414 of 2021. However, that accused had no previous case, whereas the detenu has six previous cases.

12. Since the circumstances in the present matter are far graver, we find that the subjective satisfaction of the authority that the detenu may be enlarged on bail is misplaced, as the gravity of the offences in the present case would, no doubt, weigh with the authorities as and when the bail application filed by the detenu would be considered.

13. Hence, we find merit in the submission of the petitioner that the subjective satisfaction of the authority that bail would be granted, is nothing but mere ipse dixit.

14. In light of the aforesaid discussion, this Habeas Corpus Petition is allowed and the Detention Order passed by the second respondent in No.760/BBCDEFGISSSV/2025, dated 06.10.2025 is set aside.

15. The detenu, viz., Santhosh @ Vellai Santhosh, S/o. Babu, aged 27



years, now confined in Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.

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(A.S.M.,J.) (S.M.,J.)  
25-06-2026

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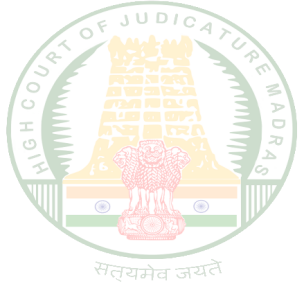
Index: Yes/No

Speaking order

Neutral Citation: Yes

To

1. The Additional Chief Secretary to Government,  
Department of Prohibition and Excise (Home),  
Fort St.George,  
Chennai -600009.
2. The Commissioner of Police  
Greater Chennai Police,  
Vepery, chennai-600007.
3. The Superintendent of Prison,  
Central Prison,  
Puzhal, Chennai.
4. The Inspector of Police,  
F-1,Chintadripet Police Station,  
Chennai.
5. The Public Prosecutor,  
High Court of Madras.
6. The Joint Secretary to Government,  
Public (Law and Order),  
Secretariat, Fort.St.George, Chennai -9.



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**DR.ANITA SUMANTH J.  
AND  
SUNDER MOHAN J.**

**SL**

**HCP No. 2547 of 2025**

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