

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 05.03.2019

CORAM :

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**H.C.P.No.2527 of 2018**

AJITH KUMAR  
S/o.Murugan  
No.89, Mariamman Koil street  
Ayathur Mettu Colony, Veppampattu,  
Tiruvallur District.

.. Petitioner/himself of the detenu

-VS-

1.The State of Tamil Nadu  
Rep by its Secretary to Government  
Department of Prohibition and Excise (Home)  
Fort St.George  
Chennai - 600 009.

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

3.The Director General of Police,  
Government of Tamil Nadu,  
Chennai.

4.The Union of India,  
 Rep by its Secretary to Government,  
 Ministry of Home Affairs,  
 Department of Internal Security,  
 North Block, New Delhi - 100 001.

*[R3 and R4 suo motu impleaded vide order dated  
 02.11.2018 made in HCP.No.2527/2018]*

5.Union of India,  
 represented by its Secretary,  
 Ministry of Family Welfare,  
 New Delhi.

6.The State of Tamil Nadu,  
 represented by its Secretary,  
 Home Department,  
 Fort St. George,  
 Chennai.

... Respondents

*[R5 and R6 suo motu impleaded vide order dated  
 05.03.2019 made in HCP.No.2527/2018]*

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records in No.841/BCDFGISSV/2018 dated 17.09.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Ajith Kumar, son of Murugan, aged about 24 years, who is confined at Central Prison before this Honourable Court and set him at liberty.

For petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.M.Mohamed Riyaz, Addl. P.P.  
 For R.1 to R.3 & R.6

Mr.G.Karthikeyan,  
Assistant Solicitor General of India  
for R.4 and R.5

\* \* \* \* \*

## O R D E R

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

“Extra-marital relationship” has become a dangerous social evil nowadays. Many heinous crimes including ghastly murders, assaults, kidnappings, etc., are committed because of clandestine relationships and they are alarmingly increasing day-by-day. Most of the killings are either by husbands or wives to eliminate his or her cheating partner, the paramour and shockingly even children. Moreover, murders are being committed either by husband or wife to continue the relationship with paramour. English Daily - DT NEXT, dated 14.07.2016, gave the following shocking account about the number of murders committed in Chennai due to illicit relationship:

Year	Total Murders	Murders due to Extra-Marital Relationship	Percentage
2014	141	90	63%
2015	129	91	70.54%
2016 [Upto July]	65	50	76.92%

Similarly, Deccan Chronicle dated 03.07.2014, stated that most of the murders that occurred in United Andhra Pradesh were due to extra-marital or love affairs. Compared to other States, undivided Andhra Pradesh topped the number of such murders with 385 registered cases in 2013.

2. Though this case is a Habeas Corpus Petition, the facts of the case would reveal that murders have been committed due to illicit intimacy. One Joesph @ Ranjithkumar was having illicit intimacy with one Sophia of Korattur. Since the said Sophia developed contact with one Lokesh, a friend of Joseph @ Ranjithkumar, during 2017, Joseph @ Ranjithkumar attacked Lokesh and he was detained under the Goondas Act. After the expiry of detention, Joseph @ Ranjithkumar developed contact with one Kala of Annai Sathya Nagar, Anna Nagar. Because of previous enmity, Sathish, Gr.I.P.C., Greater Chennai Police, attached to Anti-Gangsters Wing, Central Crime Branch, received information that problem may arise between Lokesh, who developed illicit relationship with Sophia, with whom, Joseph @ Ranjithkumar was already having illicit connection and Joseph @ Ranjithkumar and hence, Sathish, Gr.I.P.C.,

called Joseph @ Ranjithkumar to come to Five Road Junction, New Avadi Road, Ayanavaram. Sathish, Gr.I.P.C., went to the said junction wherein Joseph @ Ranjithkumar was standing along with his friends. While Sathish Gr.I.P.C., was enquiring Joseph @ Ranjithkumar, Lokesh, a rowdy, who was attacked by Joseph @ Ranjithkumar in 2017, came along with more than five of his associates, armed with deadly weapons, like knife, machete and wrongly restrained Joseph @ Ranjithkumar and attacked him.

3. Though Sathish, Gr.I.P.C., tried to prevent the attack, Lokesh attacked Joseph @ Ranjithkumar indiscriminately over his head, neck, shoulder, hands and he fell down in a pool of blood and died. In the melee, Sathish, Gr.I.P.C., also sustained injuries. Though the associates of Joseph @ Ranjithkumar tried to apprehend Lokesh and his associates, they brandishing the knife and machete threatened them and escaped.

4. A case has been registered in Cr.No.426 of 2018 by K2 Ayanavaram Police Station under Sections 147, 148, 341, 353, 332, 307, 302, 336, 506(ii) I.P.C., and Section 20 of Arms Act, 1959. The investigation reveals that Shobanapriya @ Sophia with whom Joseph @

Ranjitkumar was having illicit connection and subsequently with Lokesh, Lokesh, Velu, Suresh @ Playboy Suresh, Ajit Kumar and Syed Abbas hatched criminal conspiracy to do away with Joseph @ Ranjitkumar. Pursuant to that only, they murdered Joseph @ Ranjitkumar.

5. In view of the above, one the accused Ajitkumar [the petitioner herein/detenu] has been detained under the Goondas Act, by order of the second respondent dated 17.09.2018 in No.841/BCDFGISSV/2018 detaining the petitioner as Goonda under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 read with orders issued by the Government in G.O.(D).No.74, Home, Prohibition and Excise (XVI) Department, dated 18th April 2018 under Sub Section (2) of Section 3 of the said Act.

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6. The petitioner has been detained in the ground case filed against him and others under Sections 147, 148, 341, 353, 332, 307, 302, 336, 506(ii) IPC and Section 20 of Arms Act, 1959, later altered into

Sections 147, 148, 341, 353, 332, 307, 302, 336, 506(ii) IPC and Section 20 of Arms Act, 1959 r/w 120(B) IPC. The petitioner was arrested on 20.08.2018. Since he is considered to be a Goonda, he was detained under Goondas Act vide order dated 17.09.2018. The said order of detention is challenged before this Court.

7. Heard Mr.Ilayaraja Kandasamy, learned counsel for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

8. The learned counsel for the petitioner made the following grounds of attack:-

- (1)The petitioner has not filed any bail application and therefore, there is no likelihood of coming out on bail;
- (2)The similar case referred to in Crime No.653/2016 in which bail was granted to the accused therein is not actually similar to the case in which the petitioner has been accused of and therefore, there is non-application of mind on the part of the detaining

authority; and

(3) There is a delay in passing the detention order.

However, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the State would submit that the petitioner is a gangster and the detention order has been passed rightly.

9. A perusal of the records would show that the petitioner is accused of offences under Sections 147, 148, 341, 353, 332, 307, 302, 336, 506(ii) IPC and Section 20 of Arms Act, 1959 r/w 120(B) IPC. Even as per paragraph 3 of the detention order, the petitioner has not moved any bail petition. It has been observed in paragraph 3 that only the relatives of the detenu are taking action to take him on bail by filing appropriate application. When there is no bail petition filed and pending, the likelihood of the petitioner coming out on bail and probability of release of the detenu imminently does not arise. Therefore, the detention order passed is bad for non-application of mind, while passing the order by the detaining authority.

10. Further, it has been stated in paragraph 3 of the detention order that in a similar case registered u/s 147, 148, 294(b), 336, 427, 307 and 506(ii) IPC altered into Section 302 IPC in Crime No.653/2016 on the file of K2, Ayanavaram Police Station, bail was granted by the Principal Sessions Court, Chennai and therefore, there is likelihood for the petitioner to come out on bail. A mere comparison of the Sections under which both the cases have been registered itself would show that both the cases are not similar. Moreover, in the instant case on hand, Section 20 of the Arms Act, 1959 has been invoked, whereas it is not so in the alleged similar case and therefore, the facts of the case quoted by the detaining authority and the facts of the ground case are different. Thus, there is no material available to substantiate that there is real possibility of the detenu coming out on bail and hence, there is total non-application of mind by the detaining authority.

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11. That apart, the other ground in which the detention order suffers infirmity, is the delay in passing the detention order. Though the petitioner was arrested on 20.08.2018, the detention order was passed

by the second respondent only on 17.09.2018 and there is unexplained delay of 28 days in passing the detention order.

12. Further, one of the co-accused in the case namely, Suresh @ Playboy Suresh was released by this Court by setting aside the detention order passed against him by an order dated 28.11.2018 made in HCP.No.2255 of 2018. Another co-accused namely, Logesh was released by this Court by setting aside the detention order passed against him by an order dated 17.12.2018 made in HCP.No.2252 of 2018.

13. In view of the foregoing reasons, the order of detention in Memo No. 841/BCDFGISSV/2018 dated 17.09.2018, passed by the second respondent is set aside. **The detenu, namely, AJITH KUMAR, Son of Murugan, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.**

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14. Though the detention order passed by the second respondent is quashed, the matter is kept pending to deal with the social evil - extra-marital relationship which is the basic reason for the murder in this case.

Marriage in India is based on love, faith, trust and legitimate expectation. The marital relationship is considered to be sacred. However, what is to be sacred is dangerously fast becoming scary shattering families due to outside conjugal relationship. Therefore, to adjudicate the said issue of extra-marital relationship by men and women, this Court *suo motu* impleads (a) Union of India, represented by its Secretary, Ministry of Family Welfare, New Delhi and (b) The State of Tamil Nadu, represented by its Secretary, Home Department, Fort St. George, Chennai, as respondents 5 and 6. Mr.G.Karthikeyan, learned Assistant Solicitor General of India takes notice on behalf of newly impleaded fifth respondent and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor takes notice on behalf of the newly impleaded sixth respondent, who undertake to get response.

15. In view of spurt in offences, especially, murders due to extra-marital affairs, it is the bounden duty of this Court to address the issue. In an effort to find out the reasons and find ways and means to address the issue of “Extra-Marital Relationship” and to prevent/reduce the related offences, queries are being raised by this Court. Therefore, the

queries are neither opinion nor finding or conclusions of this Court. The following queries are raised to be answered by the respondents:

- i. How many murders took place in Chennai as well as in Tamil Nadu and in India for the past 10 years due to extra-marital affairs?  
[Yearwise details to be given.]
- ii. How many offences like suicide, kidnapping, assault, etc., other than murder were committed due to illicit intimacy in Chennai, Tamil Nadu and in India for the past 10 years?
- iii. Whether there is phenomenal increase in the number of offences due to immoral relationship year by year?
- iv. Is it a fact that the Mega Television Serials and Cinemas are major reasons for the increase in scandalous relationship in our country?
- v. Whether Mega Television Serials and Cinemas invariably give clue to the people involved in clandestine relationships to commit the offences including murders and kidnapping?
- vi. Whether spouses are increasingly engaging paid killers to get rid off their life partners?
- vii. Is it a fact that the economic independence of both the spouses is responsible for spurt in extra-marital affairs?

viii. Is it a fact that the increase in illicit relationships is because of sexual dysfunctions or deficiencies of the spouses?

ix. Does the spurt in scandalous affairs due to internet which offers platforms, like, Facebook, Facetime, Whatsapp, Instagram, etc., giving many chances for strangers to get connected?

x. Whether the increase in clandestine relationship is due to westernisation of our culture and way of life?

xi. Are illicit affairs due to invalidity of men due to their alcohol addiction?

xii. Whether illicit intimacy is due to lack of quality time spent by the spouses with each other, depriving of their emotional, psychological support and physical comfort and pleasure?

xiii. Whether better public exposure of women, who rightly broke restrictive customs, and their mingling with third parties in their offices or professions are some of the reasons for clandestine relationship?

xiv. Whether breaking away of joint family system and formation of nucleus family are responsible for the increase in extra-marital relationship?

xv. Is it correct to say that non-teaching of moral and ethical values in the schools is primarily responsible for many social evils including illicit affairs?

xvi. Is it a fact that scandalous relationships are due to conduct of arranged marriages contrary to the wishes of the bride or bridegroom?

xvii. Does mismatch of couples cause illicit intimacy?

xviii. What are all the sociological, psychological and economical factors responsible for spurt in extra-marital relationship?

xix. Why not the Central Government and the State Government constitute an Expert Committee headed by a Retired Supreme Court Judge/Retired High Court Judge, consisting of psychologists, psychiatrists, andrologists, neurologists, physicians, social activists, Non-Governmental Organisations who work for safeguarding the families, to study and analyse the reasons for the social menace of extra-marital relationship and find out the reason for increase in illicit relationship/extramarital relationship and give suggestions/solutions to arrest the evil and prevent connected offences in the interest of families/society?

xx.Why not the respondents constitute Family Counselling Centre to give counselling to the spouses in every District?

**16. Call the matter in the third week of June 2019.**

Index : Yes/No	(N.K,K,J)	(A.Q,J)
Internet : Yes/No	05.03.2019	
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To

1.The Secretary to Government,  
State of Tamil Nadu,  
Department of Prohibition and Excise (Home)  
Fort St.George  
Chennai - 600 009.

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

3.The Director General of Police,  
Government of Tamil Nadu,  
Chennai.

4.The Secretary to Government,  
Union of India,  
Ministry of Home Affairs,  
Department of Internal Security,  
North Block, New Delhi - 100 001.

5.The Secretary to Government,  
Union of India,  
Ministry of Family Welfare,  
New Delhi.

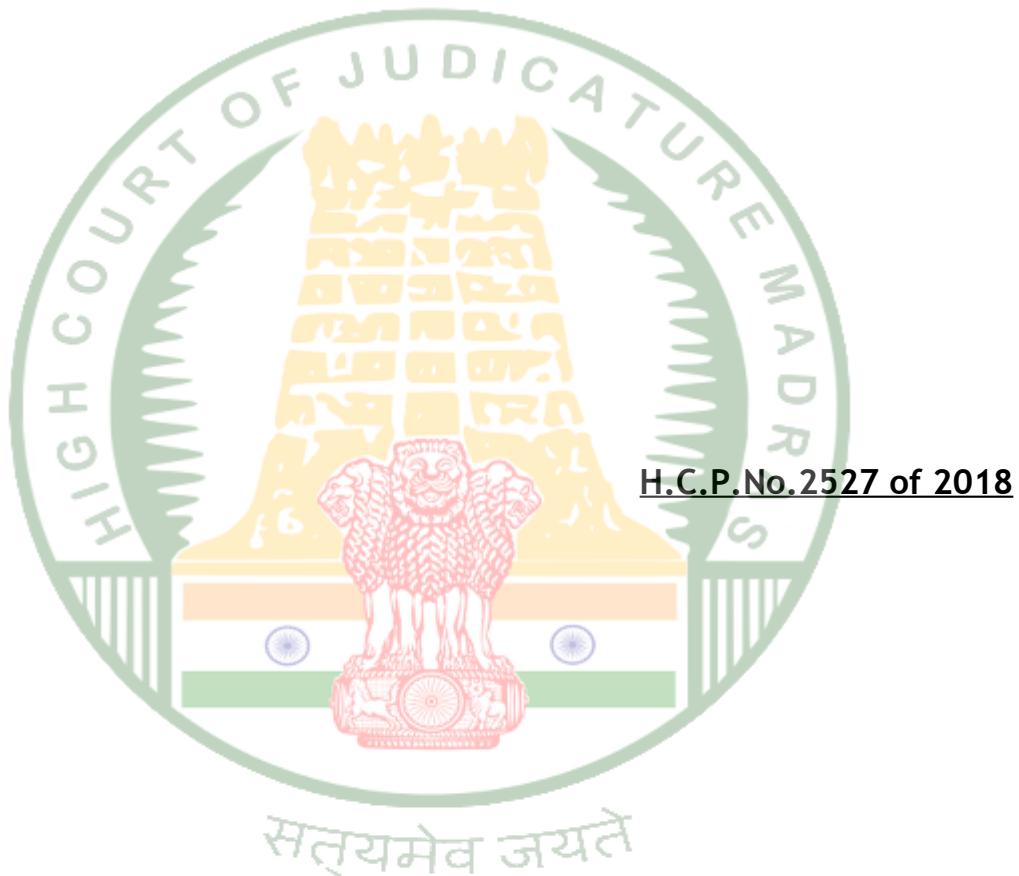
6.The Secretary to Government,  
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