

WEB COPY

W.P.No.16236 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.16236 of 2026

Hari Nadar
S/o.Arunachala Nadar
No.2/56, Nadar Sangam
Mela Elanthaikulam
Mannar Taluk, Tirunelveli District
Pin Code - 627 957.
Now confined at
Central Prison, Puzhal, Chennai.

Petitioner(s)

Vs

- 1.The Election Commission of India
Niruvachan Salai
Vishate Road
New Delhi, Pincode - 110 001.
- 2.The Chief Election Officer
No.206/N, Jawaharlal Nehru Salai
Jainagar, Arumbakkam
Chennai - 600 106.
- 3.The Deputy Inspector of Police
Prison Department
Chennai.



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4.The Superintendent of Police
Central Prison,
Puzhal, Chennai.

5.The District Collector
Thenkasi District.

6.The Returning Officer
Alangulam Legislative Assembly
Constituency.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondent Nos.1 and 2 and to consider the representation dated 30.03.2026 and permit petitioner to cast petitioner vote in the election through postal ballot.

For Petitioner(s): Mr.S.Mahaveer Shivaji
for Mr.J.William Shakesphere

For Respondent(s):Mr.Niranjan Rajagopalan
Standing Counsel
for R1, R2 and R6

Mr.E.Raj Thilak
Addl. Public Prosecutor
for R3 and R4

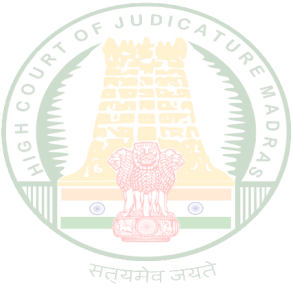
Mrs.E.Ranganayaki
Addl. Government Pleader
for R5

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Heard.

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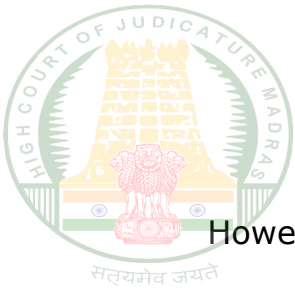
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2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, who is now confined in Central Prison, Puzhal, Chennai, to permit him to vote in the Assembly Elections, 2026 through postal ballot or in person by considering his representation dated 30.3.2026.

3. The case of the petitioner is that in view of the false case foisted against him, which is politically motivated, he is detained under Act 14/1982 in BBCDEFGISSV.No.26 of 2026, dated 22.01.2026. Challenging the same, he has also filed HCP No.329 of 2026 before this Court and the same is pending. Earlier, he had contested as a candidate for Member of the Legislative Assembly in the State election in Alangulam Legislative Assembly as an independent candidate. He had also submitted a nomination for the Assembly Election, 2026 for being sent to the Returning Officer of Alangulam Constituency, however, the third respondent did not send it and the same was handed over to his counsel. His nomination was rejected by the Returning Officer. On 30.3.2026, the petitioner had submitted a representation to the fourth respondent seeking to allow the petitioner to cast his vote and make arrangement for polling booths in jail.

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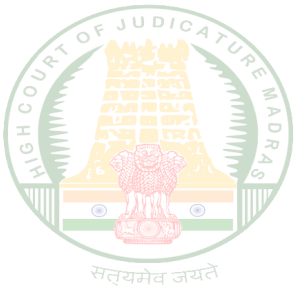


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However, on 15.4.2026, the petitioner was informed that he will not be allowed to vote in the election. Alleging that his voting right has been infringed by the third respondent, the petitioner has filed the present writ petition.

4. Learned Additional Public Prosecutor appearing for respondents 3 and 4, by producing the written instructions dated 22.4.2026 received from the Superintendent of Prisons, Central Prison-II, Chennai, submitted that the petitioner is in judicial custody as remand prisoner in connection with Crime No.187/25 registered under Sections 3(5), 310(2), 318(4), 336(2), 336(3), 338, 61(2) of BNS, as also he has been detained as TPDA prisoner on 22.1.2026 as per the orders of the Commissioner of Police, Greater Chennai. Apart from the above, the petitioner is also facing the following pending cases:

Sl. No.	Name of Police Station	Crime No. and Section	Name of the Court
1	DCB, Ariyalur	01/2026 U/s.318(4), 61(2) BNS	Judicial Magistrate No.I, Ariyalur
2	Peelamedu	740/2025 U/s.318(4) BNS	Judicial Magistrate No.II, Coimbatore



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3	CCB, Chennai	13/2026 U/s.318(4), 319, 336(3), 338, 340(2), 61(2) BNS	Additional Metropolitan Egmore	CCB, Magistrate,
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5. Learned Additional Public Prosecutor further submitted that the petitioner has applied for filing nomination as independent candidate and the same has been forwarded to the concerned Returning Officer of Alangulam Legislative Constituency through his lawyer and it is learnt through media that his candidature was rejected as the filing procedure was not duly followed. The representation of the petitioner dated 7.4.2026 seeking to cast his vote for the Tamil Nadu Legislative Assembly Election, 2026 was forwarded to the concerned Returning Officer on the same date. Since the petitioner has three pending cases against him in various Courts and is in custody, he is not eligible to vote in the ongoing Tamil Nadu Legislative Assembly Election, 2026.

6. We have considered the rival submissions and also perused the materials available on record.



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7. Section 62(5) of the Representation of People Act, 1951 (for short, "RP Act") provides as under:

"62. Right to vote-

(1) to (4) ...

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector."

8. The constitutional validity of the provisions of Section 62(5) of the RP Act has been upheld by a two-Judge Bench of the Apex Court in *Mahendra Kumar Shastri v. Union of India and another*¹ and later by a three-Judge Bench of the Apex Court in *Anukul Chandra Pradhan, Advocate, Supreme Court v. Union of India and others*².

9. It is not in dispute that Section 62(5) of the RP Act permits persons under preventive detention to exercise their right to vote. The petitioner in his petition stated that he was detained by the Detaining

¹(1984) 2 SCC 442

²(1997) 6 SCC 1



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Authority under order dated 22.1.2026 and nothing has been stated in respect of the other cases pending against him.

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10. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*³, the Constitution Bench of the Supreme Court held that the right to vote or stand as a candidate for election is not a civil right, but is a creature of statute or special law and must be subject to the limitations imposed by it.

11. A prayer for direction to facilitate voting through postal ballot of a person, who is in preventive detention, came up for consideration before a Division Bench of Madurai Bench of Madras High Court in W.P. (Crl.) MD No.2065 of 2026. Vide order dated 10.4.2026, the Division Bench, while disposing of the writ petition, directed as under:

*"5.Considering the issue involved in the present Writ Petition, we are of the view that, instead of the prison authorities collecting the willingness of the detenus, the Secretary, District Legal Services Authority, Madurai, shall visit the Central Prison, Madurai, and independently ascertain the willingness of the prisoners who are detained under the preventive detention laws. **It is made clear that such exercise shall be confined only to those prisoners who are under preventive detention and not***

³(1952) 1 SCC 94



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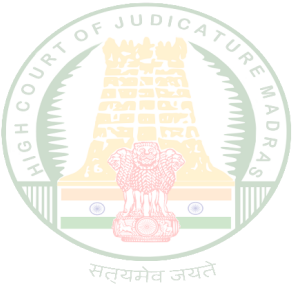
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to those in judicial custody or convicted prisoners. *The authorities shall ensure that the willingness is obtained in a fair and proper manner from only those prisoners who are in custody purely on the basis of preventive detention. After obtaining such willingness, the same shall be forwarded by the Superintendent of Prisons, Central Prison, Madurai, to the competent authorities in accordance with the Circular referred to above."*

[emphasis supplied]

12. As stated supra, in the case at hand, there are three more criminal cases pending against the petitioner, which are under investigation. Therefore, we are of the opinion that the petitioner cannot be permitted to vote in the ensuing Tamil Nadu State Assembly Election, 2026.

13. A right to vote is a statutory right. The persons convicted of crime are kept away from elections. The RP Act temporarily takes away the power of such persons to vote, even if his name is on the electoral rolls. The name is not struck off, but the qualification to be an elector and the privilege to vote when in the lawful custody of the police is taken away. The relief sought in the writ petition is hit by the statutory prescription in Section 62(5) of the RP Act.



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For the aforegiven reasons, the writ petition is dismissed. There shall be no order as to costs.

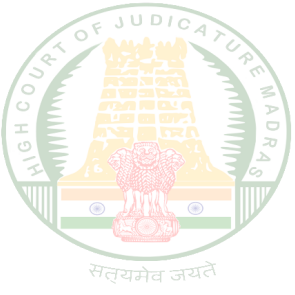
(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
22.04.2026

Index : Yes
Neutral Citation : Yes
bbr/sasi

To:

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THE HON'BLE CHIEF JUSTICE
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