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Crl.O.P.(MD)No.15390 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2026

PRONOUNCED ON : 05.08.2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

Crl.O.P.(MD)No.15390 of 2026

G.V.Markandayan
S/o. Late G.Varatharajan,
Member of Legislative Assembly
(Vilathikulam Constituency)
No.2, West Street,
Ramachandrapuram,
Vilathikulam Taluk,
Toothukudi District.

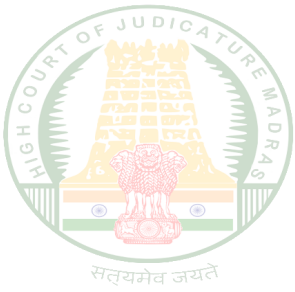
...Petitioner/Accused

vs.

The State Rep. By
The Inspector Of Police
District Crime Branch,
Thoothukudi.
(Crime No.16 of 2026)

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS., to set aside the remand order in Crime No.16 of 2026 dated 20.07.2026 and consequently enlarge the petitioner on bail in Crime No.16 of 2026.



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Crl.O.P.(MD)No.15390 of 2026

For Petitioner : Mr.P.Wilson, Senior Counsel
for Mr.S.Kasirajan

For Respondent : Mr.R.John Sathyan,
State Public Prosecutor
Assisted by Mr.Arun Anbumani
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed challenging the order of remand in Crime No.16 of 2026, dated 20.07.2026, thereby accepted the remand report of the petitioner and remanded him to judicial custody till 03.08.2026 and consequently, enlarge the petitioner on bail in Crime No.16 of 2026.

2. The petitioner is an accused in Crime No.16 of 2026 registered for the offences punishable under Sections 351(3), 352, 353(2) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS' for brevity).

3. The case of the prosecution is that on 18.07.2026 a public meeting was conducted near Krishnan Temple, Kovilpatti, to express gratitude to the voters on behalf of the political party. During the said meeting, the petitioner, who is a sitting Member of Legislative Assembly of the

2/24



CrI.O.P.(MD)No.15390 of 2026

Vilathikulam Constituency made highly derogatory, abusive and threatening

remarks against the Hon'ble Chief Minister of Tamil Nadu. While speaking to the gathering, he allegedly used insulting language and issued criminal threats, including statements to the effect that the Hon'ble Chief Minister would be dealt with inside the Legislative Assembly and physically harmed by breaking his hip born if certain actions were taken. The said speech has been widely circulated on the internet and created public tranquility between the Members of different political parties and give rise to a likelihood of public unrest, disturbance of public peace and possible clashes between groups. In pursuant to the registration of FIR, the petitioner was arrested by the respondent/police and produced him for remand. The remand report was accepted by the learned Judicial Magistrate No.1, Thoothukudi and remanded the petitioner to judicial custody till 03.08.2026 by an order dated 20.07.2026, which is under challenge in this criminal original petition.

4. The learned Senior Counsel appearing for the petitioner submitted that the offences registered as against the petitioner are punishable with imprisonment which may extend to seven years and therefore, the mandate of provisions under Section 35 (3) of BNSS is squarely applicable. He further submitted that prior to his arrest, the petitioner was not issued with

3/24



CrI.O.P.(MD)No.15390 of 2026

any notice under Section 35(3) of BNSS. Therefore, the arrest of the petitioner itself is illegal. He further submitted that the learned Judicial Magistrate remanded the petitioner without satisfying herself as to the necessity of arrest as mandated under Section 35 of BNSS and the guidelines laid down by the Hon'ble Supreme Court of India in the case of ***Arnesh Kumar vs. State of Bihar*** reported in ***(2014) 8 SCC 577***. Further, the respondent/police failed to state any reasons for the arrest of the petitioner as required under Section 35(1) of BNSS. It is also a clear violation of the law laid down by the Hon'ble Supreme Court of India in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation*** reported in ***(2022) 10 SCC 51***. He further submitted that the arrest of the petitioner was also not intimated to anybody. Even then, the Judicial Magistrate without considering the above fact, mechanically without applying her mind and remanded the petitioner to judicial custody. Therefore, it cannot be sustained and liable to be dismissed. In support of his contention, he relied upon several judgments of the Hon'ble Supreme Court of India.

5. The respondent herein filed counter affidavit and the learned State Public Prosecutor appearing for the respondent/police submitted that after registration of FIR and during the course of investigation, the speech of the

4/24



Crl.O.P.(MD)No.15390 of 2026

petitioner widely circulated in various social media platforms. Therefore, in

order to prevent the petitioner from committing in any further offences, from making any inducement of threat to the witnesses acquainted with the facts of the case and to prevent the petitioner from causing the evidence including electronic evidence from disappearing or tampering with the same by using his political influence, the arrest of the petitioner was very much required by the respondent/police. He further submitted that his threatening speech, would cause clashes among two groups, unrest and disturbance of public peace and considering the security of the Hon'ble Chief Minister, since the petitioner threatened the Hon'ble Chief Minister to attack him inside of the Legislative Assembly itself, the arrest of the petitioner become necessary. Therefore, he was arrested on 20.07.2026 at about 6.39 a.m. The arrest information was duly served to the brother-in-law of the petitioner, who was present at the time of his arrest and in the presence of one witness namely A.Devaraj S/o.Arumugam, who resides at Meenakshi Nagar, Vilathikulam.

6. Heard the learned counsel appearing on either side and perused the materials available on record.



7. On perusal of the counter affidavit filed by the respondent and also

on the submissions made by the learned counsel appearing for either side, it is revealed that after his arrest, he was subjected for preliminary interrogation. During the preliminary interrogation, the petitioner was served with questionnaire for which he had answered in his own handwriting. The relevant questionnaires and answers of the petitioner are extracted hereunder:-

42	எந்த முகாந்திரத்தின் அடிப்படையில் தாங்கள் 18.07.2026ம் தேதி பொதுகூட்டத்தில் பேசியுள்ளீர்கள்? ஜனநாயக மாண்பை காக்க
43	சட்டமன்ற உறுப்பினரான தாங்கள் கோவில்பட்டியில் நடந்த பொதுகூட்டத்தில் மாண்புமிகு தமிழக முதலமைச்சர் அவர்களை ஒருமையில் பேசி உயிருக்கு அச்சுறுத்தல் ஏற்படுத்தும் விதமாக கொலை விரட்டல் விடுத்து பொது அமைதிக்கு குந்தகம் ஏற்படுத்தும் வகையில் பேசியது சட்டப்படி தவறு என்று தெரியுமா? கருத்து சுதந்திரத்தின் அளவு கோலை மீரவில்லை
44	அவ்வாறு பேசுவது தவறாக இருந்தால் சட்ட நடவடிக்கை எடுக்கப்படும் என்பது தங்களுக்கு தெரியுமா? Yes
45	முகாந்திரம் இல்லாமல் பொதுகூட்டத்தில் பேசியது சம்பந்தமாக இரண்டு கட்சி உறுப்பினர்களிடையே மோதல் ஏற்பட வாய்ப்பு உள்ளது என்று உங்களுக்கு தெரியுமா? முதல்வர் கருரி பேசியது தவறு
46	தாங்கள் பொதுகூட்டத்தில் பேசியது யாரின் தூண்டுதலின் பேரில் பேசினீர்கள்? மாண்புமிகு முதல்வருக்கு அறிவறுத்த
47	தாங்கள் பொதுகூட்டத்தில் பேசி வலைதளங்களில் பரவியதால் தமிழகத்தின் சட்டம் ஒழுங்கு பிரச்சனை ஏற்படும் என்பது தெரியுமா? தவறுதலாக பேசவில்லை



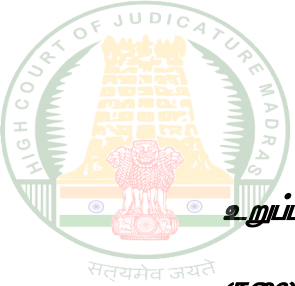
48	தாங்கள் பொதுகூட்டத்தில் பேசியதால் தமிழகத்தில் உள்ள அரசியல் கட்சியை சேர்ந்த நபர்களுக்கு இடையே தேவையற்ற பிரச்சனை ஏற்படும் என்பது தெரியுமா? முதல்வரிடம் தான் கேட்கவேண்டும்
49	தாங்கள் பொதுகூட்டத்தில் மிரட்டி பேசியதை முன் உதாரணமாக எடுத்துக் கொண்டு மற்ற கட்சியை சேர்ந்த நபர்களும் தங்கள் கட்சியை சேர்ந்த மற்ற நபர்களும் இதுபோல் பேசி சட்ட ஒழுங்கு பிரச்சனை ஏற்பட வாய்ப்புள்ளது என்பது தெரியுமா? இல்லை
50	தாங்கள் பொது கூட்டத்தில் வைத்து தமிழக சட்டமன்றத்தில் வைத்து முதலமைச்சரை சட்டமன்றத்தை கூட்டினால் உனக்கு உடம்பு, இருக்காது உன் எழும்பை உடைத்துவிடுவேன் என்று மிரட்டியதற்கு அங்கு ஏதேனும் ஏற்பாடு செய்து வைத்துள்ளீர்களா? சட்ட மன்ற கதவை மூடுவதற்கு முதல்வருக்கு அதிகாரம் இல்லை
51	சட்டமன்றத்தில் முதலமைச்சரை தாக்க யார் தலைமையில்தான், ஏற்பாடு செய்துள்ளீர்கள்? சட்டமன்ற கதவை மூட முதல்வருக்கு அதிகாரம் இல்லாதபோது நான் பேசியதற்கான வினா எழவில்லை
52	18.07.2026ம் தேதி கோவில்பட்டி பொதுகூட்டத்தில் பேசி மாண்புமிகு தமிழக முதல்வரை உன் எழும்பை உடைத்துவிட்டுதான் வெளியே அனுப்புவோம் என்று பண்மையில் பேசியுள்ளீர்கள். தாங்கள் போக வேறு எத்தனை பேரை ஏற்பாடு செய்துள்ளீர்கள். அவர்களின் விவரம்? எங்கள் இயக்க தலைவரை அவதூறாக பேசிய முதல்வரை விட குறைவாக தான் பேசியிருக்கிறேன்.
58	தமிழகத்தின் உயர்பாதுகாப்புள்ள சட்டமன்றவளாகத்தில் உள்ளே வைத்து முதலமைச்சரை கொலைவிரட்டல் விடுத்த தாங்கள் பொது இடத்தில் முதலமைச்சரை தாக்கமாட்டீர்கள் என்பது என்ன நிச்சயம்? பேச்சுரிமையை இந்த அரசு தடுக்கிறது
59	தமிழகத்தின் முதலமைச்சரின் உயிருக்கே கொலைவிரட்டல் விடுக்கும் வகையில் பொதுகூட்டத்தில் பேசிய தாங்கள் பொதுமக்களின் உயிருக்கும் பாதுகாப்பில்லாத சூழ்நிலையை உருவாக்கியுள்ளீர்கள் என்பது தெரியுமா? 50 ஆண்டுகால வயது 25 வயது பொதுவாழ்க்கை இதுவரை இல்லை. கர்நூல் முதல்வர் கூட்டத்தில் 41 உயிர் போனதுக்கு பதில் வேண்டும்.
60	அவ்வாறு ஏற்பட்டால் அது பொது அமைதிக்கு பங்கமும் சட்ட ஒழுங்கு பிரச்சனையும் ஏற்பட கூடும் என்பது தெரியுமா? ரூயமான கருத்து



இறுதியாக தங்கள் மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டிற்கு தங்களின் நிலைப்பாடு என்ன? பொது இடங்களில் கூட்டங்களில் ஜனநாயக அமைப்பில் முதல்வர் சட்டத்திற்கு உட்பட்டு பேசவேண்டும் அப்படி பேசினால் சரியான பதில் கிடைக்கும்

8. The above answers given by the petitioner clearly shows that he had knowledge for what reason he was arrested. That apart, the petitioner was duly served with grounds of arrest. The grounds and reasons for his arrest are as follows:-

“இவ்வழக்கில் புகார்தாரர் பாலசுப்பிரமணியன், தமிழக வெற்றி கழகத்தில் தூத்துக்குடி வடக்கு மாவட்டம், கோவில்பட்டி மாவட்ட செயலாளராக இருந்து வருகிறார். கடந்த 18.07.2026 ம் தேதி சுமார் 21.00 மணியளவில் கோவில்பட்டி கிரு.உஜ்ஜன கோவில் அருகில் திமுக சார்பில் வாக்காளர்களுக்கு நன்றி தெரிவிக்கும் பொதுக்கூட்டம் நடைபெற்றுள்ளது. மேற்படி பொதுக்கூட்டத்தில் கலந்து கொண்டு பேசிய விளாத்திகுளம் சட்டமன்ற உறுப்பினர் திரு.மார்க்கண்டேயன் அவர்கள் மாண்புமிகு தமிழக முதலமைச்சர் திரு.ஜோசப் விஜய் அவர்களை “மானங்கெட்ட தமிழ்நாட்டினுடைய முதலமைச்சர், உன்னை சட்டமன்றத்துக்குள்ளே வைத்து பார்த்துக் கொள்கிறோம்தா, நாங்க என்ன கோமாளி பயலுகளா நினைச்சுக்கிட்டு இருக்க? சட்டமன்றத்தை பூட்டுவானாம். பூட்டினால் உனக்கு உடம்பு இருக்காது. உன் எலும்பை உடைத்து விட்டுதான் வெளியே அனுப்புவோம் போடா வெளக்கெண்ண” என்று மாண்புமிகு தமிழக முதல்வருக்கு கொலைமிரட்டல் விடுத்துள்ளார். மேற்படி சட்டமன்ற உறுப்பினர் மார்க்கண்டேயனின் பேச்சு சமூக வலைதளங்களிலும் பரவியதால் திமுக மற்றும் தமிழக வெற்றி கழக



CrI.O.P.(MD)No.15390 of 2026

உறுப்பினர்களுக்கிடையே இடையே மோதல் ஏற்பட்டு, கலகம் உண்டாகி, பொது அமைதி

குலைவை ஏற்படுத்தும் விதம் குற்றம் புரிந்துளார் என்பது சாட்சிகளின் விசாரணையில் இருந்தும் சமீக வலைதளை வீடியோ மூலம் உண்மை என்று தெரிய வருகிறது.

2.இவ்வழக்கின் சம்பவமானது பிடிக்கக்கூடிய குற்றமாக இருப்பதால், தாங்கள் கைது செய்யப்படாவிட்டால் வழக்கின் புலன்விசாரணைக்கு தேவையான அனைத்து உண்மைகளையும் தாங்கள் வெளிப்படுத்தமாட்டீர்கள் என்பதற்காக

3.தாங்கள் மேலும் இதுபோன்ற குற்றசெயலில் ஈடுபடுவதை தடுப்பதற்காகவும், முறையான புலன்விசாரணை மேற்கொள்ளவேண்டி இருப்பதாலும்

4.தாங்கள் சட்டமன்ற உறுப்பினர் என்பதால் வழக்கின் உண்மைகளை அறிந்துள்ள சாட்சிகளை தூண்டுதல் செய்தோ, மிரட்டியோ தங்களது அதிகாரத்தை பயன்படுத்தியோ உண்மைகளை நீதிமன்றத்திற்கும் அல்லது காவல் துறையினருக்கும் தெரிவிப்பதை தடுக்க கூடும் என்பதாலும்

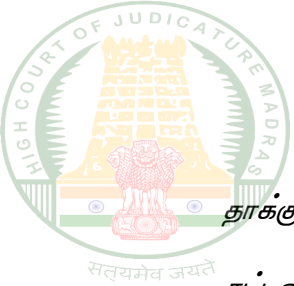
5.தங்களின் அரசியல் செல்வாக்கை பயன்படுத்தி வழக்கில் தொடர்புடைய ஆவணங்கள், மற்றும் மின்னணு ஆதாரங்களை அழிக்கவோ அல்லது மாற்றம் செய்யக்கூடும் என்பதாலும்

6.தங்களின் குற்றசாட்டுக்குரிய பேச்சானது இருதரப்பினருக்கும் இடையே கலகம் பொது அமைதி சீர்குலைவு, மற்றும் சட்டம்-ஒழுங்கு பிரச்சினை ஏற்பட வாய்ப்பு, இருப்பதாலும்

7.தாங்கள் மாண்புமிகு முதலமைச்சரின் உயிருக்கு அச்சுறுதல் ஏற்படுத்தி, கொலை மிரட்டல் விடுத்துள்ளதால் முதலமைச்சரின் அவர்களின் பாதுகாப்பு கருதியும்

8.தாங்கள் சட்டமன்றத்திற்குள்ளே வைத்து மாண்புமிகு தமிழக முதலமைச்சரை

9/24



CrI.O.P.(MD)No.15390 of 2026

தாக்குவதாக அச்சுறுத்தி மிரட்டியுள்ளதால் தமிழகம் முழுவதும் பல்வேறு இடங்களில்

சட்டஒழுங்கு பிரச்சனை ஏற்பட வாய்ப்புள்ளதாலும்

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9.மாண்புமிகு முதலமைச்சரின் உயிருக்கு அச்சுறுதல் ஏற்படுத்தி, பொது அமைதி குலைவை ஏற்படுத்திய இச்சம்பவத்தில் வேறு யாருக்கும் கூட்டுசதி தொடர்புள்ளதா என்பதை பற்றி விசாரணை மேற்கொள்ள வேண்டி இருப்பதாலும்

10.தங்களை மேற்படி வழக்கில் கைது செய்த காரணத்தை 20.07.2026 ம் தேதி காலை 06.39 மணிக்கு தெரிவித்தேன்.”

9. Thereafter, the respondent had prepared the Remand Report for remanding him to judicial custody. The learned Judicial Magistrate No.1, Thoothukudi after verifying the FIR, arrest intimation, the report of the preliminary interrogation, the grounds and reasons for his arrest and other records, ordered to remand the petitioner to the judicial custody till 03.08.2026. In fact, at the time of petitioner's remand, the petitioner counsel had relied upon all the judgments which are relied here.

10. On perusal of all the judgments, the learned Judicial Magistrate recorded that all the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 duly complied with and ordered to remand the petitioner to judicial custody. Immediately after his arrest, he was subjected to medical test before the Government Medical College and Hospital, Thoothukudi. The petitioner

10/24



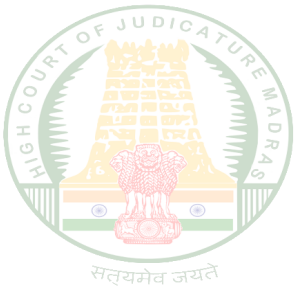
Crl.O.P.(MD)No.15390 of 2026

was subjected for medical examination and the Casualty Medical Officer/Emergency Medical Officer, Department of Emergency Medicine, certified the petitioner that he is fit for remand. Thereafter, the petitioner was duly informed about the grounds of arrest. It was duly received by the petitioner. Further, there is no dispute that the law laid down by the Hon'ble Supreme Court of India mandates that the accused must be served with grounds of arrest and the Judicial Officers are required to satisfy themselves that the mandatory procedures are duly complied with before passing an order of remand.

11. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Manubhai Ratilal Patel Through Ushaben vs. State of Gujarat*** reported in ***(2013) 1 SCC 314***, in which the Hon'ble Supreme Court of India held as follows:-

“24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it

11/24



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differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.”

The above judgment is not helpful to the case on hand, since the learned Judicial Magistrate herself satisfied with the reasons and materials placed before her and justified the order of remand.

12. The learned Senior Counsel appearing for the petitioner vehemently contended that there is absolutely no reasonable suspicion exist to arrest the petitioner and the respondent mechanically arrested the petitioner without following the procedure laid down under Section 35(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023.



13. It is relevant to extract the provisions under Section 35(1)(b) of

the Bharatiya Nagarik Suraksha Sanhita, 2023:-

“35.(1)(b) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

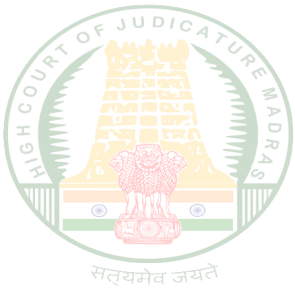
(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or



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CrI.O.P.(MD)No.15390 of 2026

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

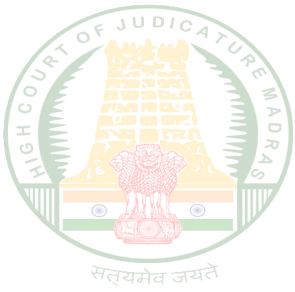
(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or



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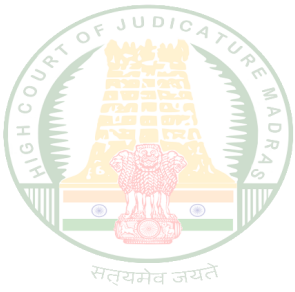
(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.”

14. In support of his contention, the learned Senior Counsel appearing for the petitioner relied upon the judgment of Hon'ble Supreme Court of India in the case of **Arnesh Kumar vs. State of Bihar** reported in **(2014) 8 SCC 273**. The relevant portions of the said judgment are extracted hereunder:-

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with



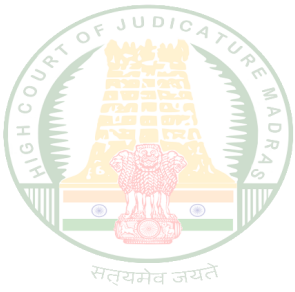
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Crl.O.P.(MD)No.15390 of 2026

imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

8.2. Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be



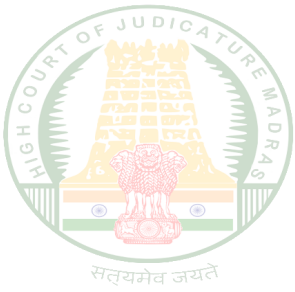
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satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

11.1. All the State Governments to instruct its police



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CrI.O.P.(MD)No.15390 of 2026

officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2. All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

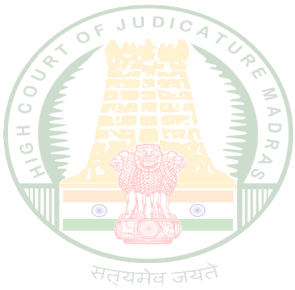
11.3. The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable



Crl.O.P.(MD)No.15390 of 2026

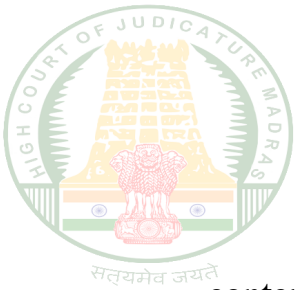
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for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

15. In the case on hand FIR was registered against the petitioner in Crime No.16 of 2026 for the offences punishable under Sections 351(3), 352, 353(2) of BNS. The offence under Section 351 (3) of BNS will be attracted where the threat is to cause to death or grievous hurt, or to cause destruction of property by fire, or to cause an offence punishable with death or imprisonment for life, the punishment may extend to imprisonment upto seven years or with fine or with both.

16. Further, the respondent himself satisfied that the arrest of the accused is necessary to prevent such person from committing any further offence. Therefore, the respondent followed the procedure laid down under Section 35(1)(b) of BNSS. Hence, the above judgment is not applicable to the case on hand.

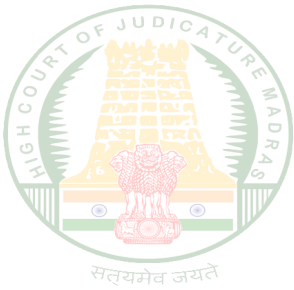


Crl.O.P.(MD)No.15390 of 2026

17. The learned Senior Counsel appearing for the petitioner further

contended that the Hon'ble Supreme Court of India repeatedly held that the position quo of Section 35(6) of BNSS, even assuming that the person to whom a notice under Section 35(3) of BNSS has been issued failed to comply with the terms of the notice or his unwilling to identify himself, an arrest is not a matter of routine. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation and another*** reported in 2026 SCC OnLine SC 162, in which the Hon'ble Supreme Court of India held as follows:-

“32. The power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023 must be interpreted as a strict objective necessity, and not a subjective convenience for the police officer. It does not mean the police officer can arrest to simply ask questions. However, it means that the police officer must satisfy himself that the investigation, qua an offence punishable with imprisonment up to 7 years, cannot proceed effectively without taking the concerned individual into custody. Any interpretation to the contrary would clearly frustrate the purpose and legislative intent of Sections 35(1)(b) and Sections 35(3) to 35(6) of the BNSS, 2023.



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CrI.O.P.(MD)No.15390 of 2026

33. *On the basis of the interpretation given by us, we conclude as follows:*

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.

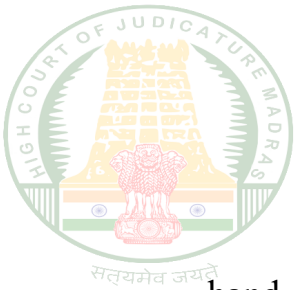
b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.”



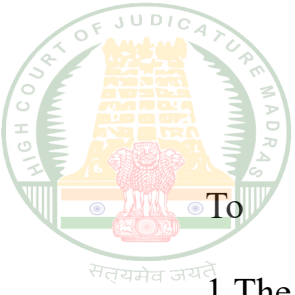
Crl.O.P.(MD)No.15390 of 2026

18. The above said judgment is also not applicable to the case on hand, since the respondent had duly followed the procedure laid down under Section 35 of BNSS, 2023. Further, prior to the arrest of the petitioner, the respondent himself satisfied that an arrest of the petitioner is very much necessary. Therefore, this Court finds no infirmity or illegality in the order of remand and hence, the Criminal Original Petition is liable to be dismissed.

19. Accordingly, the Criminal Original Petition is dismissed. In respect of consequential prayer seeking bail to the petitioner is concerned, the learned counsel for the petitioner sought permission of this Court to withdraw the said prayer and this Court by an order dated 29.07.2026 has granted permission to withdraw the consequential prayer.

05.08.2026

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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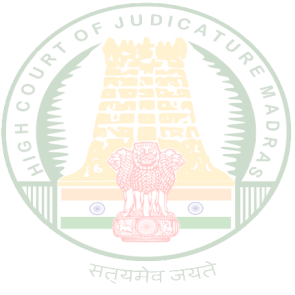
Crl.O.P.(MD)No.15390 of 2026

To

1.The Judicial Magistrate No.1,
Thootukudi.

2.The Inspector of Police,
District Crime Branch,
Thoothukudi.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Crl.O.P.(MD)No.15390 of 2026

G.K. ILANTHIRAIYAN, J.

dm

Pre-delivery order made in
Crl.O.P.(MD).No.15390 of 2026

05.08.2026