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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 30986 of 2026

CNR: {HCMA012564112026}

D.Sudha

Case QR

..Petitioner(s)

Vs

State represented by The Inspector of Police
B-2, Esplanade Police Station,
Broadway, Chennai.
Crime No.157/2026

..Respondent(s)

Prayer: This petition is filed under Section 482 of BNSS, 2023, praying to enlarge the petitioner on bail in the event of their arrest in Crime No.157 of 2026 on the file of the Respondent police.

For Petitioner(s): Mr.A.Damodaran
for Mr.Thanasekar A

For Respondent(s): Mr.R.John Sathyan,
State Public Prosecutor

Assisted by Mr.R.Rajasekaran
Government Advocate (Crl.side)

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ORDER

1. This is a petition for anticipatory bail under Section 482 of BNSS. The petitioner is the first accused in Crime No. 157 of 2026 on the file of the Inspector of Police, B-2 Esplanade Police Station, Chennai, registered for offences under Sections 296(b), 352 and 353(1)(c) of BNS. Investigation is pending.

2. The prosecution case, briefly stated, is as follows. On 7 October 2026, at a function of the Dravida Munnetra Kazhagam held at Raja Annamalai Mandram, Chennai, the petitioner—a Councillor of Ward No. 95 of the Greater Chennai Corporation and a functionary of that party's women's wing—presided over the gathering and addressed it. She is alleged to have used derogatory and abusive words in relation to the Hon'ble Chief Minister of Tamil Nadu. The counter-affidavit summarises the expressions as referring to him as a "*dog*" and a "*corpse*", together with other objectionable language, with the intention, as the first information report puts it, of defaming him, disturbing public peace and creating enmity between two groups. A video of the speech was uploaded on social media and is said to have caused apprehension and tension among the general public.

3. A transcription of the speech forms part of the typed set, and I have read it. The speech taunts the Hon'ble Chief Minister about his age, calls him a dog and a corpse, and asserts that he captured power by putting out reels rather than by work. Nobody before me sought to defend the language, and I will not reproduce more of it than the decision requires. Two features of the speech are material to everything that follows. First, it was directed at one individual—the head of a rival political party—and at no community or class of persons. Second, it was platform rhetoric addressed to a party gathering; it exhorted nobody to any act.

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4. The speech was delivered on 7 October 2026. For twelve days thereafter, no complaint was made. On 19 October 2026, a functionary of the Tamilaga Vettri Kazhagam—the party in office, of which the Hon'ble Chief Minister is the leader—presented a complaint at the police station, resting on the circulating video and claiming no grievance personal to himself. The first information report was registered the same hour. That night, at about 9.35 p.m., a notice under Section 35(3) of the BNSS was served on the petitioner's daughter, requiring the petitioner—then away at Bengaluru for a family function and medical treatment—to appear by the next afternoon. Her daughter and son-in-law attended the station the following morning with a written explanation and a request for reasonable time. A second notice issued that day for the morning after. On 21 October 2026 the petitioner presented this petition.

5. The respondent has filed a counter-affidavit and the petition is opposed on its lines: the petitioner failed to appear in response to either notice, while the second accused appeared in response to the first; she has filed this petition "*only to escape from the clutches of law and drag on the investigation proceedings*"; there is a possibility of absconding, of tampering with the evidence and of threatening witnesses; and "*there is a reasonable apprehension that she may again deliver speeches containing defamatory and derogatory remarks against the Hon'ble Chief Minister of Tamil Nadu*", likely to "*disturb public peace, promote hostility among supporters of rival political parties, and create law and order problems*".

6. After the petition was filed, the petitioner placed three documents on record:

   (i) a transcription of a video posted on her own Instagram account, in which she states that she spoke in an emotional state, that senior functionaries of her own party counselled her against such language at the venue itself, and that she expressed regret to her party leader then

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and there;

(ii) an affidavit sworn on 29 October 2026 tendering an apology to the Hon'ble Chief Minister, with an undertaking of care and restraint in her future public utterances; and

(iii) an affidavit of the same date expressing her respect for this Court, without prejudice to her contentions. These were her own acts, and I record them as such.

7. Learned counsel for the petitioner made the following submissions:

(a) the petitioner is a woman of about sixty years, a sitting Councillor against whom no antecedent is alleged; the apprehensions in the counter-affidavit are urged in the most general terms, without a single particular in support;

(b) the offences carry a maximum of three years; under Section 35 of the BNSS and the law declared in ***Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273**, and ***Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51**, arrest in such a case is the exception, and the police themselves proceeded by notice, which presupposes that arrest was not then considered necessary;

(c) the petitioner did not evade process: her family explained her absence the very next morning, and she moved this Court within two days—the recourse of a citizen, not the conduct of an absconder;

(d) the speech, however intemperate, was political speech against the head of a rival party; it named no community and incited no act, and the sections invoked are prima facie strained to fit it;

(e) the gravamen is an insult to the Hon'ble Chief Minister, for which the law provides the remedy of defamation under Section 356 of the BNS, instituted in the manner Section 222 of the BNSS prescribes; the police machinery cannot be made a substitute for it at the instance of a

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stranger; and

(f) everything the investigation needs is already with the respondent; no custodial purpose is pleaded; and the petitioner has publicly expressed regret and apologised on affidavit.

8. Learned Public Prosecutor, assisted by the Government Advocate (Criminal Side) adopted the counter-affidavit and submitted that the speech was not criticism but naked abuse of the holder of the highest elected office in the State, carried to the public at large on social media and calculated to set the cadres of rival parties against each other; that the apprehension of repetition is not fanciful; that two statutory notices were disobeyed; and that the investigation is at its threshold.

9. I have considered the rival submissions and perused the material placed before me.

10. The governing test is settled: the nature and gravity of the accusation, the role attributed to the applicant, and the facts of the case. Three questions accordingly arise:

    (i) what, precisely, is the accusation;

    (ii) does its investigation call for the custody of the petitioner; and

    (iii) does anything in her conduct disentitle her to the discretion?

    Each is coloured by the fact that the accusation arises out of a political speech and out of nothing else, and the answers must begin with the constitutional position of such speech.

11. Political speech—the speech by which those who govern are questioned, criticised, ridiculed and opposed—lies at the core of Article 19(1)(a) of the Constitution. A democracy that chooses its rulers by the ballot presupposes that the rulers may be attacked in words; the elector cannot choose between parties he is not free to hear criticised. The Constitution Bench held in **Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955**,

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that criticism of the Government, however strongly worded, is beyond the reach of the criminal law unless it tends to incite violence or public disorder. The permissible restriction is as narrow as the right is wide, and the line runs between discussion and advocacy, which are protected however offensive, and incitement, which alone the law may reach, as held in **Shreya Singhal v. Union of India, (2015) 5 SCC 1**. A speech which abuses a political leader but exhorts no one to any act stands on the protected side, whatever else may be said of it.

12. Those who hold public office are not differently placed; they are placed to endure more. Public officials must be open to criticism and comment on their public conduct, and the State cannot move to throttle such comment, as held in **R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632**. In **Subramanian Swamy v. Union of India, (2016) 7 SCC 221**, while upholding criminal defamation, the Supreme Court said in terms that criticism is different from defamation, and located the protection of public functionaries in the special channel now found in Section 222(2) to (4) of the BNSS—a complaint in writing by the Public Prosecutor, upon the previous sanction of the Government, before the Court of Session—so that the State's machinery is interposed only after a responsible officer has independently scanned the material. The scheme is coherent: the dignity of a Chief Minister is protected, but by a considered prosecution for defamation, not by a police register.

13. Recent decisions have carried the principle to the police station door. In **Javed Ahmad Hajam v. State of Maharashtra, 2024 INSC 187**, the Supreme Court held that every citizen has the right to criticise every decision of the State, that the right to dissent in a lawful manner is part of Article 19(1)(a), and that the effect of words is judged by the standard of reasonable, strong-minded minds, not of those who scent danger in every hostile point of view. In **Imran Pratapgadhi v. State of Gujarat, 2025**

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INSC 410, quashing a first information report over a poem posted online, the Court held that

> "*even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected*" (paragraph 38);

that a police officer

> "*is under an obligation to abide by the Constitution and to respect the ideals under the Constitution*" (paragraph 30);

that where the words complained of carry a sentence of three years or more but less than seven, it is always appropriate to exercise the option of a preliminary inquiry under Section 173(3) of the BNSS, for otherwise

> "*it will defeat the very object of incorporating sub-Section (3) of Section 173 of the BNSS and will also defeat the obligation of the police under Article 51-A(a)*" (paragraph 29);

and that

> "*Courts, particularly the constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens*" (paragraph 39).

The judgment opens with the observation that even after seventy-five years of the Constitution, the law-enforcement machinery is either ignorant of this right or does not care for it.

14. I turn to the offences—not to decide whether they are made out, which is for the investigation and the trial court, but because their prima facie strength is the measure of the gravity urged. **Section 296(b) of the BNS** requires obscenity, which is a term of art: words merely abusive, humiliating or defamatory are not by that token obscene, as held in **N.S. Madhanagopal v. K. Lalitha, (2022) 17 SCC 818**. This speech was foul; nothing suggests it was obscene.

15. **Section 352 of the BNS** looks to the reaction of the person insulted: mere abuse is not enough, and the insult must be likely to provoke the person insulted to break the public peace, as explained in **Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44**, and **Mohammad Wajid v.**

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State of Uttar Pradesh, *Criminal Appeal No. 2340 of 2023, decided on 8 August 2023*. The person insulted here was not present at the meeting; and the suggestion that the constitutional head of a government would be provoked by a ward councillor's abuse into breaking the public peace has only to be stated to be rejected.

16. **Section 353(1)(c) of the BNS**—the gravest offence invoked—punishes statements intended or likely to incite any class or community of persons to commit any offence against any other class or community. Its ingredients were settled, for the predecessor Section 505 of the Indian Penal Code, in **Bilal Ahmed Kaloo v. State of Andhra Pradesh, (1997) 7 SCC 431**: at least two classes or communities must be involved. The first information report identifies none; what it speaks of is enmity between the supporters of two rival political parties. A political party is a voluntary association that citizens join and leave at will—not a class or community—and the rivalry of party cadres, the daily weather of democratic politics, is not the communal enmity at which the provision is aimed. Nothing in the record discloses a single untoward incident traced to these words, in the twelve days before the complaint or since. I decide nothing about the sections; what the analysis yields is that the accusation, at its highest, is of insulting words spoken of one public man—conduct whose natural legal home is the law of defamation—and that the gravity urged rests on provisions prima facie strained to fit it.

17. The custodial question is the heart of an anticipatory bail petition. The question before me is not whether the petitioner's words deserve censure; they do, and she has said so herself on affidavit. The question is whether the material calls for her custody for the investigation. The offence, if any, consists wholly of words—spoken, recorded, uploaded, transcribed and on this record. The counter-affidavit itself recites that the scene was inspected, an observation mahazar prepared, and the complainant and

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witnesses examined. There is nothing to recover from the petitioner or at her instance, and the counter-affidavit pleads no custodial purpose at all: it opposes liberty without saying what custody would achieve. The apprehensions of absconding and tampering are urged without a particular in support; apprehensions so stated can be adequately met by conditions.

18. The manner of registration invites the same scrutiny. Twelve days of complete public silence were followed by registration within the hour of a complaint by a functionary of the ruling party who was not present at the meeting. Section 353(1)(c) is punishable with imprisonment which may extend to three years, so the option of a preliminary inquiry under Section 173(3) of the BNSS was available, and **Imran Pratapgadhi** (cited supra) holds it always appropriate in speech cases; nothing shows the option was even considered. The State's apprehension—that quarrels would begin on social media and spill into the streets—is precisely the "*remote, conjectural or far-fetched*" danger that **S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574**, excludes: twelve days of public indifference, and calm since, are the record's own answer to it.

19. There remains the true grievance, and it deserves to be addressed as what it is. Stripped of the statutory labels, the complaint is that the petitioner gravely insulted the Hon'ble Chief Minister. The law does not leave such an insult without remedy: defamation is an offence under Section 356 of the BNS, and where the person defamed is a Minister in respect of his public functions, Section 222(2) to (4) of the BNSS opens the special channel of a complaint by the Public Prosecutor, with the previous sanction of the Government, before the Court of Session—besides the remedies, civil and criminal, open to him as to any citizen. Each of those routes has a safeguard built into it: an aggrieved person, or a Public Prosecutor who has independently applied his mind, must set the law in

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motion. What has been done here is to bypass that filter—to convert an insult to a dignitary into a public-order crime on the complaint of a bystander, so that the coercive machinery of cognizable investigation, with the threat of arrest at its point, could be deployed at once. A procedure Parliament designed as a filter cannot be evaded by choosing a different label for the same grievance.

20. The pattern of which this case is an instance is larger than this case, and I will say a word about it at the level of principle. Political discourse in this State, as in the country, is now conducted in substantial measure on social media. It is a matter of common knowledge that the major political parties—the party in office included—maintain organised social-media establishments, popularly called IT wings, whose daily output includes trolling and abuse of opponents, ideological, political and personal. Complaints about such content are made on all sides; and the accusation that recurs under every government, whichever party holds office, is that the police move within hours when the speaker belongs to the opposition, while complaints against those aligned with the establishment are not even brought on file. I do not find, and on this record I need not find, that the respondent acted at any party's instance here. But the police should ask themselves how the chronology set out in paragraph 4 appears to the citizen who watches it. An even hand between the ruling party and its opponents is not a courtesy the police extend; it is a condition of their constitutional legitimacy. The police serve the State, which endures, and not the party in government, which changes.

21. These are not abstract apprehensions; events of the last few days have illustrated them. It is in the public domain, widely reported in the press on 29 October 2026, that a reputed economist of this city—a scholar who has served bodies of the Union and of this State—was taken from his home at about five in the morning by policemen in plain clothes, no

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complaint, authorisation or first information report being shown to him, over an abusive social-media comment about a legislator of the ruling party which, it transpired within hours, had been posted from a fake account misusing his photograph. He was released the same day; the Hon'ble Chief Minister received him at the Secretariat, and a Minister publicly acknowledged the lapse. Nothing about that episode is before me, and I decide nothing about it; I note it for the two lessons it carries. First, the grace shown at the end does not answer the questions the beginning raised: on what verification were plainclothes officers sent to a citizen's doorstep at dawn over a social-media comment, and what action has followed against those who so acted? An apology, however high its source, is not accountability, and a remedy that depends on the Chief Minister's personal intervention is not a remedy at all. Secondly, that gentleman's eminence secured his release within hours and an audience at the Secretariat; a common citizen with no access to power, taken at dawn on the same mistaken complaint, would have tasted the lock-up, the remand and the long road of a trial before anyone asked whether the account was even his. The measure of a police force is not how it treats the eminent when the press is watching, but how it treats the unknown when nobody is. It is against that measure that the handling of political speech—this case included—falls to be judged.

22. Nor is it any answer that the speech was indefensible. The constitutional protection of speech is tested when speech is ugly, not when it is polite; it is never the decorous critic whom power is tempted to arrest. Those who hold high office in a republic hold it on the term that they will be criticised, lampooned and, not rarely, abused. The office is not so fragile that a ward councillor's invective at a party meeting can shake it, and the State diminishes the office it claims to protect when it answers words of that kind with the machinery of arrest. A government confident of itself

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meets criticism with argument, mockery with performance, and abuse—where it truly crosses the line—with the remedy the law of defamation provides. Magnanimity towards political speech is not a grace the State may extend or withhold; it is what the Constitution exacts of those who hold power over their critics. Seventy-five years into the Republic, as the Supreme Court observed in **Imran Pratapgadhi** (cited supra), our foundations are not so shaky that a speech can be treated as a threat to them.

23. Arrest, in this scheme, is not an instrument for the expression of official displeasure. In **Mohammed Zubair v. State (NCT of Delhi)**, order dated 20 July 2022 in W.P. (Crl.) No. 279 of 2022, the Supreme Court held that arrest is not meant to be, and must not be used as, a punitive tool, and that the criminal law and its processes ought not to be instrumentalised as tools of harassment. Where the offence charged consists of words, the threat of arrest is itself the sanction: the process becomes the punishment, and every other speaker on every other platform learns the lesson the arrest was meant to teach. That chilling of speech at large is what the constitutional courts, which "must be at the forefront", are required to guard against.

24. What I have said of the State's duty is not an absolution of the petitioner. The protection of the speaker is not approval of the speech. This State has a platform tradition older than the Republic, whose great practitioners proved that Tamil oratory can wound without descending to filth; an elected representative owes the discourse at least that much. Her own party seniors told her as much at the venue, and to her credit she accepted it—publicly, and on oath, before any court asked her to.

25. The legal position may be shortly stated:
    (i) political speech, including hostile, unfair and intemperate criticism of those who hold public office, lies at the core of Article 19(1)(a), and may be restricted only on the grounds Article 19(2) enumerates,

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applied through the tests of incitement and of proximate, not conjectural, danger laid down in ***Kedar Nath Singh***, ***S. Rangarajan*** and ***Shreya Singhal*** (all cited supra);

(ii) insult or defamation of an individual public functionary is remediable at the instance of the person aggrieved, or of the State through the channel of Section 222(2) to (4) of the BNSS with its built-in safeguards, and the public-order offences of the BNS are no substitute for that channel where no two classes or communities, and no proximate danger of disorder, are shown;

(iii) before a crime arising out of speech punishable with three years or more is registered, the police must consider the preliminary inquiry under Section 173(3) of the BNSS, which ***Imran Pratapgadhi*** (cited supra) holds it always appropriate to hold in such cases;

(iv) where the offence consists of words already recorded, custodial interrogation ordinarily serves no investigative purpose, arrest is the exception, and anticipatory bail will ordinarily issue, subject to conditions that protect the investigation but never to a condition gagging lawful speech; and

(v) in registering and investigating such crimes the police owe the Constitution an even hand between the party in office and its opponents, and the threat of arrest is not to be deployed as an answer to political speech, however strong, so long as it does not incite.

26. Measured by that position, this petition answers itself. The offences carry a maximum of three years; the petitioner is a woman of about sixty, a sitting Councillor of known address, with no antecedent alleged; the material is on video and on paper and is with the respondent; no custodial purpose is pleaded; the apprehension of abscondence is contradicted by the record, the apprehension of tampering is pleaded without a particular, and the apprehension of repetition is met by her sworn undertaking and the conditions below. The investigation shall proceed, and the petitioner shall cooperate with it; but she will face it in freedom.

27. One submission of the State must be dealt with expressly. The counter-affidavit, in substance, asks that the petitioner be restrained from

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speaking against the Hon'ble Chief Minister as the price of her liberty. I decline to impose any such condition. A condition of bail must secure the accused's presence, protect the evidence and witnesses, or prevent repetition of the offence, and must be reasonable, necessary and proportionate, as directed in ***Sachin Yadav v. State (NCT of Delhi)***, order dated 29 April 2026; a blanket restraint on expression serves none of those purposes and was disapproved in ***Mohammed Zubair*** (cited supra). A court that gags a politician as the price of liberty does indirectly what Article 19 forbids the State to do directly. The petitioner's volunteered undertaking to exercise restraint is recorded; it is her promise, not my condition.

28. In the result, this Criminal Original Petition is allowed. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen (15) days from the date on which the order copy is made ready, before the **learned 7th Metropolitan Magistrate Court, George Town,** on condition that **the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only),** with **two sureties each,** for a like sum to the satisfaction of the learned Magistrate concerned, and on further conditions:

(a) If the petitioner fails to surrender before the concerned learned Magistrate within a period of fifteen (15) days from the date of receipt of a copy of this order, this order shall stand automatically cancelled;

(b) The sureties shall affix their photographs and left thumb impression in the application for surety ship (Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019]'. The learned Magistrate shall obtain a copy of any one of identify proofs to ensure their identity;

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(c) **The petitioner shall report before the respondent police daily at 10.30 am until further orders;**

(d) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate actions against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on anticipatory bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji v. State of Kerala [(2005) AIR SCW 5560];***

(e) If the petitioner thereafter absconds, a fresh FIR can be registered under Section 269 of BNS Act.

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To

1.The 7th Metropolitan Magistrate Court, George Town.

2.The Inspector of Police
B-2, Esplanade Police Station,
Broadway, Chennai.

3.The Director General of Police, Tamil Nadu.

4.The Public Prosecutor,
High Court of Madras.

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N.RAMESH, J.

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