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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 33360 of 2026

CNR: {HCMA012738602026}

P.Raja Gopal
S/o Pandian,
No.41/13, Ganagaiamman Kovil Street,
Lakshmipuram, Thiruvanmiyur,
Chennai.
Currently residing at
C.R.P. Garden, 2nd Street,
Kodambakkam, Chennai.

Case QR

..Petitioner(s)

Vs

The State rep. by its, Inspector of Police
Cyber Crime Police Station,
East Zone, Chennai.
Crime No.8/2026

..Respondent(s)

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the Petitioner on Bail in Cr.No.08 of 2026 on the file of the Respondent Police, on such terms and conditions as this Honble Court may deem fit and proper as per the circumstances of the case and thus render justice.

For Petitioner(s): Mr.S.Ganesh

For Respondent(s): Mr.Durai Gunasekaran,
Government Advocate (Crl.Side)

ORDER

1. This is a petition for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The petitioner is the accused in

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Crime No. 08 of 2026 on the file of the Cyber Crime Police Station, East Zone, Chennai, registered for offences under Section 296(b) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Section 67 of the Information Technology Act, 2000 (the IT Act). The investigation is pending.

2. The case of the prosecution, briefly stated, is this. On 12.06.2026 a post containing obscene, abusive and derogatory remarks about the Hon'ble Chief Minister of Tamil Nadu was published from an account on the social media platform X. A complaint was given on 25.06.2026 and the First Information Report was registered the same day against the holder of that account. The police say that the investigation showed the petitioner to be that person. He was arrested on 22.10.2026, nearly four months after the case was registered, and was remanded to judicial custody. He has been in custody since then, for more than three weeks. His mobile phone has been seized and sent for forensic examination.

3. The petitioner applied for bail three times before he came to this Court. The learned XI Metropolitan Magistrate, Saidapet dismissed Crl.M.P. No. 6665 of 2026 on 27.10.2026. The reason given was this:

> *"Considering the grave nature of offence of this case and that the investigation is pending and also the involvement of the petitioner in any other cases has to be ascertained, if the accused is released on bail there is every possibility to abscond and tamper the evidence".*

The learned Principal Sessions Judge, Chennai dismissed Crl.M.P. No. 11143 of 2026 on 02.11.2026 on

> *"the gravity of offence and the nascent stage of the investigation".*

A second application, Crl.M.P. No. 11528 of 2026, was dismissed on

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05.11.2026 because there was no change of circumstances after the earlier dismissal.

4. Learned counsel for the petitioner made these submissions.

[a] Both offences are bailable, the offence under Section 67 of the IT Act by force of Section 77B of that Act, and in a bailable offence bail is a matter of right.

[b] Neither the learned Magistrate nor the Court of Session had any discretion to refuse it.

[c] The petitioner is innocent and is ready to abide by any condition that may be imposed.

5. Learned Government Advocate (Criminal Side) reiterated the case of the prosecution and opposed the petition.

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

7. Two questions arise.

Are the offences alleged against the petitioner bailable?

If they are, could bail have been refused to him?

8. Section 2(1)(c) of the BNSS defines a bailable offence as an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force. Every other offence is non-bailable. The classification is made by the legislature. It does not depend on the view a court takes of the seriousness of a particular accusation.

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9. **Section 296 of the BNS** punishes obscene acts and words in or near a public place with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both. The First Schedule to the BNSS shows the offence as bailable.

10. **Section 67 of the IT Act** punishes the publication or transmission of obscene material in electronic form. On first conviction the imprisonment may extend to three years and the fine to five lakh rupees. Section 77B of the same Act reads:

> *"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence punishable with imprisonment of three years and above shall be cognizable and the offence punishable with imprisonment of three years shall be bailable."*

11. An offence under the IT Act for which the imprisonment may extend to three years is therefore bailable, whatever the general law may say. The Supreme Court said so of Section 66 of the Act, which carries the same term, in **Maharaj Saran v. State of Punjab, 2026 SCC OnLine SC 1378**. A High Court had treated that offence as non-bailable without reading Section 77B, and its view was set aside. Section 67 does provide a higher term of five years, but only in the event of a second or subsequent conviction. Nothing placed before me shows that the petitioner has earlier been convicted under that provision, and I therefore do not go into how Section 77B would work in such a case. Both offences alleged against the petitioner are bailable. No non-bailable offence is alleged.

12. That being so, the petitioner's case was governed by Section 478

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of the BNSS and not by Section 480. Section 478(1), so far as it is material, reads:

> *"When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail".*

13. The word used is "shall". Section 480, which deals with non-bailable offences, says that the person "may be released on bail". The difference is deliberate, and it has been explained more than once. Section 478 reproduces Section 436 of the Code of Criminal Procedure, 1973. As held in **Rasiklal v. Kishore Khanchand Wadhwani, (2009) 4 SCC 446**:

> *"The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative."*

A Bench of three Judges had said the same of Section 496 of the Code of 1898 in **Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376**: a person accused of a bailable offence is entitled to be released on bail pending his trial, and the officer or the court is bound to release him. In **Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281**, the Supreme Court put it in one sentence:

> *"In bailable offence there is no question of discretion for granting bail."*

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14. What is left to the court is the form of the security. In the words of **Rasiklal** (cited supra), the only choice is between taking a simple recognizance of the accused and demanding security with surety. The first proviso to Section 478(1) allows the court to release the accused on his own bond without sureties, and requires it to do so where he is indigent. A person who is unable to give a bail bond within a week of his arrest is presumed to be indigent. This Court held long ago, under the corresponding provision of the old Code, that a condition other than the bond cannot be attached to bail in a bailable offence, in **In re Kota Appalakonda, AIR 1942 Mad 740** and **In re District Magistrate of Vizagapatam, AIR 1949 Mad 77**. The reason is simple. If a condition could be imposed, bail would have to be refused when it was not fulfilled, and the section does not permit refusal.

15. The statute and the decisions recognise two limits on the right. Under Section 478(2), a person who has failed to comply with the conditions of his bond as regards the time and place of attendance may be refused bail when he later appears or is brought before the court in the same case. And a person who, after his release, conducts himself in a manner that prejudices a fair trial forfeits the right, and this Court may then cancel the bail in its inherent jurisdiction, as held in Talab Haji Hussain (cited supra) and Rasiklal (cited supra). Both limits arise after release, and both arise from the conduct of the accused himself. Neither is a ground on which bail can be refused when it is first sought. Neither arose here.

16. I take first the order of the learned Magistrate. Every reason given in it, the nature of the offence, the pendency of the investigation, the need to

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find out whether there are other cases and the possibility of absconding or tampering, is a matter that a court weighs under Section 480 when the offence is non-bailable. None of them has a place under Section 478. The application before the learned Magistrate was described as one under Section 480. That did not alter the character of the offences. The provision quoted by a party does not decide which provision applies, and a court before which an accused is produced has first to see whether the offence alleged is bailable. The order itself records the submission that the petitioner was ready to comply with the conditions imposed by the court. He was a person prepared to give bail. He ought to have been released.

17. The orders of the Court of Session stand no differently. The gravity of an offence, for the purpose of bail, is settled by the legislature when it classifies the offence as bailable. The stage of the investigation and a forensic report that is awaited are reasons to which a court may look when it has a discretion. Here there was none. The second order proceeds on the absence of a change of circumstances. That rule governs successive applications where bail is discretionary. The right under Section 478 is given "at any stage of the proceeding". It does not come to an end because it has once been wrongly refused, and an accused who asks for it a second time does not have to show that anything has changed.

18. The right did not begin with the first bail application. Section 478(1) speaks first to the officer in charge of the police station, and Section 47(2) of the BNSS requires a police officer who arrests without warrant a person accused of a bailable offence to inform him that he is entitled to be released on bail and that he may arrange for sureties. The High Court of

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Orissa held in **Dharmu Naik v. Rabindranath Acharya, 1978 Cri LJ 864**, that a police officer has no discretion to refuse bail in a bailable offence once the accused is prepared to furnish surety, and that detention after such an offer is wrongful confinement. The High Court of Chhattisgarh held in **Lala @ Daneshwar v. State of Chhattisgarh, Criminal Misc. Petition No. 65 of 2015, dated 04.01.2021**, that the refusal of bail by a Magistrate in bailable offences under the IT Act violated the personal liberty of the accused under Article 21 of the Constitution. Those decisions are of persuasive value, and I respectfully agree with them. Nothing placed before me shows whether the petitioner was informed of his right when he was arrested. What the record does show is that he has been in prison for more than three weeks in a case in which the law entitled him to be released on the day of his arrest, upon his furnishing bail.

19. I should add a word about the two orders. They are corrected here because they are wrong in law, and this Court is the forum for that correction. As held in **Ayub Khan v. State of Rajasthan, 2024 INSC 994**, where a trial court errs in deciding a bail application the error is set right on the judicial side, and *"There is a difference between criticising erroneous orders and criticising a Judicial Officer."* Nothing in this order is a finding against the learned Magistrate or the learned Principal Sessions Judge.

20. <u>The legal position may be shortly stated</u>:

[a] Whether an offence is bailable is decided by the First Schedule to the BNSS or by the special law that creates the offence. Under Section 77B of the IT Act, an offence under that Act punishable with imprisonment which may extend to three years is bailable.

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[b] A police officer or a court before whom a person accused only of bailable offences is brought must first ask whether the offences are bailable. The provision quoted in the remand report or in the bail application does not decide that question.

[c] If the offences are bailable and the accused is prepared to give bail, he shall be released under Section 478(1) of the BNSS. The police officer, the Magistrate, the Court of Session and this Court have no discretion to refuse.

[d] The gravity of the accusation, the stage of the investigation, an awaited forensic report, antecedents, and the apprehension of absconding or tampering are considerations under Section 480. They are not grounds for refusing bail in a bailable offence.

[e] The right is available at any stage of the proceeding. An earlier refusal does not take it away, and no change of circumstances need be shown.

[f] The court may fix the amount of the bond and decide whether sureties are required. It may not attach any other condition. An accused who is indigent, or who is unable to give a bail bond within a week of his arrest, is to be released on his own bond.

[g] Bail may be refused in a bailable offence only in the case covered by Section 478(2). Bail once granted may be cancelled only by this Court in its inherent jurisdiction, for conduct after release that

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prejudices a fair trial.

21. In the result, this Criminal Original Petition is allowed and the petitioner is ordered to be released on bail on his executing 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 XI Metropolitan Magistrate, Saidapet, Chennai, and on further conditions that:

> [a] 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 the identity proofs to ensure their identity;
>
> [b] **the petitioner shall report before the respondent police as and when required for interrogation;**

The offences being bailable, no other condition is imposed. The bond shall be for the attendance of the petitioner as required by law. Section 478(2) of the BNSS will apply if he fails to keep its terms.

22. The Registrar General shall circulate a copy of this order to all the Principal District and Sessions Judges and the Chief Judicial Magistrates in the State of Tamil Nadu and the Union Territory of Puducherry, and to the Principal Sessions Judge and the Chief Metropolitan Magistrate, Chennai, for the

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information of the judicial officers who deal with remand and bail. A copy shall also be sent to the Director, Tamil Nadu State Judicial Academy.

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Note:

1. Registry is directed to forthwith upload this order in the Official Website of this Court.

2. All concerned to act on this order being uploaded in Official Website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in the official website of this Court will be watermarked and will also have a QR code.

To

1.The Principal District and Sessions Judges, State of Tamil Nadu.

2. The Principal District and Sessions Judges, Union Territory of Puducherry

3. The Chief Judicial Magistrates,
State of Tamil Nadu.

4.The Chief Judicial Magistrates,
Union Territory of Puducherry

5. The Principal Sessions Judge,
Chennai.

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6.The Chief Metropolitan Magistrate,
Chennai.

7. The Inspector of Police
Cyber Crime Police Station,
East Zone, Chennai.

8.The Superintendent, Saidapet Prison,
Chennai.

9.The Public Prosecutor,
High Court, Madras.

10.The XI Metropolitan Magistrate,
Saidapet, Chennai.

11.The Director,
Tamil Nadu State Judicial Academy

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N.RAMESH, J.

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