

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.08.2025

Pronounced on: 12.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrI.R.C.(MD) Nos.505 and 506 of 2025

CrI.R.C.(MD) No.505 of 2025

Mohammed Yosuf Raseen

... Petitioner

-VS-

1. The Inspector of Police
Melapalayam Police Station,
Tirunelveli City.

2.The Superintendent of Police
Anti-Terrorism Squad(ATS)
Madurai

... Respondents

(R2 is impleaded as per the order of the court
dated 16.06.2025 in CrI.M.P(MD)No.7430 of 2025)

Criminal Revision is filed under Section 438 and 442 of BNSS to
set aside the impugned dismissal order passed by the learned Judicial
Magistrate No.V, Tirunelveli in CrI.M.P.No.793 of 2025 dated 21.02.2025
and release the petitioner on bail.



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Crl.R.C(MD) No.505 and 506 of 2025



For Appellant : Mr.Kathirvelu, Senior Counsel
for Mr.S.M.A.Jinnah

For Respondents : Mr.A. Thiruvadikumar
Additional Public Prosecutor

Crl.R.C.(MD) No.506 of 2025

Syed Mohamed Buhari

... Petitioner

-VS-

1. The Inspector of Police
Melapalayam Police Station,
Tirunelveli City.

2.The Superintendent of Police
Anti-Terrorism Squad(ATS)
Madurai

... Respondents

(R2 is impleaded as per the order of the court
dated 16.06.2025 in Crl.M.P(MD)No.7431 of 2025)

Criminal Revision is filed under Section 438 and 442 of BNSS to
set aside the impugned dismissal order passed by the learned Judicial
Magistrate No.V, Tirunelveli in Crl.M.P.No.794 of 2025 dated 21.02.2025
and release the petitioner on bail.

For Appellant : Mr.S.M.A.Jinnah

For Respondents : Mr.A. Thiruvadikumar
Additional Public Prosecutor



COMMON ORDER

A.D.JAGADISH CHANDIRA, J.,

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These Criminal revisions have been filed seeking to set aside the impugned dismissal order passed by the learned Judicial Magistrate No.V, Tirunelveli in Crl.M.P.Nos.793 and 794 of 2025 dated 21.02.2025 and release the petitioners on bail.

2. The brief facts of the case are as under:

2.1 Based on the complaint lodged by the defacto complainant Manikandan a case was registered on 16.11.2024 at 13.30 hrs in Crime No. 354 of 2024 under Section 3 of the Explosive Substances Act , 1908 on the file of the Melapalayam Police Station.

2.2.The defacto complainant who is the lessee of the Alangar theatre had taken the theatre on 12 years lease and after renovating had been running the same for three years. Ganguva featuring Surya and Amaran featuring Sivakarathikeyan were screened in the theatre and on 16.11.2024 at about 3.05a.m., watchman of the theatre had called him over phone and informed that two persons had hurddled petrol bomb into the theatre and ran away and he had immediately gone to the theatre and intimated the same to the police and showed them the CCTV



footage and he has given complaint and thereby requested the first respondent police to take action.

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2.3 The case was taken up for investigation by the first respondent upon recovery of CCTV footages. A2/Mohamed Yusuf Raseen was arrested on 20.11.2024. A3/Syed Mohammed Buhari was arrested on 19.11.2024 respectively and remanded to judicial custody. Based on the investigation first respondent altered the sections of law into Section 196,113(2) of BNSS along with Section 3 of Explosives Substance Act 1908 and alteration reports were filed before the learned Judicial Magistrate, Tirunelveli on 19.11.2024 and 20.11.2024 respectively. Subsequently pursuant to the chief officer proceedings in RC No. 05915/Crime 3(2)/2024, dated 28.11.2024 investigation in this case was transferred to the second respondent and the second respondent took up the case for further investigation on 08.12.2024 and during the course of investigation further witnesses were examined and based on the materials gathered five other accused were arrested and remanded to judicial custody. Further based on the materials alteration report was filed invoking Sections 61(2),249,196 and 113(2)(b) of the BNS along with Section 3 of the Explosives Substances Act. The said alteration report was filed before the Judicial Magistrate Court No.V, Tirunelveli on



25.01.2025.

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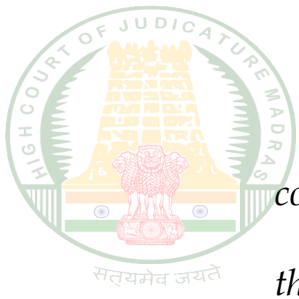
2.4. During the course of investigation it had come to light that A1/Imthiyas who is the member of banned organization Al-Umma was the mastermind behind the incident. He was absconding for more than two months and was eventually arrested on 22.01.2025 and further A8/Sadam Hussain @ Sadam who has harboured the other accused on instructions of A1/Imthiyas was formally arrested on 01.02.2025 while he was in custody in another case at Coimbatore, Central Prison in receipt of another case. A8/Sadam Hussain @ Sadam was produced through P.T.warrant on 05.02.2025 and he was remanded in the present case by the learned Judicial Magistrate on the same day. Subsequently application seeking custody of A8/Sadam Hussain @ Sadam was filed on 06.02.2025 and the same was allowed on 17.02.2025 and A8 was taken into one day custody on 18.02.2025.. Whiles, the prosecution filed a petition in Cr.M.P.No.649 of 2025 under Section 193(9) of BNSS seeking extension of thirty days for completion of investigation and filing of final report on 14.02.2025 and the same was allowed by the learned Magistrate on 17.02.2025. Pursuant to the custodial interrogation of A8/Sadam Hussain @ Sadam based on the statement of witnesses and documents collected the investigation officer further altered the charges



into sections 16,18,19 and 20 of the Unlawful Activities (Prevention)

Act, 1967 in addition to the existing charges on 20.02.2025 and an alteration report to effect was submitted before learned Judicial Magistrate No.V, Tirunelveli on 21.02.2025. On the same day, the revision petitioners A3 and A2 had filed petition for statutory bail under Section 187(2) of BNSS, 2023 in Crl.M.P.Nos.793 and 794 of 2025. The learned Judicial Magistrate dismissed the application filed by the petitioners by a common order dated 21.02.2025. The relevant portion of the said order is extracted hereunder:

“6. So the Investigation agency has already filed the extension period for further investigation which was allowed by this Court on 17.02.2025 and now on 20.01.2025, the investigation agency has filed the alteration report from section 113(ii)(b) and 196 BNS and 3 of Explosive Substance Act to Section 113(ii)(b) and 61(2), 294, 196BNS and 3 of Explosive Substance Act, r/w. Section 16,18,19,12 of unlawful activities Act and the counsel argumnt that the is the accused right of bail on the 90th day is not applicable to this case. Since, 90 days shall be concerned as 180 days. So, the petitioners were remanded on 20.11.2024 and 21.11.2025. So this court



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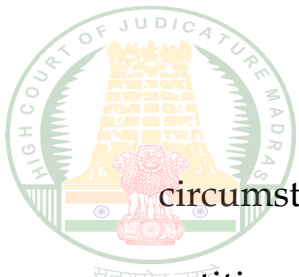
considers that the right of Mandatory bail is not available for the petitioners at this point of time and the petition are dismissed “.

Challenging the same the present criminal revisions have been filed.

3. Mr. Kathirvelu, learned Senior Counsel appearing for Mr.S.M.A.Jinnah, learned counsel appearing for the petitioners made the following submissions:

a) The revision petitioner in Crl.R.C(MD)No. 505 of 2025 was arrested and remanded to judicial custody on 20.11.2024 and the revision petitioner in Crl.R.C(MD) No. 506 of 2025 was arrested and remanded to judicial custody on 19.11.2024, as such the statutory period of 90 days in respect of A2 got over on 18.02.2025 and A3 got over on 19.02.2025.

b) The revision petitioners have filed application under Section 187(3) of BNSS for statutory bail on 21.02.2025 and on that day neither any application nor a report required under Section 43-D (2) of the Unlawful Activities (Prevention) Act, 1967 had been filed seeking detention of the accused beyond the said period of 90 days and in such

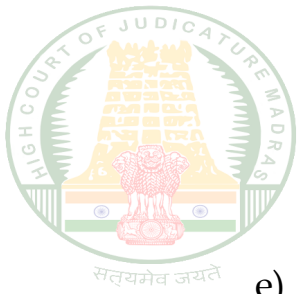


circumstances the learned Magistrate ought to have released the petitioners on statutory bail.

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c) As on 17.02.2025 the case was investigated for the offences under Sections 61(a), 249, 196 and 113(2)(b) of BNS r/w. Section 3 of Explosive Substance Act and not for the offences under the Unlawful Activities (Prevention) Act, 1967 and the investigation in this case was not completed and final report was not filed. In such circumstances, the application filed by the respondent police in Cr.M.P.No.649 of 2025 under Section 193(a) of BNSS seeking extension of thirty days for further investigation and the order passed thereon on 17.02.2025 is non-est in law and is liable to be set aside.

d) Till 20.02.2025 the respondents have not altered the charges invoking the provisions of the Unlawful Activities (Prevention) Act, 1967 and in such circumstances when no application had been filed under Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 the magistrate ought to have released the petitioners on statutory bail.



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e) At no stretch of imagination the petition filed under Section 193(9) of BNSS cannot be equated or treated to be a petition filed under Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 and in such circumstances the learned Magistrate ought to have granted statutory bail to the petitioners, thereby he would seek to allow the revision petitions and set aside the impugned order and release the petitioners on bail

4. The learned Additional Public Prosecutor would submit that the learned Magistrate had granted extension of time for further investigation by thirty days in Cr.M.P.No.649 of 2025 by an order dated 17.02.2025 and later alteration report was filed on 21.02.2025. On the same day the petitioners have filed application under Section 187(3) of BNSS and the learned Magistrate rightly holding that since the case had been altered to provisions under Unlawful Activities (Prevention) Act, 1967 had dismissed the application holding that the right of mandatory bail is not available to the petitioners. He would further submit that the petitioners along with other accused had entered into conspiracy aimed at disrupting communal harmony and thereby they are not entitled to



the relief of bail under the settled provisions of law and thereby he would seek for dismissal of the petition.

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5. This Court had called for report from the learned Judicial Magistrate No.V, Tirunelveli and the learned Principal District and Sessions Judge, Tirunelveli. Report received. This Court also perused the entire report and the CD file produced by the respondent police.

6. Admittedly the revision petitioner in Crl.R.C(MD)No. 505 of 2025 was arrested and remanded to judicial custody on 20.11.2024 and the revision petitioner in Crl.R.C(MD) No. 506 of 2025 was arrested and remanded to judicial custody on 19.11.2024, as such the statutory period of 90 days in respect of A2 got over on 18.02.2025 and A3 got over on 19.02.2025. Till such time the case was investigated for the offences under Sections 61(2), 249,196 and 113(2) (b) of BNS r/w.Section 3 of Explosive Substances Act and not for the offence under the Unlawful Activities (Prevention) Act, 1967. Strangely prior to that on 14.02.2025 the respondents had filed application under Section 193 (9) of BNSS in Cr.M.P.No.649 of 2025 seeking extension of thirty days for further investigation and it was allowed by the learned Magistrate on



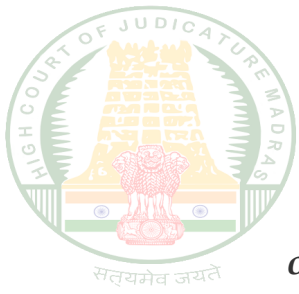
17.02.2025

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7. It is to be noted that on that day the case was not altered to offences under the Unlawful Activities (Prevention) Act, 1967, whereas the learned Magistrate had allowed the application by an order dated 17.02.2025. Only on 20.02.2025 the respondent filed an alteration report altering the offences to Sections 16,18,19 and 20 of Unlawful Activities (Prevention) Act, 1967 along with Section 3 of Explosive Substances Act. The petitioners have filed application under Section 187(3) of BNSS for statutory bail on 21.02.2025. Admittedly other than filing the alteration report neither the respondent nor the Public Prosecutor had filed an application as required under Section 43-D (2) for seeking detention of the accused beyond the period of 90 days. Proviso to Section 43-D(2) makes it clear that if it is not possible to complete the investigation within the said period of 90 days, the Court may if it is satisfied with the report of the Public Prosecutor indicate the progress of investigation and the specific reasons for the detention of the accused beyond the said period of 90 days can extend the said period upto 180 days. For reference Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 is extracted here under:



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" 43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in

the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section(2),--

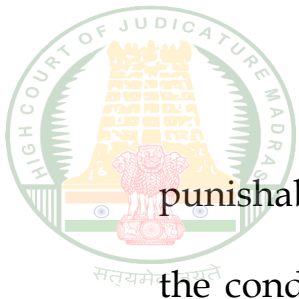
(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

8. The Section 43-D (2) of the Unlawful Activities (Prevention)

Act, 1967 prescribes certain modification of the case involving offences



punishable under the Unlawful Activities (Prevention) Act, 1967 only if the condition in the proviso are complied with. To make it clear only when it is not possible to complete the investigation within the said period of 90 days the Prosecutor should indicate the progress of investigation and state the specific reasons for detention of the accused beyond the said period of 90 days and only on the Magistrate being satisfied he may extend the said period upto 180 days.

9. In this case as stated above, other than filing alteration report neither any report of the prosecutor nor any application by the respondents has been filed seeking for detention of the accused beyond the said period of 90 days.

10. The time line said under Section 167(3) of Cr.P.C.,(187(3) of BNSS) ensures that investigation officers are compelled to act promptly and efficiently preventing misuse of further remand periods. The Hon'ble Apex Court further held that sub Section (2) of Section 167 is intrinsically linked to the Constitutional guarantee under Article 21 of the Constitution of India, which safeguards personal liberty against unlawful and arbitrary detention



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11. When no petition seeking for extension of detention is pending the dismissal of the application filed for statutory bail is illegal which would led to failure of justice

12.Considering the above facts and circumstances of the case and also the facts that the petitioners are judicial custody from 20.11.2024 and 19.11.2024 and that the charge sheet has already been filed before the learned Principal District and Sessions Judge, Tirunelveli and the same was taken on file in S.C.No.243 of 2025, this Court is inclined to allow the Criminal revisions by setting aside the order, dated 21.02.2025 made in Cr.M.P.Nos.793 and 794 of 2025 on the file of the learned Judicial Magistrate No.V, Tirunelveli

13.Accordingly, the Criminal Revision Petitions are allowed and the order, dated 21.02.2025 made in Cr.M.P.Nos.793 and 794 of 2025 on the file of the learned learned Judicial Magistrate No.V, Tirunelveli, is set aside. The petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties (of which one shall be a Government surety),



each for a like sum to the satisfaction of the learned Judicial Magistrate

No.V, Tirunelveli, and on further conditions that:

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(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judicial Magistrate No.V, Tirunelveli may obtain a copy of their valid identity card to ensure their identity.

(b) the petitioners are directed to appear before the trial Court on all working days at 10.30 a.m., until further orders.

(c) the petitioners shall not tamper with evidence or witness either during trial.

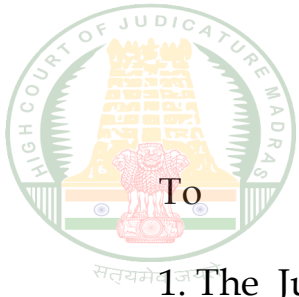
(d) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down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

[A.D.J.C.,J] [R.P.,J]
12.08.2025

Internet : Yes / No

Index : Yes / No

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Cr.L.R.C(MD) No.505 and 506 of 2

To

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1. The Judicial Magistrate No.V, Tirunelveli
2. The Inspector of Police
Melapalayam Police Station,
Tirunelveli City.
3. The Inspector of Police
Anti-Terrorism Squad(ATS)
Madurai
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Superintendent
Central Prison, Palayamkottai
6. The Record keeper
Vernacular Records, Madurai Bench of Madras High Court,
Madurai



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**A.D.JAGADISH CHANDIRA, J.
and
R.POORNIMA, J..**

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12.08.2025