

CRL OP(MD)No.12403 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 25/07/2025

PRESENT

THE HONOURABLE MR.JUSTICE P.VADAMALAI

CRL OP(MD)No.12403 of 2025

1.Raja,
S/o.Rathinakumar.

2.Selvakani,
W/o.Rathinakumar. : Petitioners/A1 and A2

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
(Crime No.258 of 2025) : Respondent/Complainant

For Petitioners : Mr.V.Sasikumar,
Advocate

For Respondent : Mr.M.Karunanithi,
Government Advocate (Criminal Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.482 of BNSS.

PRAYER :-

For Anticipatory Bail in Crime No.258 of 2025 on
the file of the Respondent Police.



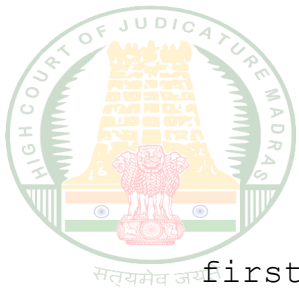
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ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 296(b) , 115(2) and 351(2) of BNS in Crime No.258 of 2025 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant agreed to allow the first petitioner to draw water from his garden for irrigation purposes and has been granting access to water for the past one year. Subsequently, due to the scarcity of water, the defacto complainant refused to provide water to the first petitioner. As a result, the first petitioner brought his four cows and allowed them to graze in the defacto complainant's garden, thereby caused damage to the garden. When the same was questioned by the defacto complainant, the first petitioner threatened the defacto complainant and on 16.06.2025 at about 05.30 pm, the petitioners went to the defacto complainant's home and assaulted him. The



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first petitioner attacked him with Aruval and caused a cut injury in his neck. Hence, the case.

3. The learned counsel for the petitioner would submit that while filing this petition, the Registry has raised a query that how this anticipatory bail petition under Section 482 of BNSS against bailable offence is maintainable. The learned counsel for the petitioner would submit that the offence under section 351 of BNS is non-bailable and hence, his petition seeking anticipatory bail is maintainable. He placed reliance on the judgment of this Court reported in **2010-3-MLJ (Cr1) - 691 (P.Ramakrishnan and Others vs. State) .**

"4. The Crucial question that arises in this case is that: Whether the Notification issued by the Government of Tamil Nadu in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 03.08.1970 in exercise of the power conferred under Section 10 of the Criminal Law Amendment Act, 1932, has binding force on BNS 2023 without any fresh notification in view of the chapter XX of the BNS and



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consequently, the offence under Section 351 of BNS, 2023 is non-bailable insofar as the State of Tamil Nadu is concerned?''.

4. Since the Hon'ble Division Bench of this Court in the case of **Ganesan Vs. State** reported in 2011 SCC Online Mad 2522 has specifically held that the State Government has power to classify the certain offences to be non-bailable and the same had over riding effect of Cr.P.C., and held 506 is non bailable and the anticipatory bail petition is maintainable.

5. The said question already answered by the division Bench in the above stated judgment and the relevant portion of the judgment as follows:

''14. At this juncture, we may state that, in exercise of the powers conferred under the said Section, the Government of Tamil Nadu had issued G.O.Ms.No.S/4118-1/70 Public (S.C.), dated 3.8.1970, published in the Tamil Nadu Government Gazette No. 260, Extraordinary Part II Section 1 Madras, dated 3rd August, 1970, thereby declaring



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that any offence punishable under Sections 188 & 506(i) of the Penal Code, 1860, when committed in any place in the State of Tamil Nadu shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable and non-bailable. After the said Government Order had been issued, as per Section 10 of the Criminal Law Amendment Act, 1932, the Code of Criminal Procedure, 1898 was deemed to have been amended accordingly.

15. When the Code of Criminal Procedure, 1973, was introduced, once again the offence under Section 506(i) of Penal Code, 1860 had been shown as bailable. However, no fresh Notification has been issued, under Section 10 of the Criminal Law Amendment Act, 1932. In such circumstances, a considerable amount of confusion had arisen as to whether the Notification issued earlier, when the repealed Code was in force, would be applicable, in respect of the present Code as well.

16. It is needless to point out that the Code of Criminal Procedure, 1973, is a Central enactment relating to a subject in Entry 4 of List III of the Constitution of India. There can also be



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no controversy regarding the fact that the State Legislature is empowered to make local amendments, in respect of the provisions of the Code. The Constitutional requirement are that, after such amendment, it should get the assent of the President of India, so as to have an over-riding effect. Admittedly, the present case, neither the Code of Criminal Procedure, 1898, nor the Code of Criminal Procedure, 1973, was amended by State Legislature, by means of any amending Act, requiring the assent of the President of India. However, in the Code of Criminal Procedure, 1898, insofar as the classification of Section 506(i) of the Penal Code, 1860, as bailable, is concerned, it was deemed to have been amended, as non-bailable, as per the Notification issued under the Criminal Law Amendment Act, 1932, which is a Central Legislation. Thus, it is not by actually amending the Code of Criminal Procedure, 1898, way of a local amendment, Section 506(i) of the Penal Code, 1860 was made non-bailable. If it had been the case of the Code of Criminal Procedure, 1898, being amended, the said amendment would have perished, along with the main Act, when the same was repealed



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by the Code of Criminal Procedure, 1973. In such an event, since, the Code of Criminal Procedure, 1973, classifies the offence, under Section 506(i) of the Penal Code, 1860, as bailable, the same would have been in force in the State of Tamil Nadu. On the contrary, as we have already stated, the Code of Criminal Procedure, 1898, had not been amended. Instead, the offence falling under Section 506 (i) of the Penal Code, 1860 had been declared to be non-bailable, in exercise of the powers conferred under Section 10 of the Criminal Law Amendment Act, 1932. The said declaration would hold good until the same is withdrawn by the Government of Tamil Nadu, under the said Act. Therefore, in spite of the fact that the offence falling under Section 506(i) of the Penal Code, 1860 has been classified as bailable, in the Code of Criminal Procedure, 1973, the Notification issued, under Section 10 of the Criminal Law Amendment Act, 1932, would hold good. As such, the declaration that the offence, under Section 506(i) of the Penal Code, 1860, is non-bailable and cognizable shall have the necessary statutory force and the same shall have an over-riding effect over the Code of



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Criminal Procedure, 1973.

17.It is an admitted fact that the Notification issued by the Government of Tamil Nadu, in G.O.Ms. No. S/4118-1/70, Public (S.C.), dated 3.8.1970, had not been challenged by the Petitioners. The said Notification has not been declared to be invalid, till date. Since, the said Notification is in force, an offence, under Section 506(i) of the Penal Code, 1860 would be non-bailable in nature. However, this Court is of the considered view that the continuation of the Notification, issued in the year, 1970, calls for a review. Therefore, it would be appropriate for the Government of Tamil Nadu to review the said Notification and to consider as to whether an offence committed, under Section 506(i) of the Penal Code, 1860, is to continue as a non-bailable offence, especially, in view of the fact that the offences, under Sections 324 & 325 of the Penal Code, 1860, are bailable in nature. The State Government shall also consider as to whether the liberty of a citizen, guaranteed under the provisions of the Constitution of India, is to be curtailed, by way of the Government Order, in G.O.Ms. No. S/4118-1/70, Public



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(S.C.), dated 3.8.1970, in the prevailing socio-legal scenario.

18. In a catena of cases, the Supreme Court of India, as well as the various High Courts, have declared the fundamental right of life and personal liberty of a person to be of paramount importance.

18.1. In **Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011 (1) MWN (Cr.) 15 (SC) : 2011 (1) SCC 694**, the Supreme Court had held as follows:

"36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of civilized existence:

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar



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facts and circumstances of the case."

18.2. The importance of life and liberty was recognised in the following words by Pathak, C.J., in **Kehar Singh v. Union of India, AIR 1989 SC 653:**

"To any civilised society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the Courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence."

18.3. In **Meneka Gandhi v. Union of India, 1978 (1) SCC 248**, the Supreme Court had held as follows:

"Personal liberty makes for the worth of the human person. Travel makes liberty worthwhile. Life is a terrestrial opportunity for unfolding personality, rising to higher states, moving to fresh woods and reaching out to reality which makes our earthly journey a true fulfillment not a tale told by an idiot



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full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article 21. Absent liberty, other freedoms are frozen."

18.4. The Supreme Court, while reiterating the importance of the fundamental right of life and personal liberty, had held, in **Manjit Singh v. C.B.I., 2011 (11) SCC 578**, that the people and the Constitution have vested their faith in the Supreme Court to keep vigil and see to it that these hallowed principles are not trampled upon by the necessities of the hour and vicissitudes of time.

19. As such, unless the situation really warrants the declaration of an offence, under Section 506(i) of the Penal Code, 1860, as cognizable and non-bailable, by the state Government, by exercising its power, under Section 10 of the Criminal Law Amendment Act, 1932, any such declaration would place the fundamental right of life and personal liberty in substantial peril. Thus, we are of the opinion that it is for the state Government to consider as to whether to keep the Government order in



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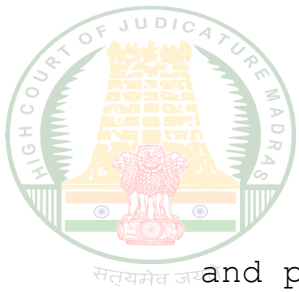
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force any further or to withdraw the same.

20. In view of the above, this Court answers the reference, stating that the Government Order, issued by the Government of Tamil Nadu, in G.O.Ms. No. S/4118-1/70, Public (S.C.), dated 3.8.1970, in exercise of the powers conferred, under Section 10 of the Criminal Law Amendment Act, 1932, continues to be in force. Therefore, an offence committed, under Section 506(i) of the Penal Code, 1860, is non-bailable in nature, as per the said Government order.

6. In view of the above decision of the Hon'ble Division Bench of this Court, the petition is maintainable.

7. The learned counsel for the petitioners submitted that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. He would further submit that the counter case in Crime No.259 of 2025 is pending and the injured has already been discharged from the hospital



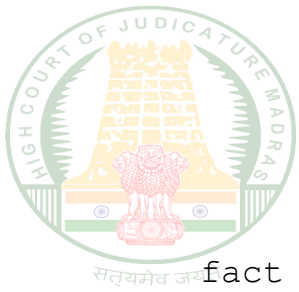
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सत्यमेव जयते and prays anticipatory bail.

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8. The learned Government Advocate (Criminal Side) for the respondent police submitted that the first petitioner brought his four cows and allowed them to graze in the defacto complainant's garden, thereby causing damage to the garden. When the same was questioned by the defacto complainant, the first petitioner threatened the defacto complainant and on 16.06.2025 at about 05.30 pm, the petitioners went to the defacto complainant's home and assaulted him. The first petitioner attacked him with Aruval and caused a cut injury in his neck. He further submitted that in the said incident both the petitioners and the defacto complainant attacked each other and the counter case in Crime No.259 of 2025 is pending and the injured was discharged from the hospital.

9. Considering the facts and circumstances of the case and also the facts that the injured was discharged from the hospital and the counter case in Crime No.259 of 2025 is pending and considering the



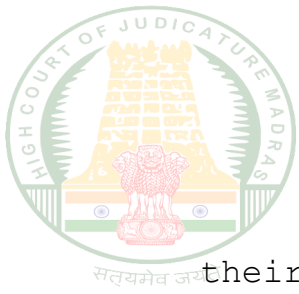
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fact that the occurrence had taken place on 16.06.2025 and most of the investigation might have been completed, this Court is inclined to grant anticipatory bail to the petitioners, subject to certain conditions.

10. Accordingly, the petitioners are ordered to be released on bail in the event of their arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Valliyoor, Tirunelveli District, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties, each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Judicial Magistrate, Valliyoor, Tirunelveli District, and on further conditions that:

(a) the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of



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their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioners shall furnish their residential address and mobile number to the learned Judicial Magistrate, Valliyoor, Tirunelveli District. In the event of any change in their residential address, the petitioners shall report the same to the learned Judicial Magistrate, Valliyoor, Tirunelveli District;

(c) the petitioners shall report before the respondent police daily at 10.00 am, until further orders;

(d) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioners shall not abscond either during investigation or trial;

(f) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners 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



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by the Hon'ble Supreme Court in *P.K.Shaji Vs. State of Kerala* [(2005) AIR SCW 5560]; and;

(g) if the accused thereafter abscond, a fresh FIR can be registered under Section 269 of BNS, 2023.

(P V M J)
25.07.2025

das

TO

- 1.The Judicial Magistrate, Valliyoor,
Tirunelveli District.
- 2.The Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. VADAMALAI, J

das

ORDER IN
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Date : 25/07/2025