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Crl.O.P. No.2535 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 03-02-2026**

CORAM

**THE HON'BLE MR JUSTICE A.D.JAGADISH CHANDIRA**

**Crl. O.P.No.2535 of 2026**

R.Vijayalakshmi

..Petitioner

Vs

The State Represented by,  
The Inspector of Police,  
W-19, Adayar AWPS,  
Chennai - 600 020.  
(Crime No. 01/2026)

..Respondent

**Prayer:** Criminal Original Petition is filed under Sections 528 & 529 of the Bharatiya Nagarik Suraksha Sanhita to direct the learned Special Judge of POCSO, at Chennai to follow the procedure under Section 330 of Cr.PC/369 of BNSS.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.S.Santhosh  
Government Advocate (Criminal Side)

### **ORDER**

This criminal original petition is filed to direct the learned Special Judge for POCSO Act cases at Chennai, to follow the procedure under Section 330 of Cr.PC/369 of BNSS.



2. The brief facts of the case are as follows :-

2.1. The petitioner is the mother of one Gopala Krishnan, male, aged 47 years, now confined in the Institute of Mental Health, Kilpauk, Chennai on the directions of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai .

2.2. A complaint had been lodged by one Suresh M Iyer/*de facto* complainant against the petitioner's son. The allegation in the complaint is that on 03.01.2026 at about 7.00 pm when the daughter of the *de facto* complainant, XXX, aged 12 years was playing on a swing with her friends in a park located in her residential area, an unidentified male entered the park and spoke to her in English and forced her to play on the swing with him. When his daughter had refused to do that, he had insisted her to sit on his lap and forced her to play on the swing after which daughter started crying. Thereafter, he misbehaved with the child by touching her inappropriately.

2.3. Based on the complaint lodged by the *de facto* complainant, a case in Crime No.01 of 2026 was registered on 04.01.2026 by the respondent police against the petitioner's son for offence under Sections 7 and 8 of the POCSO Act and he was arrested by the respondent on 05.01.2026 and before production for remand, he was taken to Saidapet Government Medical Hospital for medical examination. The petitioner's son, during medical examination, was found to be



affected with Schizophrenia and the Medical Officer had recommended for Psychiatrist opinion regarding the mental condition of his son. When the petitioner was produced before the Court for remand, the learned Judge without remanding the petitioner referred him for assessment by the Institute of Mental Health, Kilpauk, Chennai, vide order dated 05.01.2026. Subsequently, the Special Court passed a detailed order on 07.01.2026 under Section 102(1)(a) of the Mental Health Care Act, 2017 and for the compliance of Section 367(1) of BNSS. Following the same, the petitioner's son was sent to the Institute of Mental Health, Kilpauk, Chennai.

2.4. Thereafter, the petitioner filed a bail application before the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai on 19.01.2026 in Crl.M.P.No.51 of 2026 and the same was dismissed on 22.01.2026 stating that the bail application was filed without any order of remand. Aggrieved over the same, the petitioner has filed the present petition.

3. The learned counsel for the petitioner would submit that the petitioner's son has mental illness and is diagnosed to be suffering from Schizophrenia. When the petitioner's son was produced for remand, the learned Judge, finding that the petitioner's son is suffering with mental illness, had referred him for mental assessment under Section 102(1)(a) of Mental Healthcare Act and for compliance of Section 367(1) of BNSS. Thereafter, the



petitioner filed an application seeking bail. Though the petition was filed in the form of bail application, the learned Judge ought to have passed an order under Section 367(3) of BNSS and Section 102 (1)(b) of Mental Healthcare Act, 2017.

It is his further submission that as per Section 102(1)(b) of the Mental Healthcare Act, the Magistrate has power to authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the Medical Officer to carry out an assessment of the person and to plan for necessary treatment and as per Section 367(3) of the BNSS, pending such examination and enquiry, the Magistrate may deal with such person in accordance with the provisions of Section 369 of the BNSS. Now that the period of ten days has lapsed, the Magistrate ought to have considered the petition filed by the petitioner in accordance with Section 367(3) and 369 of the BNSS and Section 102(1)(b) of the Mental Healthcare Act. Hence, the present petition, as aforesaid.

4. The learned Government Advocate (Criminal Side) would submit that the petitioner's son was arrested on 04.01.2026 in Crime No.01 of 2026. Before producing before the Court, he was taken for general assessment to the medical officer who found that the petitioner's son was suffering from mental illness and he was produced before the Court along with the report and the learned Judge, finding that the petitioner's son is suffering from mental illness referred him to a medical officer and after taking the report of the Medical



Officer, referred the petitioner's son under Section 102 (1)(a) of Mental Healthcare Act and for compliance of Section 367(1) of BNSS to the Institute of Mental Health, Kilpauk, Chennai, for assessment. He would further submit that a report has also been received from the Medical Officer, in which the petitioner's son is diagnosed to be suffering from Schizophrenia. However, he would submit that no further orders have been passed till date and the petitioner's son is now being kept in the Institute of Mental Health, Kilpauk, Chennai.

5. Heard the counsel and perused the materials available on record.

6. The facts are not in dispute. The learned Magistrate, finding that the petitioner's son needed assessment under Section 102(1)(a) of the Mental Healthcare Act, had referred him to the Institute of Mental Health, Kilpauk, Chennai in compliance of Section 367(1) of the BNSS.

7. An observation report dated 21.01.2026 has been furnished by the respondent police today which reads thus:



*“Mr.Gopalakrishnan, 47 year old male was admitted in Institute of Mental Health, Kilpauk, Chennai on 05.01.2026 based on the above reference.*

*At the time of admission patient was alert, ambulant, eye contact was made and maintained, rapport was established. He exhibited a normal psychomotor activity, gave relevant and coherent replies, talk drifting to irrelevancy at times. His mood was restricted and he had formal thought disturbances (tangentiality), delusions of grandiosity and persecutory delusion were present and auditory hallucinations were present.*

*Based on detailed history and clinical evaluation and psychological assessment, he is diagnosed to be suffering from Schizophrenia. Patient is on treatment for the same. Still patient continues to have formal thought disturbances (tangentiality) and delusion of persecution and auditory hallucinations.*

*He was evaluated and found to be symptomatic and needs further treatment and presently psychologically unfit to stand trial. He was placed before the Mental Health review Board on 20/1/26, his admission and current mental health status were approved.”*

8. As per the aforesaid report, the petitioner’s son is diagnosed to be suffering from Schizophrenia and after evaluation, he was found to be symptomatic and needs further treatment and presently psychologically unfit to stand trial.

9. Now that the ten days time has lapsed, the learned Magistrate ought to follow the procedure as per Section 367 of the BNSS which reads as follows:

*“367. (1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of person with mental illness and*



*consequently incapable of making his defence, the Magistrate shall inquire into the fact of such mental illness, and shall cause such person to be examined by the civil surgeon of the district or such other medical person as the State Government may direct, and thereupon shall examine such surgeon or other medical person as a witness, and shall reduce the examination to writing.*

*(2) If the civil surgeon finds the accused to be a person with mental illness, he shall refer such person to a psychiatrist or clinical psychologist of Government hospital or Government medical college for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from mental illness: Court to be open. Procedure in case of accused being person with mental illness. Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—*

*(a) head of psychiatry unit in the nearest Government hospital; and*

*(b) a faculty member in psychiatry in the nearest Government medical college.*

*(3) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 369.*

*4) If the Magistrate is informed that the person referred to in sub-section (2) has mental illness, the Magistrate shall further determine whether the mental illness renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the*



*accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 369:*

*Provided that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of mental illness is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 369.*

*(5) If the Magistrate is informed that the person referred to in sub-section (2) is a person with mental illness, the Magistrate shall further determine whether the mental illness renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 369*

10. Further, as per Section 367 (3) of the BNSS, pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of Section 369 of the BNSS, which reads thus:

*“369. (1) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of mental illness, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail: Provided that the accused is suffering from mental illness which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.*



*(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government: Provided that no order for the detention of the accused in a public mental health establishment shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017.*

*(3) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of mental illness, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of mental illness, further determine if the release of the accused can be ordered:*

*Provided that—*

*(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 367 or section 368, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;*

*(b) if the Magistrate or Court, as the case may be, is of the opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons with mental illness may be ordered wherein the accused may be provided care and appropriate education and training. “*



11. Further, as per Section 102 of the Mental Healthcare Act, when any person with mental illness or who may have a mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act or authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the Medical Officer or mental health professional in charge of the mental health establishment, to carry out an assessment of the person and to plan for necessary treatment, if any.

12. Now that the mental assessment as required under Section 102(1) (b) of the Mental Healthcare Act has been done for the petitioner's son and the period of ten days has also lapsed, the Magistrate has to deal with custody of the petitioner's son in accordance with Section 369 of the BNSS.

13. At this juncture, it is apposite to note that though this petition has been filed in the form of a bail application, what matters is only the contents of the petitioner and not the nomenclature of the petition. That apart, it is not a case of a remand. In such circumstances, without going into the provisions under which the petition is filed, the learned Magistrate is directed to deal with



the matter in accordance with Section 369 of the BNSS and pass appropriate orders as expeditiously as possible, preferably, within a period of three days from the date of receipt of a copy of this order.

14. With the above directions, the criminal original petition stands disposed of.

**03-02-2026**

Neutral Citation: Yes/No

MRN/cad

Note: Issue order copy by 05.02.2026



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**A.D.JAGADISH CHANDIRA, J.**

MRN/cad

To

1. The Special Judge for POCSO Act Cases  
Chennai
- 2.The Inspector of Police,  
W-19, Adayar AWPS,  
Chennai - 600 020.  
(Crime No. 01/2026).
- 3.The Public Prosecutor,  
High Court of Madras.

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