



CrI.O.P.(MD)No.4439 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.02.2026**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

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Stalin

... Petitioner

Vs.

The State of Tamilnadu,
rep., by the Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
Crime No.133 of 2018

... Respondent

PRAYER : Petition filed under Section 528 of BNSS, 2023 to direct the learned Judicial Magistrate No.I, Kuzhithurai, to accept the surrender of the petitioner and recall the warrant and to consider it on the same day for the non-bailable warrant issued against the petitioner on 23.01.2026 in C.C.No.238 of 2019 on the file of the learned Judicial Magistrate No.I, Kuzhithurai.

For Petitioner : Mr.P.Sonu

For Respondent : Mr.A.Thiruvadikumar

Additional Public Prosecutor



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ORDER

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PROLOGUE

The criminal process is not merely a mechanism for securing convictions, but a constitutional instrument for balancing the competing imperatives of societal order, victim justice, and individual liberty. While the presence of an accused before the trial Court is indispensable for the orderly progress of criminal proceedings, coercive processes such as Non-Bailable Warrants are not intended to operate as punitive tools, divorced from the realities of human conduct and procedural contingencies.

2. Equally, the inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 CrPC) is extraordinary in nature and cannot be permitted to supplant or short-circuit the statutory remedies expressly provided before the trial Courts. An overzealous invocation of such jurisdiction in matters relating to recall of warrants would not only erode the authority of trial Courts but would also impede the expeditious disposal of criminal cases, thereby frustrating the mandate of Article 21 of the Constitution of India.



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3. It is in the above constitutional and statutory backdrop that the present Criminal Original Petition, seeking a direction relating to recall of a Non-Bailable Warrant, falls for consideration.

GIST OF THE CASES & RELIEF SOUGHT

4. Gist of the Case:

A case in Crime No.133 of 2018 has been registered against the petitioner for the offence under Section 457 and 380 of IPC, which culminated in charge sheet in C.C.No.238 of 2019 before the learned Judicial Magistrate No.I, Kuzhithurai.

5. Relief Sought:

To recall the warrant issued against the petitioner by setting aside warrant dated 23.01.2026, issued by the learned Judicial Magistrate No.I, Kuzhithurai in C.C.No.238 of 2019.

6. Grounds urged by the petitioner:

The petitioner has nothing to do with the alleged occurrence and he has been regularly attending the Court, due to illness, he could not attend the Court for hearing and thereafter, NBW was issued against him.



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Submissions:

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7. The learned counsel for the petitioner relying upon the judgment of this Court in CrI.O.P.No.6472 of 2025 dated 07.03.2025, CrI.O.P.No.4514 of 2016 dated 02.03.2016 and similar orders, submitted that, this Court has appreciated similar cases and had allowed the same by directing the petitioner to appear before the learned trial Court and file a petition under section 70(2) of Cr.P.C,1973/ 72(2) of BNSS,2023, to recall NBW already issued against him and on filing the same the trial court has further been directed to consider the same on its own merits in accordance with law on the same day, making it clear that the disposal of the case in that manner by this Court do not amount to consider the recall petition favourably. Citing the same, the learned counsel for the petitioner sought for a similar order seeking disposition of the case in a similar manner.

8. Per contra, the learned Additional Public Prosecutor categorically contended that this Court cannot invoke section 482/528 Cr.P.C/BNSS in warrant recall matters and insisted that the petitioner's remedy lies with the trial Court and on rejection by the Trial Court, before revision jurisdiction either before the sessions Court or this Court. He further submitted that this matter is already settled by this Court by Hon'ble Justice Janarthanam, J. in ***P.A.Saleem***



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*and others vs State another*¹ and pointed out that the said case was not brought to the attention of this Court, during disposal of Crl.O.P.No.6472 of 2025 dated 07.03.2025, Crl.O.P.No.4514 of 2016 dated 02.03.2016 and similar orders, by this Court and pressed for dismissal of the cases.

POINT FOR CONSIDERATION

9. Whether this Court can, in exercise of its inherent jurisdiction under Section 482 CrPC / Section 528 BNSS, directly interfere with or recall Non-Bailable Warrants issued by the trial Courts, or issue directions dispensing with personal appearance, in the teeth of the statutory remedy available before the very Court which issued the warrant, and in light of the law laid down in *P.A. Saleem*².

ANALYSIS

10. The legal position governing recall of warrants is no longer *res integra*. A Division Bench of this Court in *P.A. Saleem*³ has authoritatively examined the scheme of the Code of Criminal Procedure relating to issuance, execution and cancellation of warrants. The Court has categorically held that a warrant issued under Section 70 CrPC remains in force until it is executed or cancelled by the Court which issued it, and that the proper and primary remedy

1 1994 SCC OnLine Mad 860

2 Footnote 1 supra

3 Footnote 1 supra



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of an aggrieved accused is to approach that very Court with an application for cancellation or recall.

11. The judgment further clarifies that a refusal to cancel a warrant constitutes a final order amenable to revision under Sections 397 or 401 CrPC, and that the inherent jurisdiction under Section 482 CrPC cannot be invoked for a simpliciter recall of a warrant. The inherent power is not a substitute for statutory remedies, nor can it be employed to short-circuit the procedural hierarchy envisaged by law.

12.It is further submitted that the petitioner, being a wanted accused in connection with an offence of theft, has not approached this Court with clean hands. The petitioner is evading the due process of law and has failed to submit himself to the jurisdiction of the Investigating Agency.

13.It is well settled that a person who is absconding or evading arrest is not entitled to invoke the discretionary jurisdiction of this Hon'ble Court under Section 482 Cr.P.C. The inherent powers of this Court cannot be exercised in favour of such a petitioner.



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14. In view of the binding dictum laid down in *P.A. Saleem*⁵ and the Common Judgment of this Court in Crl.O.P.(MD) Nos.21580, 22630, 22033 & 22808 of 2025, this Criminal Original Petition is not maintainable for the relief sought. Accordingly, this Criminal Original Petition is dismissed, as the case pertains to an offence of theft and the petitioner is a wanted accused.

27.02.2026

NCC : Yes / No
Index : Yes / No
Rmk

(3/5)

TO:-

1. The Judicial Magistrate No.I, Kuzhithurai.
- 2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

⁵ Footnote 1 supra



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L.VICTORIA GOWRI, J.

Rmk

Order made in
CrI.O.P.(MD)No.4439 of 2026

Dated
27.02.2026
(3/5)