



Crl.Rc(MD)No.831 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.RC.(MD).No.831 of 2026

Murali

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
Crime No.442 of 2021

... Respondent

Prayer: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to admit the revision petition and set aside the order in Cr.MP.No.31 of 2026 in S.C.No.106 of 2022 dated 22.04.2026 on the file of the learned Principal District and Sessions court, Sivagangai.

For Petitioner : Mr.J.Vijaya Raja

For Respondent : Mr.D.Rajaboopathy
Government Advocate(Crl.Side)



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ORDER

The present Criminal Revision Petition presents an important question touching upon the scope of judicial discretion exercisable while considering an application for recall of a Non-Bailable Warrant under Section 72(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 70(2) of the Code of Criminal Procedure, 1973). The issue assumes significance because, while the law is fairly settled that the personal presence of an accused is not an indispensable pre-condition for considering such an application, it is equally settled that the discretion to recall an NBW is neither mechanical nor absolute. It must invariably be exercised upon a judicious consideration of the conduct of the accused, the stage of the proceedings, the gravity of the offence and the overall interests of justice.

2. The revision petitioner seeks interference with the order dated 22.04.2026 passed by the learned Principal District and Sessions Judge, Sivagangai in Cr.M.P.No.31 of 2026 in S.C.No.106 of 2022, whereby the learned Sessions Judge declined to recall the Non-Bailable Warrant issued against the petitioner.



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Gamut of the issue:

3. The question that falls for determination is not whether an accused is legally entitled to seek recall of a Non-Bailable Warrant without physically surrendering before the Court. That proposition has long ceased to be res integra. The real issue is whether the Trial Court, after taking into consideration the prolonged absence of the petitioner for nearly two years, the pendency of a Sessions Case involving an offence punishable under Section 302 IPC, the stage of framing of charges and the persistent failure of the petitioner to subject himself to the jurisdiction of the Court, had exercised its discretion in accordance with law while refusing to recall the warrant.

4. Thus, the present revision essentially concerns the limits of revisional interference with an order passed in exercise of judicial discretion under Section 72(2) BNSS.

Factual matrix:

5. The revision petitioner is arrayed as A7 in S.C.No.106 of 2022 pending on the file of the learned Principal District and



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Sessions Judge, Sivagangai. The prosecution has alleged commission of offences punishable under Sections 147, 148, 149, 114, 294(b), 342, 323, 427, 506(ii) and 302 read with Section 149 IPC arising out of Crime No.442 of 2021 registered by the respondent police.

6. According to the petitioner, he had been regularly appearing before the Trial Court through the course of the proceedings. However, on 23.07.2024, owing to certain unavoidable circumstances, he was unable to remain present before the Court. Although his counsel was informed of his inability to attend, no petition seeking exemption from personal appearance came to be filed on that date. Consequently, the learned Sessions Judge issued a Non-Bailable Warrant against the petitioner.

7. It is the further case of the petitioner that the hearing scheduled on 23.07.2024 did not involve any substantial progress in the trial warranting his compulsory presence. According to him, the issuance of a Non-Bailable Warrant for a solitary absence was disproportionate. Subsequently, instead of surrendering, he presented an application under Section 70(2) Cr.P.C. (corresponding



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to Section 72(2) BNSS) seeking recall of the warrant. The said application came to be dismissed by the learned Sessions Judge, necessitating the present revision.

Impugned order:

8. The learned Principal District and Sessions Judge, upon consideration of the rival submissions, declined to recall the Non-Bailable Warrant principally on three grounds.

9. Firstly, the Trial Court found that after issuance of the warrant on 23.07.2024, the petitioner had not taken any effective steps to secure its recall for almost two years. Such prolonged inaction, according to the learned Judge, clearly established that the petitioner had deliberately remained away from the process of law.

10. Secondly, the learned Sessions Judge recorded that the prosecution had constituted a Special Team for securing the petitioner in execution of the Non-Bailable Warrant, thereby indicating that the petitioner had remained unavailable despite repeated efforts by the investigating agency. The learned Judge



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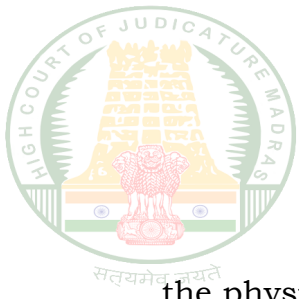
further noticed that proceedings against the sureties had also been initiated.

11. Thirdly, the Trial Court observed that the Sessions Case involved allegations of murder and allied offences carrying severe penal consequences and that the matter had remained stalled at the stage of framing of charges solely on account of the absence of the petitioner. The learned Sessions Judge therefore concluded that the petitioner had failed to furnish any convincing explanation warranting exercise of discretion in his favour and consequently dismissed the application.

Grounds of revision:

12. Assailing the aforesaid order, the learned counsel appearing for the revision petitioner would submit that the impugned order is legally unsustainable as it proceeds upon an erroneous understanding of the statutory scheme governing recall of warrants.

13. It is contended that the learned Trial Judge has completely overlooked the settled legal principle that a petition seeking recall of a Non-Bailable Warrant can be entertained even in the absence of



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the physical presence of the accused. According to the petitioner, the insistence upon his surrender, though not expressly stated, has substantially weighed with the Trial Court while rejecting the application.

14. The learned counsel would further submit that Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023, expressly enables a criminal Court to proceed with inquiry or trial in the absence of the accused where he is duly represented by an advocate and where his personal attendance has been dispensed with. The explanation appended to the said provision also recognises participation through electronic means. It is therefore argued that the Trial Court has failed to appreciate the legislative shift towards facilitating criminal trials without insisting upon the personal presence of an accused on every hearing.

15. Learned counsel would also contend that the petitioner had approached the Court voluntarily seeking recall of the warrant and had expressed his willingness to participate in the trial. Once such willingness had been demonstrated, the learned Sessions



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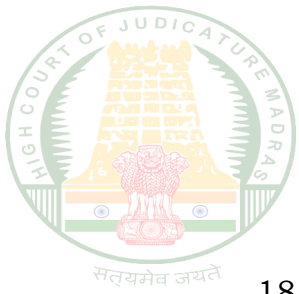
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Judge ought to have exercised the discretion vested under Section 72(2) BNSS in favour of the petitioner rather than adopting an unduly rigid approach.

16. It is lastly contended that the Trial Court has allowed itself to be influenced solely by the gravity of the offences alleged against the petitioner, overlooking the settled principle that seriousness of the charge alone cannot be a ground to deny recall of a Non-Bailable Warrant, particularly when the object of the warrant is merely to secure the presence of the accused and not to punish him before trial.

Submissions on behalf of the respondent:

17. Per contra, the learned Government Advocate (Criminal Side) would vehemently support the impugned order. According to the learned Government Advocate, the learned Trial Court has exercised its discretion judiciously and no error of law or perversity warranting interference under the revisional jurisdiction of this Court is made out.



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18. It is submitted that the petitioner cannot seek to portray his absence on 23.07.2024 as a solitary lapse. The records unmistakably reveal that after the issuance of the Non-Bailable Warrant, the petitioner neither appeared before the learned Trial Court nor took any sincere steps to recall the warrant for nearly two years. On the contrary, he remained beyond the reach of law compelling the respondent police to constitute a Special Team to execute the warrant. Proceedings had also been initiated against the sureties who stood guarantee for his appearance. Such conduct, according to the prosecution, clearly disentitles the petitioner from invoking the equitable jurisdiction of this Court.

19. The learned Government Advocate would further submit that the case is one involving allegations of unlawful assembly culminating in an offence punishable under Section 302 IPC. The Sessions Case has remained pending for more than four years without commencement of trial solely because of the absence of the petitioner. At the stage of framing of charges, the presence of the accused assumes considerable importance and the Trial Court was



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perfectly justified in declining to recall the warrant merely on the strength of an affidavit.

20. It is therefore contended that the impugned order neither suffers from illegality nor manifests any jurisdictional error and consequently deserves affirmation.

Point for consideration:

21. In the light of the rival submissions, the following point arises for consideration:

"Whether the learned Principal District and Sessions Judge, Sivagangai, committed any illegality or material irregularity in refusing to recall the Non-Bailable Warrant issued against the revision petitioner under Section 72(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, warranting interference in exercise of the revisional jurisdiction of this Court?"

Analysis:

22. Before examining the correctness of the impugned order, it is necessary to remind oneself of the well-settled limitations



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governing revisional jurisdiction. A Revision Court does not function as a Court of first appeal. Unless the impugned order suffers from patent illegality, jurisdictional error, perversity or manifest miscarriage of justice, the discretionary order of the subordinate Court ordinarily does not warrant substitution merely because another view is possible.

23. Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita preserve the revisional power of the High Court substantially on the same principles that governed Sections 397 and 401 of the Code of Criminal Procedure. The object of revision is supervisory and corrective; it is not intended to enable the Revisional Court to re-exercise every discretionary power vested in the Trial Court.

Nature of a Non-Bailable Warrant:

24. A Non-Bailable Warrant is one of the strongest coercive processes available to a criminal Court. It is never intended to punish an accused. Equally, it cannot be viewed as a mere procedural formality capable of being recalled automatically on every request.



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25. The issuance of a Non-Bailable Warrant becomes necessary when the Court is satisfied that the presence of the accused cannot otherwise be secured. The object is singular, that is, to ensure that the administration of criminal justice does not become hostage to the convenience or indifference of an accused.

26. Consequently, while Section 72(2) BNSS empowers the Court issuing the warrant to recall or cancel the same, the exercise of such power is fundamentally discretionary. The provision does not create an indefeasible right in favour of an accused.

27. Learned counsel for the petitioner placed considerable reliance upon the decisions of this Court in ***Karupiah @ Chinnathambi v. Inspector of Police¹, Dr. Zubaida Begum v. State²*** and the judgment in ***Francis Xavier v. Neelamegam³***. These decisions undoubtedly hold that a petition seeking recall of a Non-Bailable Warrant may be entertained even without insisting upon the physical surrender of the accused before the Trial Court.

¹ Crl.O.P.(MD)No.17104 of 2014

² Crl.RC(MD)No.357 & 369 of 2016

³ [1995] 2 M.W.N.(Crl.)114 [para 6]



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28. However, the principle emerging from those decisions is frequently misunderstood. The ratio is not that every Non-Bailable Warrant must invariably be recalled in the absence of the accused. The ratio is only that the Trial Court possesses the jurisdiction to entertain such an application without insisting upon physical production of the accused in every case.

29. The distinction between maintainability of an application and entitlement to relief assumes significance. While the former concerns the jurisdiction of the Court, the latter depends upon judicial discretion exercised upon the facts of each individual case.

30. Learned counsel for the petitioner also relied upon Section 355 BNSS contending that the Trial Court ought to have permitted the petitioner to be represented through counsel. This submission, attractive though it appears at first blush, cannot be accepted in the factual backdrop of the present case.



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31. Section 355 empowers the criminal Court, in appropriate cases, to dispense with the personal attendance of an accused represented through an advocate. The provision is intended to facilitate smooth conduct of proceedings and avoid unnecessary hardship to litigants. The legislative recognition of virtual appearance further reinforces this objective.

32. Nevertheless, Section 355 does not eclipse the authority of the Trial Court to insist upon the personal presence of an accused whenever such presence becomes indispensable for the effective progress of the proceedings.

33. Particularly in Sessions trials involving offences punishable with imprisonment for life or death, the stage of framing of charges is one at which the presence of the accused ordinarily assumes importance. The discretion continues to remain with the Trial Court.

34. It is here that the present case fundamentally differs from the authorities relied upon by the petitioner. The impugned order records that the petitioner remained unavailable for nearly two years



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after issuance of the Non-Bailable Warrant. During this interregnum, the respondent police constituted a Special Team for execution of the warrant and proceedings against the sureties were also initiated. These factual findings have not been demonstrated to be incorrect before this Court.

35. Courts exercising equitable discretion are entitled to examine not merely the explanation offered by an accused but also his overall conduct. Judicial discretion cannot operate in a vacuum divorced from surrounding circumstances.

36. The explanation that the petitioner was attending to the illness of his father may perhaps explain his absence on one particular day. It does not satisfactorily explain his continued absence extending over almost two years nor does it explain why no effective steps were taken immediately after issuance of the warrant.

37. Learned counsel would contend that the learned Sessions Judge was unduly influenced by the gravity of the offences. A careful reading of the impugned order does not support such contention.



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38. The learned Sessions Judge has taken into account four relevant circumstances, namely,

- (i) the prolonged non-appearance of the petitioner;
- (ii) the failure to seek recall of the warrant for nearly two years;
- (iii) the constitution of a Special Team to execute the warrant;

and

(iv) the pendency of a Sessions Case involving grave offences at the stage of framing of charges.

These considerations are neither extraneous nor irrelevant.

38. Gravity of the offence, though not by itself determinative, undoubtedly constitutes one of the relevant considerations while deciding whether coercive process issued by a criminal Court deserves to be withdrawn.

39. The precedents relied upon by the petitioner lay down an important safeguard against unnecessary insistence upon physical surrender. They cannot, however, be construed as compelling every



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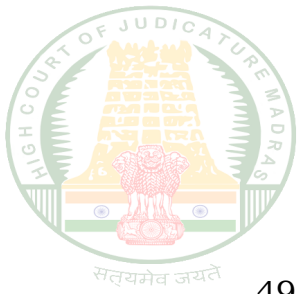
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Trial Court to recall a warrant irrespective of the conduct of the accused. Judicial discretion under Section 72(2) BNSS is intended to advance justice and not to reward prolonged non-compliance with judicial process.

40. In the present case, the learned Sessions Judge has assigned cogent reasons founded upon the facts borne out by the record. The discretion exercised cannot be characterised as arbitrary, capricious or perverse so as to warrant interference in revision.

41. This Court is therefore of the considered opinion that the impugned order dated 22.04.2026 passed by the learned Principal District and Sessions Judge, Sivagangai, in Cr.M.P.No.31 of 2026 in S.C.No.106 of 2022 does not suffer from any illegality, perversity or material irregularity warranting interference under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

42. Accordingly, the Criminal Revision Petition stands dismissed. Consequently, the connected miscellaneous petition, if any, shall also stand dismissed.



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49. Nevertheless, it is made clear that dismissal of the present revision shall not preclude the petitioner from voluntarily appearing before the learned Principal District and Sessions Judge, Sivagangai, and seeking such relief as may be available in law. In the event of such appearance, any application that may be filed shall be considered independently on its own merits, uninfluenced by the observations contained in this judgment, save those necessary for disposal of the present revision.

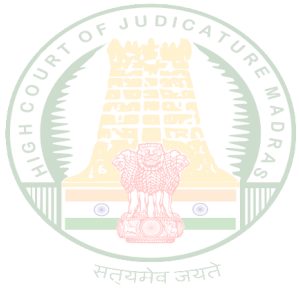
20.07.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

Note: Issue order copy on 20.07.2026.

To

- 1.The Principal District and Sessions court,
Sivagangai.
- 2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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