

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 15-09-2026****CORAM****THE HON'BLE MR.JUSTICE N.RAMESH****CRL OP No. 24516 of 2026****S.Prabhakaran****..Petitioner(s)****Vs**

1. The State, represented by
the Inspector of Police,
K5, Peravallur Police Station,
Periyar Nagar West,
Perambur, Chennai 600 082.

2. Avanse Financial Services Limited
Having its registered and Corporate Office at
001 and 002, Fulcrum, A Wing, Ground Floor,
Sahar Road, Next to Hyatt Regency,
Andheri (East), Mumbai - 400 099
Represented by its Authorized Representative.

..Respondent(s)

PRAYER: This criminal original petition filed under Section 482 BNSS Act to enlarge the petitioner on anticipatory bail in the event of his arrest by the 1st respondent police in execution of the Non-Bailabel Warrant issued in STC.No. 10829 of 2025 on the file of the learned XXXIV Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai, in connection with the alleged offence under Section 138 of the Negotiable Instruments Act, 1881, on such terms and conditions as this Hon'ble court may deem fit and proper, and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render Justice.

For Petitioner(s):**Mr.Thiruneelakandan Ramaiyan****For Respondent(s):****Mr.R.Rajasekaran,
Govt.Advocate (Crl.Side)**



ORDER

1. This petition is presented under Section 482 of BNSS. The petitioner asks that he be released on bail in the event of his arrest by the first respondent police in execution of the Non-Bailable Warrant issued against him in S.T.C. No. 10829 of 2025 on the file of the learned XXXIV Metropolitan Magistrate, Fast Track Court No. I, Egmore at Allikulam, Chennai. That case is a complaint by the second respondent for an offence under Section 138 of the Negotiable Instruments Act, 1881. The petition stands numbered subject to maintainability and is listed under the caption "**for maintainability**". This order is confined to that question.

2. The objection of the Registry, raised when the papers were returned, is in a single line: *"How Section 138 Negotiable Instrument Act lie in AB."* On representation, learned counsel for the petitioner endorsed that the *"Hon'ble Madras High Court in Regupathi Vs. Govindan and another Crl.O.P.No.6542 of 2026 dated 15.03.2006 has held that in a case Under Section 138 of the NI Act where an NBW has been issued, High Court has the Power to grant anticipatory bail by invoking its inherent Jurisdiction"*, and that the petition is maintainable in view of that judgment. Nothing else is urged in support of maintainability, and the papers were placed before this Court for orders. Counsel for petitioner was heard.

3. The decision relied upon is **Regupathi v. Govindan and another, 2006 Cri.L.J. 4232 : 2006 (2) MLJ (Crl) 336**, of a learned single Judge of this Court dated 15.3.2006.

4. The facts that bear upon the objection are short, and I take them from the petition and its enclosures. The complaint was taken on file as S.T.C. No. 10829 of 2025. Summons and thereafter a bailable warrant failed to bring the petitioner before the trial Court. On 02 June 2026 the learned Magistrate



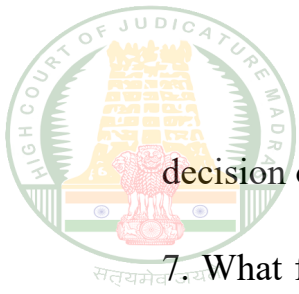
recorded that the bailable warrant had not been returned and that no report had been filed, and issued a Non-Bailable Warrant. On 31 July 2026 the petitioner moved Crl.M.P. No. 7438 of 2026 under Section 72(2) of the Sanhita to recall that warrant, along with a petition under Section 355 for dispensation of his personal appearance and an affidavit of undertaking. By order of the same date the learned Magistrate dismissed the recall petition. The petitioner states that he has since presented Crl.O.P. (SR) No. 51306 of 2026 under Section 528 of the Sanhita to set aside that order, and Crl.O.P. (SR) No. 49792 of 2026 to set aside the warrant, and that both await numbering. It is in that setting that he asks this Court for anticipatory bail.

5. Section 482(1) of the Sanhita reads:

"When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail."

The jurisdiction is conferred by reference to the character of the offence. An accusation of a non-bailable offence is the condition upon which the power rests. Where the accusation is of a bailable offence the section is not attracted, and the question whether relief ought to be granted never arises.

6. The offence under Section 138 of the Negotiable Instruments Act, 1881, is punishable with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. An offence against a law other than the Bharatiya Nyaya Sanhita, 2023, punishable with imprisonment for less than three years, is classified as bailable by Part II of the First Schedule to the Sanhita. That the offence here is bailable is not in controversy. It is the premise of the Registry's objection, and the



decision on which the petitioner relies proceeds upon it.

7. What follows from those two propositions is settled by binding authority. In

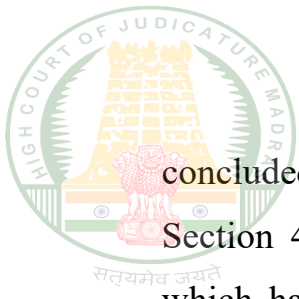
R.K. Krishna Kumar v. State of Assam, AIR 1998 SC 530 : (1998) 1 SCC 474, the Supreme Court held that where the offence alleged is bailable,

"the question of granting anticipatory bail to the appellants under Section 438 of the Code of Criminal Procedure cannot and does not arise ... and a direction under the former can be issued only in respect of a non-bailable offence."

The point was put again in **Joginder @ Jindi v. State of Haryana, (2008) 10 SCC 138**, where it was held that *"Section 438 Cr.P.C. in terms relates to non-bailable offences"* and that *"a petition under Section 438 Cr.P.C. in relation to bailable offences is mis-conceived"*, the Court adding that if the petitioner surrenders and seeks regular bail that application is to be considered on its own. Section 482 of the Sanhita reproduces Section 438 of the Code in terms, and those decisions govern its construction.

8. The issue of a Non-Bailable Warrant does not alter the position. A warrant is process to secure attendance. It is directed to the person and not to the offence, and it cannot change the classification the statute has given to the offence. Were it otherwise, the character of an offence would vary with the form of process a Magistrate chose to issue, and the First Schedule would be at the disposal of the trial Court. Section 72(2) of the Sanhita provides that every warrant remains in force until it is cancelled by the Court which issued it, or until it is executed. The power to undo the warrant lies where the warrant was made.

9. Regupathicase (Supra) does not survive this. The learned Judge there followed **R. Sarathkumar v. Inspector of Police, 2004 MLJ (Cri) 421**, held that a Non-Bailable Warrant issued in a bailable case without a preceding bailable warrant is not in accordance with the scheme of the Code, and



concluded that this Court may therefore grant anticipatory bail by invoking Section 482 read with Section 438 of the Code. R.K. Krishna Kumar case, which had by then stood for eight years, was not placed before that learned Judge. The earlier decision of this Court in **J.K.S. Manickam v. Inspector of Police, 1994-2-L.W. (Cri) 764**, which Regupathi itself notices as having held that an anticipatory bail petition in a Section 138 case is not maintainable, was neither followed nor dissented from. In **S. Kannan v. State, 2011 SCC Online MAD 255**, a learned single Judge of this Court examined R. Sarathkumar and Regupathi against the decisions of the Supreme Court and held, with respect, that *"these two judgements are per incuriam and so they are not binding precedents"*, following his own earlier view in **Venkatesh Babu v. State of Tamil Nadu, 2009 (1) L.W. (Cri) 80** that the issue of a non-bailable warrant *"shall not convert the offence into one of non-bailable so as to maintain a petition under Section 438 of Cr.P.C."*, and that what cannot expressly be done under Section 438 cannot be done indirectly under Section 482 of the Code. I respectfully agree with that reasoning. The endorsement rests the maintainability of this petition upon a decision that was held fifteen years ago not to be a binding precedent, and it does not notice that holding.

10. The petitioner is not without remedy, and he has already taken it. He moved the learned Magistrate under Section 72(2) for recall of the warrant and failed; he has carried that refusal to this Court in Crl.O.P. (SR) No. 51306 of 2026; and he has separately attacked the warrant in Crl.O.P. (SR) No. 49792 of 2026. Whether the learned Magistrate was right to decline recall, and what the guidance in **Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51** requires in a case of this kind, are questions for those petitions when they are numbered and listed. They cannot be reached through a provision that does not apply. Nor is the petitioner exposed in the manner the affidavit apprehends. The offence being bailable, his release on bail upon arrest



is governed by Section 478 of the Sanhita and falls to be dealt with under that provision by the Court before which he is produced.

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11. I therefore hold that a petition under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, does not lie in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881, and that the issue of a Non-Bailable Warrant in such a case does not attract that provision. The objection of the Registry is sustained.

12. In the result, this Criminal Original Petition is dismissed as not maintainable.

15-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
sms

To

1. The learned XXXIV Metropolitan Magistrate,
Fast Track Court No.1, Egmore at Allikulam,
Chennai.

2. The Inspector of Police,
K5, Peravallur Police Station,
Periyar Nagar West,
Perambur, Chennai 600 082.

3. The Public Prosecutor
High Court, Madras.



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Order QR

N.RAMESH, J.

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