**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 28-08-2026****CORAM****THE HON'BLE MR.JUSTICE N.RAMESH****CRL OP No. 22231 of 2026**

Rajalakshmi

..Petitioner(s)

Vs

The state, Rep by
The Station House Officer
All Women Police Station,
Panruti Taluk, Cuddalore District.

..Respondent(s)

PRAYER: This criminal original petition filed under Section 482 of BNSS, 2023, to enlarge the petitioner on Anticipatory Bail in the event of arrest by the Respondent All Women Police Station Panruti in Crime No. 74 of 2026, 08-07-2026 pending on the file of the respondent All women police and pass such further or other orders as this Honorable Court.

For Petitioner(s):

Mr.S. Parthibarajan

For Respondent(s):

Mr.R.Rajasekaran

Government Advocate (Crl.Side)

ORDER

1. This Criminal Original Petition has been filed under Section 482 of BNSS, praying that the petitioner, Rajalakshmi, arrayed as Accused No.2, be enlarged on anticipatory bail in the event of her arrest in connection with Crime No.74 of 2026 on the file of the All Women Police Station, Panruti, Cuddalore District. The FIR was registered on 08.07.2026 for the alleged occurrence dated 19.06.2026, for offences punishable under **Sections 82, 85, 49, 296(b) and 351(2) of the BNS.**



2. The case set out in the affidavit filed in support of the petition is, in substance, that the de facto complainant/wife of A1, has alleged that this petitioner/A2 entered into a marriage with A1/ Mayakrishnan. The petitioner's specific case is that she had no knowledge, at the time she entered into the marriage with Mavakrishnan, that he already had a subsisting marriage with the de facto complainant; that the said fact was concealed from her: that she is, if anything, a person deceived by that concealment rather than a participant in any offence; and that she has been falsely implicated in a matrimonial dispute that is essentially between the de facto complainant and Mayakrishnan.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent-State.

4. **Section 82 of the BNS** reads as follows:

82. (1) Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception. This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes

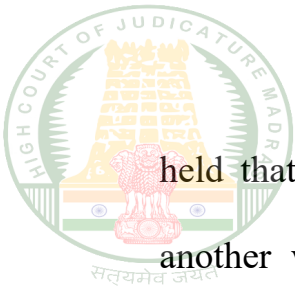


place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

(2) Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It is seen that Section 82 BNS reproduces, in substance, former Sections 494 and 495 of the Indian Penal Code, 1860. Sub-section (1) punishes a person who, having a spouse living, marries again during the subsistence of that marriage. Sub-section (2) enhances the punishment where the offender has concealed the fact of the former marriage from the person with whom the subsequent marriage is contracted. On the plain language of the provision, the offender is the person who already has a living spouse; a person who is herself unmarried and marries such a person, without knowledge of the subsisting marriage, does not thereby become an offender under Section 82.

5. This construction is well settled under the predecessor provision and has been carried forward under the BNS. **The Karnataka High Court in Thimmappa v. Bharathi (2024:KHC:10412)** held that it is only the spouse who marries again during the subsistence of the earlier marriage who can be prosecuted under Section 494 IPC, and that relatives or the second spouse cannot be roped in without material showing knowledge and participation. The Chhattisgarh High Court in **Dr. Manju Sinha v. Smt. Pyari Dadsena (2025:CGHC:4513)**



held that a person who was single at the time of the marriage and married another whose earlier marriage was subsisting cannot be prosecuted under Section 494 IPC, since liability attaches only to the spouse whose earlier marriage is in force.

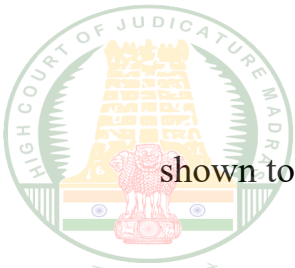
6. On the petitioner's specific case that she was unaware of the subsistence of Mayakrishnan's marriage with the de facto complainant - she is not, prima facie, the person contemplated as an offender under Section 82(1) of the BNS. Whether that plea of want of knowledge is true is a matter for investigation and, if necessary, trial; but for the purpose of anticipatory bail, in the absence of any material placed by the prosecution to show that the petitioner was aware of the subsisting marriage, the case against her under Section 82 does not, at this stage, disclose the gravity that would justify custodial interrogation.

7. **Section 85 of the BNS** (corresponding to Section 498A IPC) punishes cruelty inflicted on a woman by her "husband or relative of the husband". The provision is not one of general application: it is confined, by its own terms, to the husband and to persons who stand in the relationship of a relative to the husband, ordinarily by blood, marriage or adoption. The Calcutta High Court in **SAGARI HEMBRAM v. STATE OF WEST BENGAL AND ANR., (2024 SCC ONLINE CAL 10278)** quashed proceedings under Sections 498A, 494, 406 and 506 IPC against a second wife on the ground that the offence under Section 494 IPC is applicable only to the person who has married a second time during



the subsistence of a valid marriage, and not to the person with whom that marriage is contracted. The same reasoning applies with equal force to Section 85 of the BNS. If the petitioner's alliance with Mavakrishnan is, as she claims, one she entered into believing herself to be his wife while in fact being deceived as to the subsistence of his earlier marriage, she does not thereby become a "relative of the husband of the de facto complainant within the meaning of Section 85. She and the de facto complainant occupy, on the petitioner's case, the position of the two women deceived and wronged by the same man, not that of an accused and her victim.

8. It may also be noticed, without resting the decision on this ground alone, that the Calcutta High Court (Jalpaiguri Circuit Bench) in **AJAY KUMAR v. THE STATE OF WEST BENGAL AND ANR, (CRR/77/2026, Mar 23, 2026)**- a case involving the identical combination of Sections 82(2) and 85 of the BNS - held that, in terms of Section 219 of the BNSS, an offence under Section 82(2) of the BNS is non-cognizable and cannot be set into motion by a police case, and must proceed only as a complaint case. Should the offence in the present crime, in so far as it invokes Section 82, be founded on the concealment limb under Section 82(2), that observation would bear on the very maintainability of the police case to that extent. This aspect is left open for such consideration as may be appropriate at the proper stage and is noted here only as a factor reinforcing the conclusion that custodial interrogation of the petitioner is not

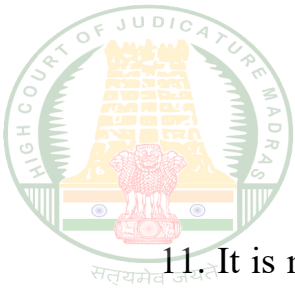


shown to be necessary.

9. The jurisdiction under Section 482 of the BNSS is to be exercised having regard to the nature and gravity of the accusation, the role attributed to the applicant, the possibility of the applicant fleeing from justice or tampering with evidence, and the need, if any, for custodial interrogation. The Supreme Court in **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273**, while dealing with Section 498A IPC - the very provision of which Section 85 of the BNS is the successor-cautioned against automatic or mechanical arrest in matrimonial offences carrying sentences of less than seven years, and required that the necessity for arrest be objectively justified.

10. Applying these considerations to the present case:

- (i) the core allegation under **Section 82** is, on the statutory language and the authorities noticed above, directed at the person who already has a subsisting marriage, that is, Mayakrishnan, and not at the petitioner on her case of want of knowledge;
- (ii) the allegation under **Section 85** is not, prima facie, sustainable against the petitioner, who is not shown to be a "relative of the husband" of the de facto complainant;
- (iii) the petitioner is a woman who has approached this Court promptly.



11. It is made clear that the observations in this order are confined to the prima facie evaluation required at the stage of anticipatory bail and shall not be construed as a finding on the merits of the prosecution case against Mayakrishnan or the other accused, nor as a final determination of the validity of either marriage or of the applicability of any of the sections invoked. Those questions shall abide investigation and, if a charge sheet is filed, the trial. Nothing in this order shall enure to the benefit of Mayakrishnan or the other co-accused, and the investigation against them shall proceed uninfluenced by anything stated herein.

12. This Court is satisfied that the petitioner has made out a case for grant of anticipatory bail.

13. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date on which the order copy is made ready, before the **learned Judicial Magistrate No.I, Panruti, Cuddalore District**, on condition that the **petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)** with **two sureties** each for a like sum to the satisfaction of the learned Magistrate concerned, and on further conditions:

(a) If the petitioner fails to surrender before the concerned learned Magistrate within a period of fifteen (15) days from the



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date of receipt of a copy of this order, this order shall stand automatically cancelled;

(b) The sureties shall affix their photographs and left thumb impression in the application for surety ship (Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019]'. The learned Magistrate shall obtain a copy of any one of identify proofs to ensure their identity;

(c) The petitioner shall report before the respondent police daily at 10.30 am for a period of four weeks;

(d) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate actions against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on anticipatory bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji v. State of Kerala [(2005) AIR SCW 5560]*;

(e) If the petitioner thereafter absconds, a fresh FIR can be registered under Section 269 of BNS Act.

In the result, this Criminal Original Petition is allowed on the above conditions.

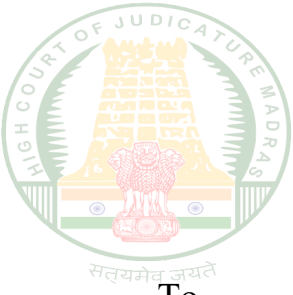
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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

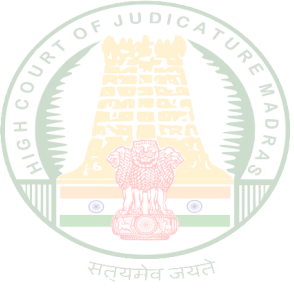
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To
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- 1.The learned Judicial Magistrate No.I, Panruti, Cuddalore District.
- 2.The Station House Officer
All Women Police Station,
Panruti Taluk, Cuddalore District.
- 3.The Public Prosecutor
High Court, Madras.

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N.RAMESH, J.

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