



CRIMINAL

Madras High Court Issues Landmark Directions for Transgender Welfare While Granting Anticipatory Bail

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The Madurai Bench of the Madras High Court has delivered a significant judgment that transcends the immediate facts of an anticipatory bail application to address the systemic marginalisation and deprivation of constitutional rights faced by the transgender community in Tamil Nadu. In *V. Sarathkumar v. The State*, Justice K.K. Ramakrishnan granted anticipatory bail to a YouTuber charged under Section 353 of the Bharatiya Nyaya Sanhita (BNS) 2023, while simultaneously issuing comprehensive directions to the Government of Tamil Nadu to formulate and implement welfare schemes for transgender persons at the taluk level.

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Factual Background

The petitioner, a YouTuber, published a video on digital media concerning the self-immolation of a transgender individual within the precincts of a police station. The video allegedly projected, albeit incorrectly, that police had collected details of transgender persons based on complaints that they were extracting money from the public through coercive means. During the relevant period, one transgender person committed self-immolation and succumbed to injuries.

The petitioner contended that the incident was inadequately reported in mainstream media, resulting in injustice to the transgender community. Based on the video, the respondent police registered Crime No. 73 of 2026 under Section 353 BNS, which pertains to statements conducing to public mischief.

The petitioner sought anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), arguing that he had merely retransmitted content, the message did not originate from him, no incriminating material was found, and upon becoming aware of the contents, he immediately removed the video. His mobile phone had already been seized by the investigating agency, rendering custodial interrogation unnecessary.

The Additional Public Prosecutor opposed the grant of anticipatory bail, contending that the petitioner had propagated false information against the police and the Government, creating a misleading impression that grievances of the transgender community were not addressed by authorities. It was further submitted that there were serious allegations against certain members of the transgender community regarding illegal extraction of money from the public through intimidation.

The Court's Decision on Anticipatory Bail

Justice K.K. Ramakrishnan directed the investigating officer to produce the alleged offending material. Upon viewing the contents on a pen drive, the Court found that the allegation against the petitioner was limited to retransmission of news relating to the self-immolation incident. Even as per the FIR, the accusation was that the petitioner published or shared the information. Significantly, similar news had already been disseminated by several other media outlets prior to the petitioner's transmission.

In these circumstances, the Court granted anticipatory bail subject to conditions including execution of a bond for Rs. 10,000 with two sureties, daily reporting to the respondent police for 15 days, and undertakings not to tamper with evidence, influence witnesses, or abscond.

Judicial Notice of Transgender Marginalisation

While the grant of bail was relatively straightforward, the Court did not remain confined to the immediate issue. Justice Ramakrishnan noted that the tragic incident of self-immolation “shocks the judicial conscience” and observed that members of the transgender community continue to face entrenched social stigma, resulting in deprivation of basic dignity and meaningful livelihood opportunities.

The Court made powerful observations rooted in constitutional philosophy:

“Transgender persons are not strangers to our social fabric and the tragedy is not in their birth, it is in the blindness of society which, by exclusion and prejudice, has driven them into conditions of extreme marginalization.”

The Court noted that transgender persons have been driven to beg on streets or engage in activities inconsistent with societal norms merely to secure livelihood, deepening their vulnerability. This, the Court held, reflects a total failure of society’s collective conscience to embrace diversity with empathy.

Constitutional Framework and Precedent

The judgment extensively cites and applies the Supreme Court’s landmark decision in *National Legal Services Authority v. Union of India* (2014) 5 SCC 438, which recognised transgender persons as a third gender and affirmed their entitlement to equality, dignity, and protection under Articles 14, 15, 16, and 21 of the Constitution.

The Court quoted extensively from NALSA, including the Supreme Court’s finding that transgender persons have been systematically denied rights under Article 15(2) (access to public places), have not been afforded special provisions under Article 15(4) for socially and educationally backward classes, have been denied rights under Article 16(2) (non-discrimination in employment), and are entitled to reservation under Article 16(4).

The Supreme Court in NALSA had held:

“By recognising TGs as third gender, they would be able to enjoy their human rights, to which they are largely deprived of for want of this recognition.”

The Madurai Bench noted that despite NALSA being delivered in 2014, the directions issued therein have not been effectively implemented in their true spirit. The continued inaction on the part of the State, the Court held, undermines the mandate of Articles 14, 15, 16, and 21 of the Constitution.

Constitutional Obligation and Judicial Intervention

Justice Ramakrishnan held that where society has failed to cultivate tolerance, compassion, and fraternity, and instead seeks to deflect responsibility, the Court cannot be a mute witness to the indignities suffered by a vulnerable class. The charter of human dignity obligates the Court to intervene where society has faltered.

The Court observed:

“The Constitution does not permit such exclusion. Therefore, this Court observes with deep anguish and records, with profound concern, that such conditions reflect a collective societal failure to uphold the basic values of empathy, equality, and fraternity.”

Drawing on the constitutional philosophy articulated in *State of Karnataka v. Ranganatha Reddy* (1977) 4 SCC 471, the Court emphasised that the social philosophy of the Constitution shapes creative judicial vision and orientation, and that constitutional problems cannot be studied in a socio-economic vacuum.

The Court further invoked John Rawls’ conception of “Justice as Fairness” and the notion of distributive justice endorsed by Nobel Laureate Amartya Sen, holding that once it is accepted that transgender persons are part of vulnerable and marginalised sections of society, the State is obligated to bring them within the fold of rights recognised for other such classes.

Directions to the State Government

In discharge of its constitutional duty, the Court issued the following binding directions:

- Comprehensive Rehabilitation Scheme:** The State Government shall formulate a comprehensive rehabilitation scheme for transgender persons at the taluk level, ensuring avenues for self-employment and sustainable livelihood, and to restore dignity and ensure meaningful inclusion of transgender persons in society along with necessary welfare schemes tailored to their specific needs.
- Coordination by Chief Secretary:** The Chief Secretary of the State of Tamil Nadu is directed to coordinate with all relevant departments to ensure effective and time-bound implementation of the aforesaid measures.
- Compliance Report:** The Chief Secretary shall file a detailed compliance report on or before 26 July 2026.
- Monitoring:** The matter has been listed on 3 August 2026 for reporting compliance.

Legal Significance and Implications

This judgment is significant on multiple levels:

Judicial Activism in Service of Constitutional Values: The Court has exercised its jurisdiction under Article 226 of the Constitution to grant relief in a bail matter, and to secure substantive constitutional rights for a marginalised community. This is consistent with the Supreme Court's recognition in NALSA that Article 21 imposes positive obligations on the State to ensure better enjoyment of life and dignity.

Implementation of NALSA: The judgment addresses a critical gap between constitutional declaration and ground reality. Despite NALSA recognising transgender persons as a third gender in 2014, and the enactment of the Transgender Persons (Protection of Rights) Act, 2019, implementation has been patchy. This judgment seeks to translate judicial pronouncements into enforceable administrative action.

Taluk-Level Implementation: The direction to formulate schemes at the taluk level is particularly significant. It recognises that meaningful inclusion requires localised, accessible interventions rather than centralised schemes that may not reach vulnerable individuals in smaller towns and rural areas.

Self-Employment and Dignity: The emphasis on self-employment and sustainable livelihood, rather than mere welfare handouts, reflects a dignity-based approach. It seeks to enable transgender persons to participate in economic life as equals rather than objects of charity.

Justiciability of Positive Rights: The judgment reaffirms that fundamental rights under Part III of the Constitution are not merely negative restraints on State action but impose positive obligations to create conditions for the realisation of dignity, equality, and fraternity.

Broader Implications for Vulnerable Groups: The reasoning and approach adopted in this judgment can inform judicial interventions for other marginalised communities, including persons with disabilities, de-notified tribes, manual scavenging communities, and others subjected to systemic exclusion.

Concluding Observations

The Madurai Bench's judgment in *V. Sarathkumar v. The State* is a powerful reaffirmation of the judiciary's role as a guarantor of constitutional rights for marginalised communities. By moving beyond the immediate facts of an anticipatory bail application to address systemic exclusion, the Court has demonstrated that judicial compassion must translate into enforceable rights.

The judgment is a reminder that constitutional promises of equality, dignity, and fraternity are not self-executing. They require active State intervention, vigilant judicial oversight, and sustained societal commitment to inclusion.

For legal practitioners, policymakers, and civil society organisations working on transgender rights, this judgment provides a renewed impetus to demand implementation of NALSA and the Transgender Persons Act, 2019. For the Government of Tamil Nadu, it is a binding constitutional mandate to formulate and implement comprehensive welfare measures at the grassroots level.

The Court's parting observation bears repetition: "It is no part of judicial function to sit in theological judgment over the Creator." The Constitution does not permit exclusion based on gender identity. The time for action is long overdue.

Source: Madras High Court, Madurai Bench

Citation: *V. Sarathkumar v. The State*, CrI.O.P(MD) No. 5185 of 2026, decided on 24 April 2026 by Hon'ble Mr. Justice K.K. Ramakrishnan, Madras High Court, Madurai Bench.

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