

KADK010058652025



Presented on : 10-12-2025
Registered on : 10-12-2025
Decided on : 10-07-2026
Duration : 7 months

**In the Court of III Additional District & Sessions Judge,
D.K., Mangaluru.**

Present:- Sri. Shridhar Gopalakrishna Bhat,
III Additional District and Sessions Judge,
D.K., Mangaluru.

Dated: This the 10th day of July, 2026.

Crl.Rev. Petition No.294/2025

Petitioner: Mr. Saddam,
S/o. Umarabba,
Aged about 32 years,
R/at Borugudde, Kannur,
Mangalore.

(By Sri. Ibrahim K.S, Advocate)

Versus

Respondent: 1. Special Executive Magistrate,
Mangalore City Commissionarate,
Mangaluru D.K.

2. The State represented by
Kankanady Town Police.

(By learned Public Prosecutor)

ORDER

The revision petitioner has filed the present revision petition under section 438 and 440 of Bharatiya Nagarik Suraksha Sanhitha(in short BNSS), seeking an order to call for the records in No.1044/SEM/M.C/2025 from the Respondent No.1/Special Executive Magistrate and Deputy Commissioner of Police (in short DCP) (Law and Order), Mangaluru City, Mangaluru and to set aside the proceedings therein in the interest of justice.

2. The petitioner in his petition contended that the Special Executive Magistrate and DCP, Mangaluru city, as per the proceedings in 1044/SEM/M.C/2025 initiated the proceeding under Section 129(e) and (g) of the BNSS and passed the preliminary order dated 07-11-2025 under Section 130 of the BNSS against the Petitioner and the Petitioner is directed to appear before him and to execute the personal bond for Rs.50,000/- and one surety for the likesum for keeping good behaviour. The said proceeding was initiated on the basis of the report filed by the Assistant Sub-Inspector of Police, Kankanaday Police Station.

3. Being highly aggrieved by the initiation of the said proceedings, the Petitioner has filed the present revision petition on the following grounds:

(a) The institution of the proceedings under Section 129(e) and (g) of BNSS and issuing notice to the Petitioner by the Special Executive Magistrate is improper, illegal and hence the entire proceedings is liable to be set aside.

(b) The impugned order does not set forth the instance of any breach of peace or disturbance of public tranquility. Hence the learned Special Executive Magistrate ought to have held that there was no material to invoke Section 129(e) and (g) of the BNSS.

(c) The preliminary order does not disclose that the learned Special Executive Magistrate has recorded the sworn statement of the complainant. There is no material to show that the Special Executive Magistrate has been satisfied that there was likelihood of breach of peace being caused by the Petitioner. Hence, the impugned order is liable to be set aside.

(d) The learned Special Executive Magistrate ought to have rejected the report of the police as no material placed to show that the Petitioner has been indulging on acts of breach or disturbance of the public tranquility. The Petitioner was made as an accused in Crime numbers mentioned in the impugned order in which he has been already enlarged on bail. Except the cited cases, no other single cases are registered against him. He has no criminal antecedents. Only inorder to harass him and to

fill the statistics, the police have given false report of the public nuisance.

Accordingly, on these grounds prayed for allowing the petition.

4. Along with the petition, Petitioner has produced the copy of notice issued by the Respondent No.1 and order dated 07-11-2025 passed under Section 130 of the BNSS to substantiate the petition averments.

5. After filing of this petition, this Court was pleased to issue notice to the Respondents. In pursuance to the notice issued, the learned Public Prosecutor entered his appearance for Respondents and filed detail objection along with the copy of entire proceedings held by the Special Executive Magistrate and DCP (Law and Order) Mangaluru City, Mangaluru in proceeding No.1044/S.E.M/M.C/2025. The Respondents have objected the petition contending that the petition is not maintainable either in law or on facts. In the objection the learned Public Prosecutor explained as to why the proceedings are initiated by the Special Executive Magistrate against the Petitioner. It is further contended that the Special Executive Magistrate has passed the order issuing show cause notice to the Petitioner to prevent the commission of breach of public peace and disturbing public tranquility or to do any unlawful act that may cause breach of public peace or disturb the

public tranquility. The Special Executive Magistrate had only issued show cause notice calling upon the Petitioner to explain why he should not be ordered to execute the bond as called for. The Petitioner without show causing has come up with the present petition which is not proper. The only intention of the Petitioner in filing the present petition is to prevent the proceedings before the Special Executive Magistrate. It is further objected on the ground that the order passed by the Special Executive Magistrate is only an interlocutory order and hence the revision petition itself is not maintainable. The Special Executive Magistrate after receiving the Preventive Action Report from the Sub Inspector of Police, Kankanady Police Station and considering the matter, passed the order which is in accordance with law. Hence the revision petition is not sustainable and the Petitioner has not made out any grounds for allowing the petition. Accordingly, prayed for dismissal of the petition.

6. Heard the arguments of the learned counsel for the Petitioner as well as learned Public Prosecutor on the petition. The learned Public Prosecutor has relied on the Judgment of Hon'ble Madras High Court reported in **2018 Crl.L.J. 1188** in case of **M. Krishnamurthy and others -Vs - Sub-Divisional Magistrate-cum Revenue and another** and also the order dated 19-03-2024 passed by our Hon'ble High Court in **Crl.Pn.No.2578/2024 (482)** and also the order dated

02-09-2025 passed by our Hon'ble High Court in **W.P.No.105748/2025 (GM-RES)** in support of his arguments. Though the learned Public Prosecutor referred the decision of the Hon'ble Orissa High Court reported in **1989 Crl.L.J 1872** and also the Judgment of the Apex Court in **Crl.A.No.388/2022** in his objection he has not furnished the same.

7. On perusal of entire materials placed before this Court and also on hearing the arguments of the learned counsels, the points that would arise for consideration are;

1. Whether the present revision petition is maintainable? If so whether the Petitioner has made out grounds for allowing the petition?
2. What order?

8. The above points are answered as under;

Point No.1 : In the Negative.

Point No.2 : As per the final order
for the following;

REASONS

9. **Point No.1:** The Petitioner has stepped up the door of this Court questioning the impugned show cause notice dated 07-11-2025 issued by the Respondent No.1/ Special Executive Magistrate and DCP (Law and Order)

Mangaluru City, Mangaluru under Section 130 of BNSS, 2023. On perusal of the show cause notice produced before this court it would reveal that the 1st Respondent had received Preventive Action Report with requisition from the Sub-Inspector of Police, Kankanady Police Station, Mangaluru under Section 126 of the BNSS seeking the preventive action against the Petitioner under Section 136 of the BNSS. On receipt of the said report and requisition, the Respondent No.1 being the competent authority considering the same, in exercise of his power under Section 130 of the BNSS, 2023 has issued the impugned show cause notice.

10. The learned counsel for the Petitioner vehemently argued in terms of the petition averments contending that the Respondent No.1 has passed the order under Section 130 of the BNSS without considering any material and mechanically issued the show cause notice affecting the right of the Petitioner and hence there is total irregularity, illegality and arbitrariness in the proceedings initiated and thereby the revision petition is maintainable and the Petitioner has made out the grounds for allowing the petition.

11. On the other hand, the learned Public Prosecutor relying on the Judgment of the Hon'ble Madras High Court reported in 2018 Crl.L.J 1188 contended that the order passed by the Special Executive

Magistrate under Section 130 of the BNSS is only an interlocutory order and that will not decide any right or liability of the Petitioner and hence the revision petition is not maintainable. Apart from that, relying on the Order passed by our Hon'ble High Court in WP No.105748/2025 and Criminal Petition No.2758/2024 the learned Public Prosecutor meticulously submitted that only show cause notice has been issued by the Special Executive Magistrate and the Petitioner has to appear before him and to give explanation as to why the bond should not be taken from him with one surety as called for. In spite of complying with show cause notice issued by the competent authority, he has filed the present revision petition which is not sustainable.

12. This Court has carefully perused the decision relied by the learned Public Prosecutor. In the decision reported in 2018 Crl. L.J 1188, the Hon'ble Madras High Court has held that the order under Section 111 of Cr.P.C. is not revisable, being interlocutory. Section 130 of the BNSS corresponds Section 111 of Criminal Procedure Code 1973. On going through the show cause notice it is clear that it is only interlocutory order calling the Petitioner to show cause why the bond should not be taken from him for the amount mentioned in the show cause notice along with one surety. The Petitioner has to appear before the Special Executive Magistrate and has

to show the reason as to why he should not be asked to furnish the bond with one surety as called for. Thereafter the Respondent No.1 has to pass orders under Section 136 of BNSS in accordance with law. Hence the impugned order does not determine/decide any right or liability of the Petitioner. Therefore, the impugned order is purely interlocutory in nature and thereby the present petition itself is not sustainable by virtue of Section 438(2) of BNSS. The rulings relied by the learned Public Prosecutor in this regard is aptly applicable to the present case on hand to hold that the revision petition is not sustainable.

13. Further in the Order dated 02-09-2025 passed in WP No.105748/2025 (GM-RES) our Hon'ble High Court in a similar set of facts observed as under:

“5. Perusal of the impugned show-cause notice would go to show that a preliminary order as contemplated under Section 130 of the BNSS, 2023 has been passed by the competent authority mentioning the brief facts of the case, which has resulted in issuing the show-cause notice and therefore, I do not find any illegality in the impugned show-cause notice, which is challenged by the petitioner in this petition. It is for the petitioner to appear before the competent authority on the date mentioned in the show-cause notice and file reply objection to the show-cause notice, and in the event

an adverse order is passed against the petitioner, it is always open for him to question the same before the appropriate forum. Under the circumstances, I do not find any merit in this petition. Accordingly, the Writ Petition is dismissed.”

14. Similar observation is being made in Criminal Petition No.2578/2024 also. In the light of the said dictum it is clear that the petitioner to whom the show cause notice was issued by the lawful authority i.e. Respondent No.1, the Petitioner is required to appear before the said authority and to show cause as to why he should not be asked to execute the bond as called for in the said show cause notice. Without complying with the show cause notice, the petitioner has come up with the present application. Therefore in the light of the above rulings relied by the learned Public Prosecutor and considering the order passed by Respondent No.1, this court is of the considered view that the revision petition itself is not sustainable in any angle and the petitioner has to appear before Respondent No.1 and to file his written explanation as to why he should not be asked to execute the bond as called for. Therefore this court did not find any substance or merit in the revision petition so as to set aside the proceedings initiated by the Respondent No.1 as sought for. This court did not find any irregularity or illegality or arbitrariness in the proceedings initiated by Respondent No.1 and the show

cause notice issued. The order passed by the Respondent No.1 is found to be inaccordance with law and this Court did not find any illegality or arbitrariness in the matter of issuance of show cause notice to the Petitioner. Therefore point no. 1 is required to be answered in the **Negative** and answered accordingly.

15. **Point No.2:** For the reasons discussed in connection with Point No.1 and the findings given thereon, this court proceeds to pass the following:

ORDER

The revision petition filed by the
petitioner under section 438 and 440 of
BNSS is hereby dismissed.

(Typed on my dictation by the Stenographer Gr-I,
corrected, signed and then pronounced by me in open Court
on this the 10th day of July, 2026)

(Shridhar Gopalkrishna Bhat),
III Additional District & Sessions Judge,
D.K, Mangaluru.