

CRL OP(MD) No.5185 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	16.03.2026
Pronounced On	:	24.04.2026

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.5185 of 2026

V.Sarathkumar

... Petitioner

Vs

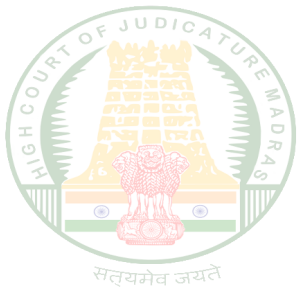
The State Rep.By,
The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
(Cr.No.73 of 2026)

... Respondent

PRAYER:- This petition has been filed under Section 482 of BNSS to enlarge the petitioner on anticipatory bail in the event of their arrest or surrender in Crime No.73 of 2026 on the file of the respondent police.

For Petitioner : Mr.Thayumanasundaram for
Mr.K.Bhuvaneshwaran

For Respondent : Mr.P.Kottaichamy
Government Advocate (Criminal Side)



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ORDER

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The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 353 of BNS 2023 in Crime No.73 of 2026, on the file of the respondent police, seeks anticipatory bail.

2. The petitioner is a You Tuber and is alleged to have published a video in digital media concerning an incident of self-immolation by a transgender individual within the precincts of a police station. It is further alleged that, in the said video, the petitioner projected, albeit incorrectly, that the 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. According to the petitioner, the said incident was not adequately reported in mainstream media, resulting in injustice to the transgender community. On the basis of the said video, the respondent police registered a case against the petitioner for an offence under Section 353 of the Bharatiya Nyaya Sanhita (BNS).

3. The learned counsel for the petitioner submitted that the petitioner had merely retransmitted the content and that the message did not originate from

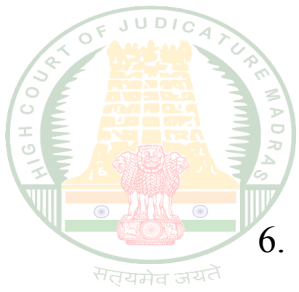


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him. It was further contended that no incriminating material was found in the said transmission. Upon becoming aware of the contents, the petitioner had immediately removed the video and prevented its further dissemination. The petitioner's mobile phone has already been seized by the investigating agency, and therefore, no custodial interrogation is necessary.

4. Per contra, the learned Additional Public Prosecutor strongly 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 the grievances of the transgender community were not addressed by the 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.

5. This Court has carefully considered the rival submissions made by the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

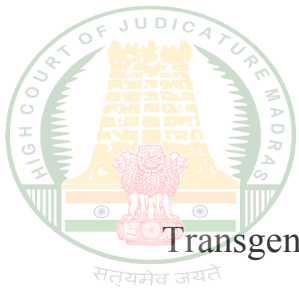


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6. The Investigating Officer was directed to produce the alleged offending material, which was accordingly placed before the Court in the form of a pen drive. Upon viewing the contents, this Court finds that the allegation against the petitioner is limited to retransmission of the news relating to the self-immolation incident. Even as per the FIR, the accusation is that the petitioner published or shared the said information. It is also evident that similar news had already been disseminated by several other media outlets prior to the petitioner's transmission. In such circumstances, this Court is inclined to grant anticipatory bail to the petitioner, subject to appropriate conditions.

7. At the same time, this Court cannot remain oblivious to the tragic incident of self-immolation, which shocks the judicial conscience. The members of the transgender community continue to face entrenched social stigma, resulting in deprivation of basic dignity and meaningful livelihood opportunities.

8. Transgenders are also children of god. On the flip side, Transgenders screenout their nuts and kooks. Transgenders are tolerate ambiguity and recognize their originality and distinguished "productive weirdness".



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Transgenders are more apt to regard themselves as carriers of talent, instruments of the transpersonal.

9. Hence, 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 such as being driven to beg on the streets or to engage in activities inconsistent with societal norms merely to secure their livelihood and thereby deepening their vulnerability and there is total failure of society's collective conscience to embrace diversity with empathy. This court feels that it cannot be said that the Creator has erred. To indict the Creator is to evade human responsibility. The absence of patience and tolerance in society cannot be a ground to deny them dignity. They are entitled to be accepted as equals, as members of families, as participants in the common destiny of this nation. It is no part of judicial function to sit in theological judgment over the Creator.

10. Where society has failed to cultivate tolerance, compassion, and fraternity, and instead seeks to deflect responsibility, this Court cannot be a mute witness to the indignities suffered by a vulnerable class. Charter of human dignity obligates this Court to intervene where society has faltered. Judicial compassion must translate into enforceable rights. The Constitution



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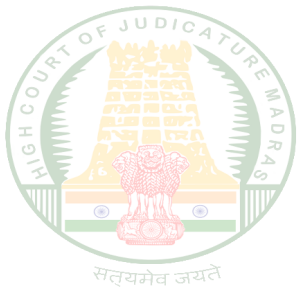
does not permit such exclusion. Therefore, this Court observes with deep anguish and records, with profound concern, that such conditions reflect a collective societal failure to uphold the basic values of empathy, equality, and fraternity and in discharge of its constitutional duty, as an instrument of justice, to alleviate such hardship and restore dignity and to remedy this continuing injustice, this Court issues appropriate directions to the Government of Tamilnadu to undo, as far as possible, the historical wrongs inflicted upon Transgender persons and to secure for them a life of dignity, equality, and meaningful inclusion, integration as equal participants in the social order and to alleviate their cosmic sadness and to frame and implement effective social welfare measures to enable them selves to self sufficiently attain full development in the nature of the creation of meaningful economic opportunities, access to education, healthcare, and other essential resources and to ensure that transgender persons are brought into the mainstream of society.

11. This Court power to issue appropriate direction to the state Government of TamilNadu is consistent with the constitutional ethos recognized in ***National Legal Services Authority v. Union of India***, wherein, the Supreme Court of India affirmed that transgender persons are entitled to equality,



dignity, and protection under Articles 14, 19, and 21 of the Constitution. The relevant paras of judgement reported in ***National Legal Services Authority v. Union of India, (2014) 5 SCC 438*** are as follows:

67. TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.



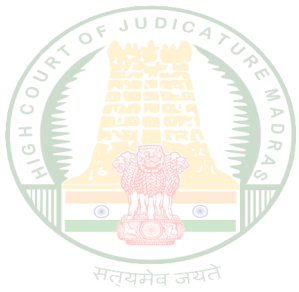
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68. *Articles 15(2) to (4) and Article 16(4) read with the directive*

principles of State policy and various international instruments to which India is a party, call for social equality, which TGs could realize, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.

82. *Article 14 has used the expression “person” and Article 15 has used the expression “citizen” and “sex” so also Article 16. Article 19 has also used the expression “citizen”. Article 21 has used the expression “person”. All these expressions, which are “gender neutral” evidently refer to human beings. Hence, they take within their sweep hijras/transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one's personal self, based on self-identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.*

100. *Speaking for the vision of our Founding Fathers, in State of Karnataka v. Ranganatha Reddy [(1977) 4 SCC 471 : AIR 1978 SC 215] , this Court speaking through Krishna Iyer, J. observed : (SCC p. 496, paras 44-45)*

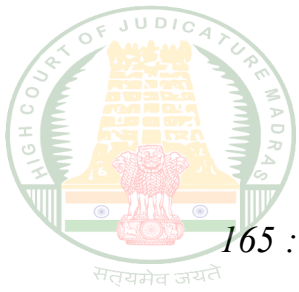


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“44. The social philosophy of the Constitution shapes creative judicial vision and orientation. Our nation has, as its dynamic doctrine, economic democracy sans which political democracy is chimerical. We say so because our Constitution, in Parts III and IV and elsewhere, ensouls such a value system, and the debate in this case puts precisely this soul in peril.

45. ... Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality. A Judge is a social scientist in his role as constitutional invigilator and fails functionally if he forgets this dimension in his complex duties.”(emphasis in original).

103. A corollary of this development is that while so long the negative language of Article 21 and use of the word “deprived” was supposed to impose upon the State the negative duty not to interfere with the life or liberty of an individual without the sanction of law, the width and amplitude of this provision has now imposed a positive obligation (Vincent Panikurlangara v. Union of India [(1987) 2 SCC



165 : 1987 SCC (Cri) 329]) upon the State to take steps for ensuring to
the individual a better enjoyment of his life and dignity e.g.:

(i) Maintenance and improvement of public health (*Vincent Panikurlangara v. Union of India* [(1987) 2 SCC 165 : 1987 SCC (Cri) 329]).

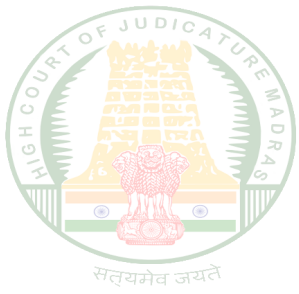
(ii) Elimination of water and air pollution (*M.C. Mehta v. Union of India* [(1987) 4 SCC 463]).

(iii) Improvement of means of communication (*State of H.P. V Umed Ram Sharma* [(1986) 2 SCC 68]).

(iv) Rehabilitation of bonded labourers (*Bandhua Mukti Morcha v. Union of India* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389]).

(v) Providing human conditions in prisons (*Sher Singh v. State of Punjab* [(1983) 2 SCC 344 : 1983 SCC (Cri) 461 : AIR 1983 SC 465]) and protective homes (*Sheela Barse v. Union of India* [(1986) 3 SCC 596 : 1986 SCC (Cri) 337]).

(vi) Providing hygienic condition in a slaughterhouse (*Buffalo Traders Welfare Assn. v. Maneka Gandhi* [1994 Supp (3) SCC 448]).



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104. *The common golden thread which passes through all these pronouncements is that Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development.*

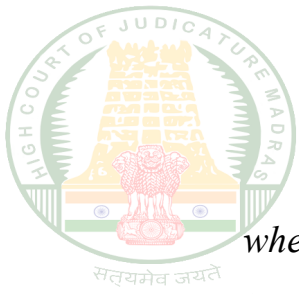
117. *We are of the firm opinion that by recognising such TGs as third gender, they would be able to enjoy their human rights, to which they are largely deprived of for want of this recognition. As mentioned above, the issue of transgender is not merely a social or medical issue but there is a need to adopt human rights approach towards transgenders which may focus on functioning as an interaction between a person and their environment highlighting the role of society and changing the stigma attached to them. TGs face many disadvantages due to various reasons, particularly for gender abnormality which in certain level leads to physical and mental disability. Up till recently they were subjected to cruelty, pity or charity. Fortunately, there is a paradigm shift in thinking from the aforesaid approach to a rights-based approach. Though, this may be the thinking of human rights activist, the society has not kept pace with this shift. There appears to be limited public knowledge and understanding of same-sex sexual orientation and people whose gender identity and expression are incongruent with their biological sex. As a result of this approach, such persons are socially excluded from the mainstream of the society and they are denied equal access to those fundamental rights and freedoms that the other people enjoy freely. (See Hijras/Transgender Women in India : HIV, Human*



Rights and Social Exclusion, UNDP Report on India Issue : December 2010.)

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118. *Some of the common and reported problem that transgenders most commonly suffer are : harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places, et al. The other major problems that the transgender people face in their daily life are discrimination, lack of educational facilities, lack of medical facilities, homelessness, unemployment, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption. In spite of the adoption of the Universal Declaration of Human Rights (UDHR) in the year 1948, the inherent dignity, equality, respect and rights of all human beings throughout the world, the transgenders are denied basic human rights. This denial is premised on a prevalent juridical assumption that the law should target discrimination based on sex (i.e. whether a person is anatomically male or female), rather than gender (i.e. whether a person has qualities that society consider masculine or feminine (Katherine M. Franke, “The Central Mistake of Sex Discrimination Law : The Disaggregation of Sex from Gender” [(1995) 144 University of Pennsylvania Law Review 1, 3.]) (arguing that by defining sex in biological terms, the law has failed to distinguish sex from gender, and sexual differentiation from sex discrimination). Transgender people are generally excluded from the society and people think transgenderism as a medical disease. Much like the disability, which in earlier times was considered as an illness but later on looked upon as a rights-based approach. The question*



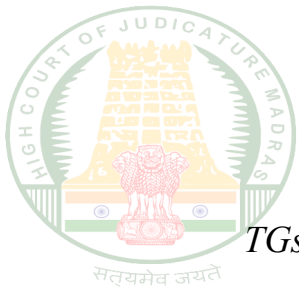
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whether transgenderism is a disease is hotly debated in both the transgender and medical-psychiatric communities. But a prevalent view regarding this is that transgenderism is not a disease at all, but a benign normal variant of the human experience akin to left-handedness.

119. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as “third gender” would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's licence, the right to education, employment, health and so on.

120. Further, there seems to be no reason why a transgender must be denied of basic human rights which includes right to life and liberty with dignity, right to privacy and freedom of expression, right to education and empowerment, right against violence, right against exploitation and right against discrimination. The Constitution has fulfilled its duty of providing rights to transgenders. Now it is time for us to recognise this and to extend and interpret the Constitution in such a manner to ensure a dignified life for transgender people. All this can be achieved if the beginning is made with the recognition of TG as third gender.

132. By recognising TGs as third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to



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TGs but also justice to the society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to TGs which legitimately belongs to them.

133. Aristotle opined that treating all equal things equal and all unequal things unequal amounts to justice. Kant was of the view that at the basis of all conceptions of justice, no matter which culture or religion has inspired them, lies the golden rule that you should treat others as you would want everybody to treat everybody else, including yourself. When Locke conceived of individual liberties, the individuals he had in mind were independently rich males. Similarly, Kant thought of economically self-sufficient males as the only possible citizens of a liberal democratic State. These theories may not be relevant in today's context as it is perceived that the bias of their perspective is all too obvious to us. In post-traditional liberal democratic theories of justice, the background assumption is that humans have equal value and should, therefore, be treated as equal, as well as by equal laws. This can be described as “Reflective Equilibrium”. The method of Reflective Equilibrium was first introduced by Nelson Goodman in *Fact, Fiction and Forecast* (1955). However, it is John Rawls who elaborated this method of reflective equilibrium by introducing the conception of “Justice as Fairness”. In his *A Theory of Justice*, Rawls has proposed a model of just institutions for democratic societies. Herein he draws on certain pre-theoretical elementary moral beliefs (“considered judgments”),



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which he assumes most members of democratic societies would accept. “Justice as fairness [...] tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretations. Justice as fairness is a political conception in part because it starts from within a certain political tradition.” Based on this preliminary understanding of just institutions in a democratic society, Rawls aims at a set of universalistic rules with the help of which the justice of present formal and informal institutions can be assessed. The ensuing conception of justice is called “justice as fairness”. When we combine Rawls' notion of Justice as Fairness with the notions of Distributive Justice, to which Noble Laureate Prof. Amartya Sen has also subscribed, we get jurisprudential basis for doing justice to the vulnerable groups which definitely include TGs. Once it is accepted that TGs are also part of vulnerable groups and marginalized section of the society, we are only bringing them within the fold of the aforesaid rights recognized in respect of other classes falling in the marginalized group. This is the minimum riposte in an attempt to assuage the insult and injury suffered by them so far as to pave way for fast-tracking the realization of their human rights.

12. The Hon’ble Supreme Court in ***National Legal Services Authority v. Union of India***, taking judicial notice of the social exclusion and psychological distress suffered by transgender persons, issued a series of binding directions to secure their constitutional rights. Notwithstanding the said pronouncement

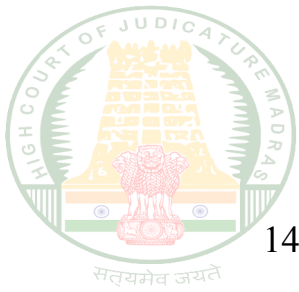


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delivered in the year 2014, it is brought to the notice of this Court that the directions so issued have not been effectively implemented in their true spirit.

The continued inaction on the part of the State undermines the mandate of Articles 14, 15, 16 and 21 of the Constitution of India, which guarantee equality, non-discrimination, equal opportunity, and the right to live with dignity.

13. Therefore, leaving this matter without issuing further directions for the welfare of transgender persons would amount to a failure on the part of this Court to discharge its constitutional obligations and this Court expresses its profound sorrow in noting that justice has not been adequately ensured to them and takes judicial notice of the prevailing socio-economic conditions of transgender persons and consequently, in order to remedy this situation, this Court deems it appropriate to issue certain directions to the State Government to 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.



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14. Accordingly, this Criminal Original Petition is allowed with the following terms:

14.1. Petitioner is ordered to be released on anticipatory bail in the event of arrest or on his appearance, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/-(Rupees Ten Thousand only) with two sureties for a like sum to the satisfaction of the Learned Judicial Magistrate No.II, Srivilliputtur, Virudhunagar District within a period of fifteen days from the date on which the order made ready and on further conditions that:

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent police daily at 10.30 a.m., for a period of fifteen days (15 days) and thereafter, as and when required.

[c]the petitioner shall not tamper with the evidence or influence the witnesses either during investigation or trial.

[d]the petitioner shall not abscond either during investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and



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the petitioners are released on bail by the learned Magistrate/Trial Court

himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

[f]If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS.

15. Accordingly, this Court also issues the following directions:

15.1. The State Government to 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.

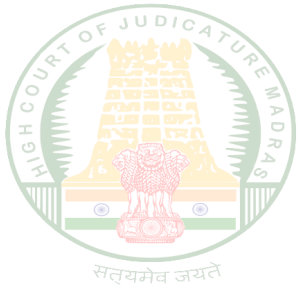
15.2. The Chief Secretary of the State of Tamil Nadu is hereby directed to coordinate with all relevant departments to ensure effective and time-bound implementation of the aforesaid measures.

15.3. The Chief Secretary of the State of Tamil Nadu shall file a detailed compliance report on or before 26th July.

16. List the matter on 03-08-2026 for reporting compliance.

24.04.2026

sbm

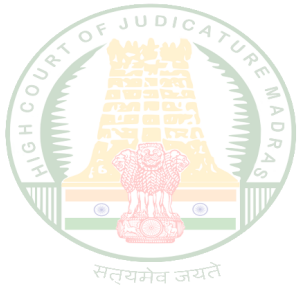


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To

1. The Chief Secretary of the State of TamilNadu,
Fort St George, Chennai.
2. The Judicial Magistrate No.II, Srivilliputtur,
Virudhunagar District.
3. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J.

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