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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10 -11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 27023 of 2026

CNR: {HCMA012148922026}

Case QR

Saimon Debbarma
S/o.Sunil Debbarma,
No.260, Biswadeb Sadhu Para,
Tamakari,
Sidhal,
Sadar West Tripura - 799211.

..Petitioner(s)

Vs

The State Rep by The Inspector of Police
PEW Tambaram Police Station,
Chennai.
Crime No.272 of 2023.

..Respondent(s)

PRAYER : Criminal Original Petition filed under Section 483 of BNSS praying to enlarge the petitioner on bail pending Trial in C.C.No.75 of 2024 on the file of the II Addl Special Judge NDPS Act Cases, at Chennai

For Petitioner(s): Mr.T.S.Sasi Kumar

For Respondent(s): Mr.M.M.I.Khaleel
Government Advocate (Crl. Side)

ORDER

This is a petition for regular bail in a case under the NDPS Act, under Section 483 of the BNSS. The petitioner is the first accused in Crime No.272 of 2023 on the file of the Inspector of Police, Prohibition Enforcement Wing, Tambaram Unit, Chennai, registered for offences under Section 8(c) read with

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Sections 20(b)(ii)(C) and 29(1) of the Act, and now pending as **C.C.No.75 of 2024** on the file of the II Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai. This is his seventh petition before this Court.

2. The case of the prosecution, briefly stated, is this. On 10.07.2023, on information that four persons would come to sell ganja near the Pallavaram railway station, a party of the respondent police went there and found the petitioner and three others. Two sacks said to have been carried by the petitioner were found to contain about 30 kilograms of ganja, about 15 kilograms in each. Samples were drawn at the spot, and the report of the Forensic Sciences Department dated 31.08.2023 is that both samples are ganja. All four were arrested the same day. The final report was taken on file as C.C.No.75 of 2024 on 03.02.2024.The petitioner is native of Tripura.

3. Ganja is entered at Serial No.55 of the Table to Notification S.O.1055(E) dated 19.10.2001, and 20 kilograms Ganja is commercial quantity. The mahazar attributes the whole of the **30 kilograms** to the petitioner, and the quantity is not in dispute. Section 37(1)(b)(ii) of the Act applies.

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4. The petitioner has been in custody since his arrest, a period a little under three years and four months. The three co-accused were released on bail and absconded; non-bailable warrants issued against them, and the counter affidavit states that the warrant against the third accused was executed on 31.08.2026 and that the others remain pending. The counter affidavit gives the stage of the case as remand, the last posting being 29.09.2026, and does not say that any witness has been examined. At the hearing of this petition it was stated that the case has since been split up as against the petitioner and that charges have not been framed against him.

5. Of the six earlier petitions, Crl.O.P.No.10274 of 2024 was dismissed on 10.07.2024 on the gravity of the offence, with a direction to complete the trial within three months; Crl.O.P.No.22146 of 2024 was dismissed on 12.09.2024 for want of representation; Crl.O.P.No.23899 of 2024 was dismissed on 18.10.2024 with a like direction of three months; Crl.O.P.No.1114 of 2025 was disposed of on 25.03.2025, the Court holding that the twin conditions stood in the way and directing the trial to be concluded within four months; Crl.O.P.No.22029 of 2025 was disposed of on 04.12.2025, the Court holding that Section 50 of the Act was not attracted and, on a report that the co-accused on bail had absconded and the trial had not progressed, directing the

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trial Court to consider a split-up and proceed; and Crl.O.P.No.19697 of 2026 was dismissed on 04.08.2026 on the merits, after the pleas under Sections 50 and 52A, the plea that one man could not have carried both sacks, and the plea of delay had been considered and rejected.

6. Learned counsel for the petitioner made these submissions.

[a] Sections 42 and 50(1) of the Act were not complied with, and the samples were drawn at the spot and not before a Magistrate, contrary to Section 52A; reliance is placed on **Nadeem Ahamed v. State of West Bengal**, 2025 INSC 993.

[b] The documents prepared at the spot are in Tamil and are said to have been explained in Hindi, which the petitioner, who is from Tripura, does not know; and the grounds of arrest were not intimated to him as the Supreme Court requires.

[c] The case has been split up, charges have not been framed, and the petitioner, who has no previous case, has been in custody for more than three years while the directions of this Court to complete the trial have gone unheeded.

[d] He is the sole breadwinner of his family and will abide by any

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condition.

7. The respondent has filed a counter affidavit and the petition is opposed on its lines: the whole of the contraband was recovered from the petitioner; the search, seizure and sampling were in accordance with law and the grounds of arrest were communicated at the time of arrest in a language he understood; six earlier petitions have failed; Section 37 of the Act is not satisfied; and the petitioner, a resident of Tripura, is likely to abscond and to tamper with the evidence if released.

8. I have considered the rival submissions and perused the material placed before me.

9. The recovery of 30 kgs of Ganja is direct from the petitioner. The mahazar records the seizure of both sacks from the petitioner while he was carrying them, and the analyst's report confirms the substance. Whether one man carried both sacks while three others stood by is, as was held in the last dismissal order, a matter for the trial. Due to pendency of NBW against the co-accused for a long period, the case has been split up as against the petitioner and the trial against him stands short of the framing of charges. The Supreme Court, in an appeal from an order of this Court under this very Act, granted bail in

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Iqbal Basha Urundadi v. Superintendent of Customs, SLP (Crl.) No.14128 of 2026, order dated 31.08.2026, because an earlier direction of this Court to conclude the trial could not be complied with, for which the accused could not be faulted, and he had been in custody for more than four years. These circumstances tell in the petitioner's favour, and the petition is considered on its merits.

10. A statutory restriction on bail does not oust the power of a constitutional Court where the accused has suffered long incarceration and the trial is unlikely to be concluded within a reasonable time, as held in **Union of India v. K.A. Najeeb**, (2021) 3 SCC 713, and applied to this Act in **Mohd. Muslim @ Hussain v. State (NCT of Delhi)**, (2023) 18 SCC 166. In **Rabi Prakash v. State of Odisha**, 2023 SCC OnLine SC 1109, the Supreme Court held that the opinion on the first limb of Section 37(1)(b)(ii) *"may not be formed at this stage"* where the accused had spent more than three and a half years in custody. The Supreme Court has taken that course twice this year on appeals from orders of this Court: in **Jamaluddin v. Union of India**, SLP (Crl.) No.18601 of 2025, order dated 23.02.2026, where, despite a direction of this Court, one of fourteen witnesses had been examined in six months and the custody exceeded three years, and in **Iqbal Basha Urundadi** (cited supra).

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11. At the same time, the right to a speedy trial is to be read alongside, and not in displacement of, the mandate of Section 37, as held in **Sukhwinder Singh @ Gora** (cited supra), and custody of one year and seven months was held not to be long custody in **State of Punjab v. Balraj Singh @ Billa**, 2026 INSC 618. I am conscious that the approach to prolonged incarceration under special statutes stands referred to a larger Bench in **Tasleem Ahmed v. State (NCT of Delhi)**, SLP (Crl.) No.2867 of 2026, order dated 22.05.2026, as noticed in **Balraj Singh @ Billa** (cited supra). Until that reference is answered, the course indicated in the decisions noticed above governs.

12. Applying that law to this record: the custody is a little under three years and four months, against a minimum sentence of ten years. The final report has been on file since February 2024. The three directions of this Court to complete the trial, and the direction to consider a split-up, already noticed, have all gone unheeded. The reason recorded on each occasion is the abscondence of the co-accused; the counter affidavit attributes no part of the delay to the petitioner, who has been in prison throughout. The case against him has now been separated from theirs, and even so stands short of the framing of charges. Nothing in the record suggests that the trial will conclude in the near future. The petitioner has no previous case; the counter affidavit alleges none, and meets the plea only by saying that clean antecedents cannot override Section 37. This

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record does not differ in substance from that in **Jamaluddin** (cited supra). The continued detention of the petitioner has ceased to serve the trial. Following **Rabi Prakash**, **Jamaluddin** and **Iqbal Basha Urundadi** (all cited supra), I hold that at this distance of time the opinion contemplated by the first limb of Section 37(1)(b)(ii) of the Act need not be formed against the petitioner, and that his conditional liberty is to be preferred to a detention which the state of the trial can no longer justify.

13. The apprehension that the petitioner, who lives in another State, may not return for the trial is a real one; it was the conduct of his co-accused that stalled this trial. The answer to it is a verifiable set of conditions, with power in the Special Court to act at once on any breach.

14. **In the result, this Criminal Original Petition is allowed and the** the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties (out of which, one shall be a local surety and one shall be a blood surety),** each for a like sum to the satisfaction of the **learned II Additional Special Judge NDPS Cases, Chennai,** and on further conditions that:

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[a] the sureties shall affix his 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 the identity proofs to ensure his identity;

(b) the petitioner shall report before the respondent police daily at 10.30.a.m., until further orders;

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[e] On breach of any of the aforementioned conditions, the learned Magistrate/Trial Court is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions have been imposed and the petitioner 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)13 SCC 283];**

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

[g] Before his release, the petitioner shall file before the Special Court an affidavit stating his permanent address in

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Tripura, the address at which he will reside while on bail and the mobile number on which he can be reached, with proof of each, and he shall not change that address or number without prior written intimation to the Special Court and to the respondent.

15. The learned II Additional Special Judge for Exclusive Trial of Cases under the NDPS Act, Chennai, shall split up against the petitioner and frame charges, if they have not already been framed, within four weeks from the date of receipt of a copy of this order, without adjourning the case for that purpose except for reasons to be recorded, shall examine the witnesses on dates not more than fourteen days apart, and shall make every endeavour to conclude the trial within six months thereafter.

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To

1. The Inspector of Police
PEW Tambaram Police Station,
Chennai.

2. II Additional Special Judge NDPS Cases, Chennai

3. The Superintendent,
Central Prison II, Puzhal, Chennai.

4. The Public Prosecutor,
Madras High Court.

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N.RAMESH, J.

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