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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24-11-2026**

CORAM

**THE HON'BLE MR.JUSTICE N.RAMESH**

**CRL OP No. 27192 of 2026**

*CNR: {HCMA012159972026}*

Sarath Babu
S/o.Rajendran

Case QR

..Petitioner/Accused No.3

Vs

The State Rep. by
The Inspector of police
Karaikal Town Police Station,
Karaikal, Puducherry,
Crime No. 200/2025

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 483 of BNSS., 2023, to release the petitioner on bail in Crime No.200 of 2025 on the file of the Respondent Police, Karaikal Town Police Station, Karaikal, Puducherry.

For Petitioner(s): Mr.R.Muruga Bharathi

For Respondent(s): Mr.Thamizh Mani
for Public Prosecutor (Puducherry)

**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 **third accused** in Crime No. 200 of 2025 on the file of the Karaikal Town Police Station, Puducherry, registered for offences under Sections 20(b)(ii)(C) and 24 of the NDPS Act, Section 14A



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of the Foreigners Act, 1946 and Section 3(3) of the Passport (Entry into India) Act, 1920. Each of the two offences under the NDPS Act is punishable with rigorous imprisonment for not less than ten years, which may extend to twenty years. This is his **fourth petition** before this Court.

2. The case of the prosecution, briefly stated, is this. Acting on information, the police found the petitioner and other accused engaged in transporting ganja from Andhra Pradesh through Tamil Nadu to Karaikal, for onward shipment to Sri Lanka. The accused are said to come from Andhra Pradesh, Sri Lanka and several districts of Tamil Nadu, and a number of vehicles and a boat from Sri Lanka were seized. The case was registered on 16.07.2025. The petitioner was arrested and remanded to judicial custody on 03.08.2025, and on the date of this order he has been in custody for a little over one year and three months. The Public Prosecutor told this Court on 04.11.2025 that the final report had been filed. The present petition says in one paragraph that it has been filed and in another that it has not, and no trial court case number is before me.

3. On the quantity, the record does not give one figure. The petition and the orders dated 04.11.2025 and 04.02.2026 speak of **350 kilograms of ganja**. The order dated 11.06.2026 speaks of **406 kilograms**. The order of the Supreme Court dated 07.08.2026 in the appeal of the co-accused S. Delip records 26



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kilograms found in the car in which he travelled and 306 kilograms linked to the larger syndicate. Ganja is entered at Serial No. 55 of the Table to Notification S.O. 1055(E) dated 19.10.2001, with a small quantity of one kilogram and a commercial quantity of twenty kilograms. On any of these figures the quantity is commercial, and Section 37(1)(b) of the Act applies.

4. The petitioner's first petition, Crl.O.P. No. 29972 of 2025, was dismissed by a coordinate Bench on 04.11.2025, on the ground that the quantity was commercial and that the petitioner had been identified as the master mind and was directly involved in the transportation and possession of the contraband. Crl.O.P. No. 2498 of 2026 was dismissed on 04.02.2026 because no change in circumstances was shown. Crl.O.P. No. 14696 of 2026 was dismissed on 11.06.2026 on the quantity, the twin conditions and the earlier dismissals.

5. Learned counsel for the petitioner made these submissions.

[a] Nothing was recovered from the petitioner, and he has been implicated only on the confession of a co-accused;

[b] he has been in custody for more than four hundred days;

[c] the co-accused S. Delip has been released on bail by the Supreme Court by order dated 07.08.2026 in the appeal arising out of S.L.P. (Crl.) No. 9006 of 2026;

[d] the petitioner has no previous case and will abide by any condition the Court imposes.



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6. The respondent has not filed a counter affidavit in this petition. Learned counsel for the respondent did not oppose the petition, and submitted that the petitioner was implicated on the confession statement of a co-accused.

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

8. This being a successive petition, the first question is what has changed since the order dated 11.06.2026. A successive petition is not barred, but it can be entertained only on a change in the fact situation or in law that requires the earlier view to be interfered with, as held in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, (2005) 2 SCC 42**. The two changes urged in the petition do not meet that test. The Supreme Court released S. Delip because his arrest memo records his arrest at 23.15 hours on 15.07.2025 while the first information report shows its registration at 00.26 hours on 16.07.2025, and because CCTV footage he had sought to preserve was reported to be unavailable. Those circumstances concern his arrest. Nothing of that kind is suggested about the arrest of this petitioner. Custody of a little over one year and three months, in a case of this quantity, does not by itself displace Section 37.

9. That leaves the stand taken for the respondent at the hearing, which is a



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strange one. On a fourth petition in a case of this size, counsel for the respondent filed no counter affidavit, did not oppose the petition, and said that the petitioner was implicated on the confession of a co-accused. No document supports that statement. The final report, which the Public Prosecutor told this Court on 04.11.2025 had been filed, has not been placed before me by either side. The statement also runs against what the coordinate Bench was told on 04.11.2025, on which it found that the petitioner had been identified as the master mind and was directly involved in the transportation and possession of the contraband. No explanation is offered for the difference. What the prosecution chooses to say at a hearing has changed, but nothing in the material has, and a change of that kind is not a change in the fact situation.

10. Nor does the absence of opposition take the case outside Section 37. Clause (b)(i) of Section 37(1) requires that the Public Prosecutor be given an opportunity to oppose, and clause (b)(ii) requires the satisfaction of the Court where he opposes. The contention that the twin conditions fall away when the Prosecutor does not oppose was rejected in **Narcotics Control Bureau v. Karma Phuntsok, (2005) 12 SCC 480**, where it was held that in a commercial quantity case the appearance of the Prosecutor on notice *would suggest that he appeared to oppose the bail application*. That decision was followed in **N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721**. Release on bail in a commercial quantity case is not a matter of the prosecution's consent. A confession of a co-



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accused recorded by the police cannot be proved against the petitioner, as held in **Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1**. Whether the material against him is confined to such a confession can be seen only from the final report, and that is not before me. There is no material on which the satisfaction required by Section 37(1)(b)(ii) could be recorded.

11. No change in the fact situation having been shown since the order dated 11.06.2026, the earlier refusals stand and this petition fails at the threshold. If the final report, when placed before the Court, shows that the material against the petitioner is confined to the confession of a co-accused, that would be a change in the fact situation, and he is at liberty to move afresh on that footing.

**12. The manner in which this petition was defended on behalf of the respondent is very unfortunate, and I must record it. The case concerns ganja running to hundreds of kilograms, said to have been bound for Sri Lanka by sea, with accused from two countries and a Sri Lankan boat among the property seized. A coordinate Bench refused bail to this petitioner on being told that he was the master mind. On his fourth petition, more than a year after his arrest, the respondent did not file a counter affidavit or produce the final report or any document from it. It left the Court without even a settled figure for the quantity seized, or a**



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**statement whether the final report has been laid. Its counsel then did not oppose the petition and offered, as the State's case, that the petitioner stood implicated only on a confession that no court can act upon against him. Had the Court acted on that stand, an accused in a trafficking case of this size would have been released on the prosecution's own unsupported word. Either the description given to the coordinate Bench had no material behind it, or the material exists and the respondent chose not to place it before this Court and not to oppose. Neither is acceptable in a prosecution under the NDPS Act, and the matter calls for attention at the highest level of the Government of Puducherry.**

13. **In the result, this Criminal Original Petition is dismissed.**

14. It is made clear that the observations made in this order are confined to the disposal of this petition, are prima facie in nature, and shall not influence the respondent in the further investigation or the trial court at any stage of the trial. The observations on the defence of this petition concern the manner in which the respondent conducted it, and not the merits of the case against the petitioner.

15. The Registry shall send a copy of this order to the Chief Secretary to the Government of Puducherry. The Chief Secretary shall look into the manner



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in which this petition was defended on behalf of the respondent, including the absence of a counter affidavit and of any opposition in a case involving a commercial quantity, and shall take such action as is called for. That action shall include instructions to ensure that every petition for bail under the NDPS Act involving a commercial quantity is answered by a counter affidavit setting out the material against the particular accused, and is defended by counsel instructed with the case diary and the final report. The Registry shall also send a copy of this order to the Director General of Police, Puducherry.

**24-11-2026**

KSA-2

To
1. The Inspector of police
Karaikal Town police Station,
Karaikal,
Puducherry,

2. The Public Prosecutor (Puducherry)
High Court of Madras

**Copy to:**
1. The Chief Secretary to the Government of
Puducherry

2. The Director General of Police, Puducherry.



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**N.RAMESH, J.**

**KSA-2**

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