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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-11-2026

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 the Bharatiya Nagarik Suraksha Sanhita, 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 : Mr. R. Muruga Bharathi

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

ORDER

This petition was heard and an order dismissing it was pronounced on 24.11.2026. Thereafter, learned counsel for the respondent mentioned the matter and submitted that a counter affidavit had been filed on 04.11.2026 and that, by an omission, it had not been placed before the Court. At her request, the matter was listed today for clarification. I have perused the counter affidavit, and its

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averments are taken into account below as the case of the respondent. This order is passed in substitution of the order dated 24.11.2026.

2. This is a petition for regular bail in a case under the NDPS Act, under Section 483 of the BNSS. The petitioner is the sixth 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 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.

3. The case of the prosecution, as set out in the counter affidavit, is this. On 15.07.2025, acting on information, the police intercepted a car at Karaikal and seized about 26.095 kilograms of ganja from A1 and A2. On 16.07.2025, on their statements, about 277.949 kilograms more were seized from a house taken on rent by A2 at Karaikal. The ganja is said to have been bought in Andhra Pradesh by A3 and moved to Karaikal for shipment to Sri Lanka by fibre boat, and two Sri Lankan nationals were later arrested with a boat. The part attributed to the petitioner is that, on the instructions of A3 and A9 and for money, he transported ganja from Andhra Pradesh to Tamil Nadu in a Bharat Benz lorry and an Eicher mini lorry, both of which were seized from A3 on 21.07.2025.

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The petitioner was secured at Vaniyambadi on 02.08.2025 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 final report was filed on 13.10.2025. The case is pending trial as Spl.S.C. No. 27 of 2025 on the file of the learned Special Judge (NDPS Act), Karaikal, the case against two absconding accused having been split up as Spl.S.C. No. 5 of 2026.

4. 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, and 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 kilograms found in the car in which he travelled and 306 kilograms linked to the larger syndicate. The counter affidavit gives the two seizures as about 26.095 and 277.949 kilograms, and says that A3 bought about 406 kilograms in July 2025. 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.

5. 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

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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.

6. 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.

7. The respondent has filed a counter affidavit sworn by the Station House Officer, Town Police Station, Karaikal. The counter opposes the petition on these grounds: the case is pending trial; the petitioner took part in transporting the ganja as stated above; being a native of Tirupathur District, he may not appear for the trial; and, if released, he may commit a like offence and abscond. At the hearing, learned counsel for the respondent did not oppose the petition, and submitted that the petitioner was implicated on the confession

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statement of a co-accused.

8. I have considered the submissions and perused the material placed before me, including the counter affidavit.

9. 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. The counter shows that A2 and A8 have also been released on bail by this Court, but both were released before the order dated 11.06.2026, and the petitioner does not rely on either. Custody of a little over one year and three months, in a case of this quantity, does not by itself displace Section 37.

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

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a strange one. On a fourth petition in a case of this size, counsel for the respondent did not refer to the respondent's own counter affidavit, did not oppose the petition, and said that the petitioner was implicated on the confession of a co-accused. That statement is contrary to the counter affidavit, which opposes bail and attributes to the petitioner a specific part in moving the ganja from Andhra Pradesh. The counter does not describe the petitioner as the master mind, as the coordinate Bench was told on 04.11.2025. It places him as one who carried the ganja on the instructions of A3 and A9. Nowhere does it say that he stands implicated only on a confession. No explanation is offered for the stand taken at the hearing. What was said for the prosecution at the hearing departed from its own pleading, but nothing in the material has changed, and a change of that kind is not a change in the fact situation.

11. Nor does the absence of opposition at the hearing 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**.

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Here, moreover, the respondent's own counter affidavit opposes the petition. Release on bail in a commercial quantity case is not a matter of the prosecution's consent. A confession of a co-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**. The counter refers, besides the statements of the co-accused, to the petitioner's own statement, to a mobile phone seized from him and to the two lorries said to have been used. What that material is worth will be tested at the trial on the final report, which is not before me. On the material now before me, I am unable to record the satisfaction required by Section 37(1)(b)(ii).

12. 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.

13. 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

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seized. A coordinate Bench refused bail to this petitioner on being told that he was the master mind. On his fourth petition, the final report was not produced. Counsel for the respondent 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. That stand was contrary to the respondent's own sworn counter. Had the Court acted on it, an accused in a trafficking case of this size would have been released on the prosecution's word, given against its own pleading. Neither the omission nor the stand taken at the hearing is acceptable in a prosecution under the NDPS Act.

14. **In the result, this Criminal Original Petition stands dismissed.**

15. 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.

26-11-2026

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Note:The Registry shall upload this order in place of the order dated 24.11.2026.

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To

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

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

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N.RAMESH, J.

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