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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 27268 of 2026

CNR: {HCMA012262302026}

Case QR

Mahmood Sulaiman
S/o Shahul Hameed,
23A, Appa Palli Street,
Kayalpattinam, Thoothukudi.

..Petitioner(s)

Vs

The State Rep. by, The Inspector of Police
B-1, North Beach Police Station,
Chennai.

..Respondent(s)

PRAYER : Criminal Original Petition filed under Section 483 of BNSS praying to enlarge the Petitioner (A5) on Bail in the event of his arrest in Cr.No.275 of 2026 on such conditions as this Honble Court may deem fit and proper and thus render justice.

For Petitioner(s): Mr.G.Mohana Krishnan

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 fifth accused in Crime No. 275 of 2026 on the file of the Inspector of Police, B-1 North Beach Police Station, Chennai, registered for offences under Sections 8(c), 22(b), 22(c), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act"), the

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gravest of which carries rigorous imprisonment for not less than ten years and up to twenty years. He was arrested on 25.08.2026, remanded to judicial custody on 26.08.2026, and has been in custody for nearly three months. The investigation is pending.

2. The case of the prosecution, briefly stated, is this. On 25.08.2026, at about 17.00 hours, a police party conducting a vehicle check near the Indian Bank signal on Rajaji Salai stopped five persons on two two-wheelers. A small packet of methamphetamine of about one gram was found in the shirt pocket of the first accused, and another of about one gram in that of the third accused. Fourteen "stamps" weighing about 0.24 grams were found in the shirt pocket of the second accused, who is the petitioner's younger brother, and thirteen thousand rupees, said to be the proceeds of sale, with the fourth accused. From the petitioner a mobile phone was seized, and the first and second accused are said to have stated that they had bought the substances from others and kept them for sale with their friends.

3. Methamphetamine is entered at Serial No. 159 of the Table to Notification S.O. 1055(E) dated 19.10.2001, with a small quantity of two grams and a commercial quantity of fifty grams. What was seized from the first and

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third accused, even taken together, is far below the commercial quantity. Lysergide (LSD) is entered at Serial No. 133, with a small quantity of 0.002 grams and a commercial quantity of 0.1 grams. Nothing was seized from the petitioner except a mobile phone. Section 37 of the Act is therefore engaged against the petitioner only if the stamps seized from the second accused can be put to his account.

4. Learned counsel for the petitioner made these submissions.

[a] Nothing was recovered from the petitioner except his mobile phone, and the first information report itself says so.

[b] The petitioner was not at the vehicle check. He works night shifts at SpiceJet Private Limited; at about 6 p.m. on 25.08.2026 the police brought the second accused to the house where the brothers live with their parents and called the petitioner to the station for enquiry. Still photographs from a CCTV camera are produced in support.

[c] He has been implicated only because he is the brother of the second accused. The only material against him is the confession statements of the other accused, which cannot be proved under Section 23 of the Bharatiya Sakshya Adhiniyam, 2023.

[d] He has no previous case.

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5. The respondent has filed a counter affidavit, and the petition is opposed on its lines. The respondent says that the accused were acting together in the sale of the substances, that the absence of recovery from the petitioner does not absolve him under Section 29 of the Act, and that his mobile phone is to be examined. The investigation is said to be at a preliminary stage, with more witnesses to be examined, absconding accused to be secured and bank statements to be collected. The petitioner's account of where he was, is described as a plea of alibi for the trial.

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

7. The counter affidavit filed in this Court, in paragraph 3, attributes recoveries to the first, second and third accused and records only a mobile phone as seized from the petitioner. The CCTV photographs at pages 13 to 17 of the typed set, three of them time-stamped 17.32 and 17.50 hours on 25.08.2026, and the persons in them cannot be identified, while the first information report places all five accused at the vehicle check from 17.00 hours. Which of the two is true is a matter for the investigation, and it cannot be

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resolved on affidavits. I proceed on the prosecution's own account, and nothing in this order rests on the photographs.

8. Section 29 of the Act makes a person who abets, or is a party to a criminal conspiracy to commit, an offence under Chapter IV liable to the punishment provided for that offence. The quantity seized from one accused can be put to the account of another only where there is material of abetment, conspiracy or joint possession. Where two persons found together were each carrying what was recovered from him, and there was no evidence of abetment or conspiracy, Section 29 was held not attracted in **Amarsingh Ramjibhai Barot v. State of Gujarat, (2005) 7 SCC 550**. In **Nadeem Ahamed v. State of West Bengal, 2025 INSC 993**, the two accused had been apprehended together while walking side by side, and the Supreme Court held, at paragraph 22: *"These facts may give rise to a suspicion, but suspicion, however, cannot take place of proof."* A confession made to a police officer cannot be proved against an accused (Section 23(1) of the Bharatiya Sakshya Adhiniyam, 2023), and a statement recorded by an officer under the Act stands on the same footing, as held in **Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1**. This Court applied these principles where the link between separate recoveries rested on joint interception and on confession statements, in Crl.O.P. No. 23777 of 2026, dated 05.10.2026, and in Crl.O.P. No. 28744 of 2026, dated 02.11.2026.

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9. The first information report names him among the five persons stopped at the vehicle check. Taken at its face value, it shows that he was with the others when they were stopped. It does not show that he had possession of, or a share in, the stamps found in the shirt pocket of the second accused. As for the mobile phone, the counter affidavit does not say that the phone or any call record discloses a single call, message or payment between the petitioner and any other accused, and the column headed "Specific Overtact of the Accused-5" names no act of his, saying only that his involvement "is being investigated in the context of the concerted activity of the accused persons". That the petitioner lives in the same house as the second accused makes him a brother of the accused, not a party to what the accused carried.

10. I do not decide whether the stamps can be put to the petitioner's account. That question belongs to the Special Court, at the framing of charges and at the trial. On the present record, it is not shown with the degree of assurance that the invocation of Section 37 requires that the petitioner is answerable for a commercial quantity. The rigour of Section 37 of the Act is therefore not shown to apply, and the petition falls to be decided under Section 483 of the BNSS. On that footing, what remains is the pending investigation. None of the steps the respondent proposes requires the petitioner to be kept in

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custody, and the counter affidavit says no more than that his release "may prejudice the ongoing investigation".

11. The case of commercial quantity against the petitioner rests on his presence at the vehicle check and on statements that cannot be proved against him. The counter affidavit attributes no previous case to him.

12. **In the result, this Criminal Original Petition is allowed and 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,** for a like sum to the satisfaction of **the learned VII Metropolitan Judicial Magistrate at George Town, Chennai,** and on further conditions that:**.**

[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 on all working days at 10.30 a.m. until further orders.

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[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.

12-11-2026

SMA

To

1, VII Metropolitan Judicial Magistrate at George Town, Chennai

2. The Inspector of Police
B-1, North Beach Police Station,
Chennai.

3. The Public Prosecutor,
Madras High Court

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N.RAMESH, J.

SMA

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