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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 27823 of 2026

CNR: {HCMA012275002026}

T.Ashwin Kumar
S/o.Thiyagarajan,
No.547, TNHB, Ayappakkam,
Chennai-600 077.

Case QR

..Petitioner(s)

Vs

The State of Tamilnadu Represented by the
Inspector of Police
Ayappakkam Police Station,
Chennai.
Crime No.102/2026.

..Respondent(s)

PRAYER : Criminal Original Petition filed under Section 483 of BNSS praying to enlarge the petitioner on bail in connection with the case in Cr.No.102 of 2026 on the file of the respondent police

For Petitioner(s): Mr.S.V.Karthikeyan

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 second accused in Crime No. 14 of 2025 on the file of the Inspector of Police, Prohibition Enforcement Wing,

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Pallikaranai, Tambaram City, registered on 07.03.2025 for offences under Section 8(c) read with Sections 20(b)(ii)(C) and 29(1) of the Act, and now pending as C.C. No. 668 of 2025 on the file of the II Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai. This is his fourth petition before this Court.

2. The case of the prosecution, briefly stated, is this. On the morning of that day, on information that two persons from Andhra Pradesh would bring ganja for sale to the East Tambaram 5A bus stand, a police party went there and the informant pointed out the first accused, Johnson, and the petitioner. Each was searched under a separate mahazar, and fifteen kilograms of ganja were found in the gunny bag and shoulder bag carried by each. The first accused is said to have named the third accused, Dhinesh @ GD, as the person for whom the ganja was brought; nothing was recovered from him. The petitioner was arrested at the spot and remanded to judicial custody the same day.

3. Ganja is entered at Serial No. 55 of the Table to Notification S.O. 1055(E) dated 19.10.2001. The fifteen kilograms seized from the petitioner is an intermediate quantity; the **thirty kilograms** seized from the two accused together is a commercial quantity, for which the offence under Section 20(b)(ii)

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(C) of the Act carries rigorous imprisonment for not less than ten years, extendable to twenty. Section 37 of the Act is therefore engaged against the petitioner only if the fifteen kilograms seized from the first accused can be put to his account. He has been in custody since then, a period of one year and eight months as on today. The final report was taken on file on 22.08.2025; the counter affidavit states that the case stood posted to 29.10.2026, and nothing on the record shows that charges have been framed.

4. Crl.O.P. No. 13511 of 2025 was dismissed on 23.06.2025, the quantity being commercial and the twin conditions in Section 37 of the Act not satisfied. Crl.O.P. No. 22013 of 2025 was dismissed for non-prosecution on 17.10.2025 and decides nothing. In Crl.O.P. No. 4652 of 2026 the petitioner urged that only fifteen kilograms had been recovered from him, that the case had been foisted on him after the Supreme Court had granted him bail in an earlier case, and that he had been in custody for over a year. By order dated 30.03.2026 a coordinate Bench held that the total quantity of thirty kilograms was commercial, that a plea of a false case could not be considered when no complaint had been made to any higher authority, that an offence of the same kind after bail in the previous case showed misuse of that liberty, and that nothing had been placed to overcome Section 37.

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5. Learned counsel for the petitioner made these submissions.

[a] The recovery attributed to the petitioner is fifteen kilograms, an intermediate quantity; the recoveries were made at different times under separate mahazars; no call record, financial transaction or other material connects him with the first or the third accused; and the recoveries cannot be aggregated to attract Section 37 of the Act.

[b] The petitioner had been released on bail by the Supreme Court on 06.01.2025 in Crime No. 206 of 2023 of the Anna Nagar unit of the Prohibition Enforcement Wing; this case was foisted on him two months later out of vengeance; the police party stayed at a lodge at his native place on 06.03.2025, as photographs show, and took him into custody there.

[c] The grounds of arrest were not communicated to him effectively and in a language he understands, contrary to Article 22(1) of the Constitution and **Mihir Rajesh Shah v. State of Maharashtra**, (2026) 1 SCC 500 : 2025 INSC 1288; he does not know Tamil, the language of the arrest papers, the mahazar and the confession statements.

[d] The search was made at night without compliance with Section 42 of the Act, and compliance with Section 50 is not shown.

[e] His arrest was not intimated to his family.

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[f] The final report has been filed, he has been in custody for about one year and eight months, and his conduct while on bail in the earlier case shows that he will not abscond; a fresh scrutiny of the final report on 13.08.2026 disclosed these grounds, which constitute a change of circumstances.

6. Learned Government Advocate (Criminal Side), on the counter affidavit of the Inspector of Police, opposed the petition: thirty kilograms of ganja, a commercial quantity, were seized from the two accused, who were found together at one place; the grounds of arrest were communicated at the time of arrest, and the petitioner signed the arrest papers in English; **Mihir Rajesh Shah** (cited supra) does not govern an arrest made before 06.11.2025; the petitioner was on bail in a previous case of eighty kilograms of ganja when this offence was committed; this is the fourth petition, the grounds now urged were not taken earlier, and nothing has changed; and the petitioner, a resident of another State, is likely to abscond and to repeat the offence.

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

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8. This being a successive petition, the first question is what has changed since the order dated 30.03.2026. The rejection of bail is not res judicata, but liberty to move again is not liberty to re-argue. A successive petition lies only on a change in the fact situation or in law which requires the earlier view to be interfered with, as held in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**, (2005) 2 SCC 42, and a Court entertaining one under a special statute must refer to the fate of the earlier petitions and record the change that justifies fresh consideration, as held in **State of Punjab v. Sukhwinder Singh @ Gora**, (2026) 7 SCC 513: 2026 INSC 411.

Heads [a] and [b] were urged on 30.03.2026 and answered. Heads [c] to [e] rest on the first information report, the mahazar, the intimation of arrest and the arrest memo, all drawn up on the day of the arrest, which are in the petitioner's own typed set and were on the file of the Special Court seven months before the third petition was decided. They were available then and were not urged; a ground available when an earlier petition was argued does not become fresh by being urged now, and a fresh reading of old papers is not a change in the fact situation. Nor is the filing of the final report a change since 30.03.2026; it preceded that order, whatever the prayer in that petition said. What has changed is time: some seven months of further custody.

9. The question that decides whether Section 37 of the Act applies to the petitioner, whether the fifteen kilograms seized from the first accused can be put

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to his account, was answered against him on 30.03.2026 on the very contention now repeated. If every statement recorded from the accused by the police is left out of account, as **Tofan Singh v. State of Tamil Nadu**, (2021) 4 SCC 1, requires, what remains on the prosecution's own papers is the information that named the two together, their being found together at the spot, and like quantities in like packing in the bags each carried. On a successive petition I cannot take a different view of the same material.This Court declined to reopen an aggregation so decided in Crl.O.P. No. 23565 of 2026, dated 25.09.2026. I express no view of my own on whether the two recoveries can be read together. That question remains open for the Special Court, and so long as the earlier view holds, Section 37 of the Act stands in the petitioner's way.

10. The plea on the grounds of arrest goes to the legality of the custody, and I have examined it. In paragraph 12 of **State of Meghalaya v. Sonam Raghuvanshi**, 2026 SCC OnLine SC 1392, the Supreme Court held that *"when the accused person warranted a finding on merits on the earlier occasions, it is not open for him/her to go back and raise the plea on the issue pertaining to the grounds of arrest thereafter."* The petitioner obtained decisions on the merits on 23.06.2025 and 30.03.2026 without raising it; this Court so held on a like record in Crl.O.P. No. 26176 of 2026, dated 13.10.2026. Secondly, this is not a case of non-service. The intimation of arrest under Section 52(1) of the Act at page 11

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of the typed set, drawn up at the spot and signed by the petitioner, states that he was arrested near the East Tambaram 5A bus stand for keeping about fifteen kilograms of ganja for sale without licence; the arrest memo at page 13 states the crime number, the provisions, the quantity, the place and the time; both reached the learned Judicial Magistrate within days of the remand. The complaint is of language. The intimation is in Tamil, which the petitioner says he does not know; the first information report records that both accused spoke and understood Tamil. Whether he understood what he signed is a question of fact for the trial. He moved the Special Court for bail within six weeks of his arrest and this Court within four months, and no prejudice is shown. No breach of Article 22(1) of the Constitution is made out on this record.

11. The remaining pleas are matters of evidence, and I leave them open. The plea of a foisted case was rejected on 30.03.2026; the photograph now produced bears no date and identifies no one, and which version of the arrest is true cannot be decided on affidavits. The order of the Supreme Court dated 18.10.2024 granting bail to the first accused, on which the petition relies, was passed in another crime; the record does not show that any co-accused in this crime is on bail, and no question of parity arises.

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12. The petitioner's own typed set shows that he was arrested in this case two months after his release on bail by the Supreme Court on 06.01.2025 in Crime No. 206 of 2023 of the Anna Nagar unit, a case of eighty kilograms of ganja under the same provisions, pending trial as C.C. No. 786 of 2023, in which bail was granted on the footing that he had no antecedents. What the record shows is an offence of the same kind alleged two months after release in the earlier one. On that record I am unable to record the satisfaction that the petitioner is not likely to commit any offence while on bail.

13. Custody of one year and eight months was held not to be long for an offence carrying up to twenty years in **State of Punjab v. Balraj Singh @ Billa**, 2026 INSC 618, and the right to a speedy trial is to be read alongside, and not in displacement of, Section 37 of the Act, as held in **Sukhwinder Singh** (cited supra). The state of the trial already noticed calls for a direction, not for release: the answer to a trial that has not moved is to move the trial, not to release an accused whose case for release rests on that very delay.

14. In the result, this Criminal Original Petition is dismissed.

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15. There will, however, be the following directions.

(i) The learned II Additional Special Judge, Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai, shall 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, and shall make every endeavour to conclude the trial within six months thereafter, examining the witnesses on dates not more than fourteen days apart.

(ii) If the trial is not concluded within that period for reasons not attributable to the petitioner, or if the charge framed against him is confined to an intermediate quantity, he is at liberty to move afresh. Any such petition shall be decided on its own merits, uninfluenced by this order.

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To

1. Inspector of Police
Ayappakkam Police Station,
Chennai.

2. The Public Prosecutor,
Madras High Court.

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N.RAMESH, J.

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