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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP Nos. 30741 and 30744 of 2026

Crl.O.P.No.30741 of 2026:

1.Fakurudheen,
C/o.Risina,
2. Mohamed Ibrahim,
S/o.Mohamed Musthafa ...Petitioners in Crl.O.P.No.30741 of 2026

1.Zahir Hussain,
S/o.Mohamed Kani

2.Muzamil Ahamed,
S/o.Seeni Mohammed Khan ...Petitioners in Crl.O.P.No.30744 of 2026

Vs

The State Rep by,
The Inspector of Police,
Q-Branch CID, Chennai. ...Respondent/Complainant in both cases
Crime No.01 of 2026.

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COMMON PRAYER in Crl.O.P.Nos.30741 and 30744 2026 : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the petitioners on bail pending investigation in Crime No.01 of 2026 on the file of the respondent.

Crl.O.P.No.30741 of 2026:

For Petitioner(s) : Mr.Mr.C.Raja

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

Crl.O.P.No.30744 of 2026:

For Petitioner(s) : Mr.O.Chembulingam

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

COMMON ORDER

1. These are two petitions for regular bail under Section 483 of the BNSS by four persons arrested together in Crime No. 1 of 2026 on the file of the Inspector of Police, 'Q' Branch CID, Chennai City, registered for offences under Sections 61(2), 318, 123, 48 and 111(3) of the BNS and Section 18(c) read with Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940. Crl.O.P. No. 30741 of 2026 is by Fakurudheen and Mohamed Ibrahim, and Crl.O.P. No. 30744 of 2026 by

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Zahir Hussain and Muzamil Ahamed. Since they arise out of one seizure, they are disposed of together.

2. The case of the prosecution, briefly stated, is this. On 24.09.2026 a 'Q' Branch team on surveillance on Pantheon Road, Egmore, stopped the four petitioners as they came away from the office of a travel agency with a blue trolley suitcase. The suitcase held rice, sweets and clothes. On a search made before two independent witnesses, two packets of a white substance were found concealed in its upper and lower sides. The packets and the suitcase were seized under a mahazar, and a sample sent to the Tamil Nadu Forensic Sciences Department was reported the same evening to be etomidate. The prosecution says that the petitioners acted on the instructions of Jainudeen and Firdaus, the fifth and sixth accused, who are in Malaysia; that the etomidate was to be taken by bus through Bengaluru to Mumbai and sent on from there to Malaysia by air; and that the money moved through hawala channels. The investigation is in progress.

3. Learned counsel for the petitioners made these submissions:

[a] the first information report does not record the weight of the substance seized;

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[b] the petitioners were not at the scene and have been implicated only to make up numbers;

[c] etomidate is governed by the Drugs and Cosmetics Act, 1940 and not by the NDPS Act; under **Union of India v. Ashok Kumar Sharma, (2021) 12 SCC 674**, the police can neither register a first information report for an offence under Chapter IV of that Act, nor investigate it, nor arrest for it; decisions of the High Courts of Bombay, Allahabad, Jharkhand and Karnataka are relied on to the same effect;

[d] the sample ought not to have been sent for analysis without the permission of the Court;

[e] the petitioners have no previous case.

4. The respondent has filed counter affidavits of the Deputy Superintendent of Police, 'Q' Branch CID (Operations), Chennai City, who is now the investigating officer, and the petitions are opposed on their lines. The learned Government Advocate (Criminal Side) submitted that:

[a] the quantity is recorded in the seizure mahazar, and its absence from the first information report does not falsify the case;

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[b] the presence of the petitioners is spoken to by the witnesses, each of them gave a confession statement, and their mobile phones were recovered and handed over to the Court;

[c] the case is not confined to Chapter IV of the Drugs and Cosmetics Act. It is one of a conspiracy to export etomidate to Malaysia without a licence through illegal channels, which attracts the offences under the Sanhita independently, and Ashok Kumar Sharma is therefore distinguishable. The Drugs Inspector has been associated with the investigation and samples have been forwarded to him;

[d] the samples were drawn before witnesses, the bulk was produced before the Court, and samples drawn under the orders of the learned Magistrate were sent to the Forensic Sciences Department and to the Drugs Inspector;

[e] the petitioners acted under the directions of the absconding accused abroad and so constitute an organised crime syndicate. The investigation is at a nascent stage, more accused are to be arrested, and custodial interrogation is required to trace the source, the recipients and the network. If released, the petitioners may abscond, or act with the absconding accused to tamper with the evidence;

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[f] the petitioners are not first offenders. Fakurudheen is said to have been involved in NCB Crime No. 12 of 2025, a case of possession of 5.07 kilograms of pseudoephedrine. Muzamil Ahamed is an accused in Crime No. 110 of 2021 of Nainarkoil Police Station, Ramanathapuram District, under Sections 8(c), 20(b)(ii)(B) and 25 of the NDPS Act, for 1.2 kilograms of ganja, pending trial as C.C. No. 41 of 2023 before the Essential Commodities Court, Pudukottai. Zahir Hussain is an accused in Crime No. 352 of 2021 of Ilayankudi Police Station under Sections 147, 294(b), 427, 448, 457, 468, 380 and 506(i) IPC, pending trial as C.C. No. 56 of 2026 before the learned Chief Judicial Magistrate, Sivagangai. Mohamed Ibrahim is an accused in a case of the Directorate of Revenue Intelligence of 2015, pending trial as C.C. No. 30 of 2017 before the learned IV Additional District Judge, Visakhapatnam, in which a non-bailable warrant is pending against him.

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

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6. I take first the contention that the police could not have registered this case at all. In **Ashok Kumar Sharma** (cited supra) the Supreme Court held that only the persons named in Section 32 of the Drugs and Cosmetics Act, 1940 may prosecute an offence under Chapter IV of the Act; that a police officer can neither register a first information report for such an offence nor investigate it; and that police officers have no power to arrest for it, a holding which operates from 28.08.2020 (paragraphs 170.1, 170.3 and 170.6). The same judgment holds, in paragraph 170.2, that the police are not barred from investigating and prosecuting a person who has committed a cognizable offence under any other law, which is what Section 32(3) of the Act preserves. A coordinate Bench of this Court had taken the same view of Section 32 a few weeks earlier, in **Ram Kowshik v. State, 2020 SCC OnLine Mad 8292**.

7. Two things follow. The *first* is that the case does not fall at the threshold merely because the police registered it, since it also carries penal provision under the BNS.

The *second* is that the offence under Section 18(c) read with Section 27(b)(ii), which is the offence the facts most naturally describe, cannot be investigated by the respondent and cannot by itself sustain the arrest and detention of the petitioners at the instance of the police. Their continued detention has to be

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justified, if at all, by the penal provision under the BNSS, each examined on its own ingredients. The counter affidavits say, in paragraph 3, that the Drugs Inspector has been associated with the investigation. Whether that meets Section 32 is a question for the court before which cognizance is sought, and I express no view on it. The decisions of other High Courts relied on by the petitioners are persuasive only. In **Bipin Gopaldas Taori v. State of Maharashtra, 2026 SCC OnLine Bom 1208**, **Dr. Shiv Kumar Agarwal v. State of U.P., 2024:AHC:113863**, and **Rakesh v. State of Karnataka, Crl.P. No. 201223 of 2021, dated 14.12.2021**, the High Courts, on petitions to quash, set aside proceedings that the police had taken up in what was in substance a prosecution under Chapter IV. Whether the penal sections under the BNS in this case are of that description cannot be decided on a petition for bail. For the present purpose those decisions take the matter no further than **Ashok Kumar Sharma** (cited supra), on which they rest.

8. I turn to the penal section under the BNS. Section 123 punishes one who administers to, or causes to be taken by, any person a poison or a stupefying, intoxicating or unwholesome drug, with the intent or knowledge there stated. Neither the first information report nor the counter affidavits suggest that the etomidate was administered to, or taken by, anyone. Without that, the foundation

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of the section is absent, as held by this Court, on a seizure of pharmaceutical capsules, in Crl.O.P. No. 23413 of 2026, dated 03.09.2026. Section 318 requires a person deceived, and neither document names one. Section 48 describes abetment from outside India of an offence in India; on the prosecution case it describes what is alleged against the fifth and sixth accused, not against the petitioners. Section 61(2) punishes a criminal conspiracy according to the offence that is its object. The count that gives this case its gravity is Section 111(3), which punishes one who abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or engages in any act preparatory to it.

9. Organised crime, under Section 111(1), is a continuing unlawful activity carried on as a member, or on behalf, of an organised crime syndicate. By clause (ii) of the Explanation, a continuing unlawful activity is one *in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence*. The counter affidavits assert, in paragraph 4, that the petitioners acted under the directions of the absconding accused, *thereby constituting an organised crime syndicate*. They do not identify a single earlier charge-sheet laid in respect of any activity of that syndicate. The previous cases they list are one

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case against each petitioner. None is said to have been committed with the present co-accused or on behalf of the persons in Malaysia, and on no reading of the Explanation does one earlier case against one member amount to *more than one charge-sheets*. I do not hold that Section 111 is not attracted. The investigation is at an early stage and may bring up the material.

10. Nor do the counter affidavits state the quantity of etomidate seized. They say that it is recorded in the mahazar and speak, in paragraph 4, of *bulk quantities*, but give no figure. In a seizure of this kind the gravity lies largely in the quantity, and when the respondent relies on gravity to oppose bail, it is for the respondent to state it. The plea that the petitioners were not at the scene, and the objection to the sampling, are matters for the trial, and I leave them open.

11. Each petition avers, in paragraph 12, that there is no previous case against the petitioners. On the counter affidavits that averment is untrue of all four, and it detracts from the credit of the affidavits. Mohamed Ibrahim stands differently. The counter affidavit states that a non-bailable warrant is pending against him in the case at Visakhapatnam, and nothing in his petition, which denies any previous case, answers it. A warrant of that kind issues to compel the presence of

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an accused before the court that issued it. Conditions of bail exist to secure the presence of the accused. In his case the risk they are meant to answer is not an apprehension but a matter of record, and no condition imposed here can answer a warrant of another court that remains unanswered. He must first submit to that court.

12. The recovery is complete and the petitioners have been in custody for over a month.

13. The legal position may be shortly stated: where a first information report joins an offence under Chapter IV of the Drugs and Cosmetics Act, 1940 with offences under the Bharatiya Nyaya Sanhita, 2023, the police may investigate the latter but not the former; and on a petition for bail, the detention of the accused must be justified by the penal sections under the BNS, each examined on its own ingredients.

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14. **In the result,**

(i) Crl.O.P. No. 30744 of 2026 is allowed,

(ii) Crl.O.P. No. 30741 of 2026 is allowed in respect of Fakurudheen and dismissed in respect of Mohamed Ibrahim.

The petitioners Zahir Hussain, Muzamil Ahamed and Fakurudheen are ordered to be released on bail on each of them executing a bond for a sum of Rs. 25,000/- (Rupees twenty-five thousand only) with two sureties each for a like sum to the satisfaction of the learned XIV Metropolitan Magistrate, Egmore, Chennai,

15. The dismissal of the petition in respect of Mohamed Ibrahim does not stand in the way of his moving afresh after the non-bailable warrant pending against him in C.C. No. 30 of 2017 on the file of the learned IV Additional District Judge, Visakhapatnam, has been executed or recalled, on a full disclosure of what has happened in that case.

Further conditions:-

- the petitioners shall report before the respondent at 10.30 a.m. daily for two weeks from the date of their release, then every Monday at 10.30 a.m. for the next eight weeks, and thereafter whenever required for the investigation;

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[b] the petitioners shall not leave India without the prior permission of the learned XIV Metropolitan Magistrate, Egmore, Chennai or, after the final report is filed, of the trial court;

[c] each petitioner shall, within one week of his release, file before the learned XIV Metropolitan Magistrate, Egmore, Chennai an affidavit stating his address of residence with proof of it, and shall not change that address without prior intimation to that court and to the respondent.

[d] the petitioners 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 petitioners in accordance with law as if the aforementioned conditions have been imposed and the petitioners 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];**

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

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Note:

1. Registry is directed to forthwith upload this order in the Official Website of this Court.
2. All concerned to act on this order being uploaded in Official Website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in the official website of this Court will be watermarked and will also have a QR code.

To

1.The XVI Metropolitan Magistrate,
Egmore, Chennai.

2.The Inspector of Police,
Q-Branch CID, Chennai.
Crime No.01 of 2026.

3.The Superintendent,
Central Prison, Puzhal.

4.The Public Prosecutor,
High Court, Madras.

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Common order in

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