WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 32920 of 2026

CNR: {HCMA012688822026}

Parth Sharma
S/o Nitesh Sharma,
B-83, Dena Apartments, Sector 13, Rohini, Delhi-110085

Case QR

..Petitioner(s)

Vs

State rep by the Inspector of police
Brahmmapuram Police Station,
Vellore District, Tamil Nadu.
Crime No.97/2026

..Respondent(s)

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the petitioner /accused on bail in crime no.97 of 2026 on the file of the Brahmmapuram police station, Vellore and pass such further or other orders.

For Petitioner(s): Mr.Abudu Kumar Rajarathinam, Senior Counsel for Mr. Aditya Chandramouli

For Respondent(s): Mr.Durai Gunasekaran, Government Advocate (Crl.Side)

ORDER

1. This is a petition for regular bail under Section 483 of the BNSS. The petitioner, a student aged twenty-three, is an accused in Crime No. 97 of 2026 on the file of the Brahmmapuram Police Station, Vellore District, registered on 14.07.2026 under Sections 111 and 123 of the Bharatiya Nyaya Sanhita, 2023

https://www.mhc.tn.gov.in/judis

WEB COPY

(BNS). Section 123 is punishable with imprisonment which may extend to ten years and fine. Section 111 is cited in the first information report without a sub-section. Where death does not result, the offence it creates is punishable with imprisonment for not less than five years which may extend to imprisonment for life, and with a fine of not less than five lakh rupees. The investigation is pending.

2. The case of the prosecution, briefly stated, is this. On 14.07.2026, on information that a parcel of intoxicating tablets had arrived at the DTDC courier office opposite Gate 1A of the Vellore Institute of Technology at Katpadi, the police kept watch there. At 4.40 p.m. Bhaavan Dubey, the first accused, who had completed his course at the Institute in 2025, collected a parcel addressed to "Ajai". It contained ten strips of Tapentadol (TYDAL 100 mg) tablets, one hundred tablets in all. He was arrested and the case was registered. The first information report does not name the petitioner. The police say that the petitioner sent the parcel from Delhi under the false name "Ajay", and that he is the "procurement coordinator" of such consignments.

3. On 24.08.2026 the petitioner was arrested in Crime No. 139 of 2026 of the Sathuvachari Police Station, Vellore, also registered under Sections 111 and 123 of the BNS, which concerns a courier parcel of four hundred Tapentadol tablets booked under a false name. While in custody in that case, he was shown arrested in this crime on **29.08.2026**. I declined him bail in that case in Crl.O.P.

https://www.mhc.tn.gov.in/judis

WEB COPY

No. 24988 of 2026 on 07.09.2026. The Supreme Court set that order aside on 27.10.2026 in the criminal appeal arising out of SLP (Crl.) No. 17589 of 2026, and the petitioner has furnished sureties under the order of the learned Principal Sessions Judge, Vellore dated 03.11.2026 in Crl.M.P. No. 4099 of 2026. He now remains in prison only for this crime, and has been in custody in it for about two and a half months. On the same day, 03.11.2026, the learned Principal Sessions Judge dismissed his petition for bail in this crime in Crl.M.P. No. 4072 of 2026. The report of the chemical analysis of the tablets is awaited.

4. Learned counsel for the petitioner made these submissions:

[a] the petitioner is not named in the first information report and nothing was recovered from him;

[b] the material against him is the statement of the co-accused;

[c] Tapentadol is not a narcotic drug or a psychotropic substance under the NDPS Act;

[d] Section 111 of the BNS is not attracted, because there is no continuing unlawful activity and not a single charge-sheet;

[e] Section 123 of the BNS is not attracted, because no one is said to have been administered any tablet;

[f] the Supreme Court has granted him bail in the connected crime on material of the same kind;

[g] he is a student with a permanent home in Delhi and will abide by any condition imposed.

https://www.mhc.tn.gov.in/judis

WEB COPY

5. The petition is opposed by the learned Government Advocate (Criminal Side). The case for continued custody, as the order of the learned Principal Sessions Judge dated 03.11.2026 records it, is that the petitioner arranged the supply of Tapentadol tablets by courier under false identities, that he is an accused in a similar case, that the chemical analysis report is awaited, and that, being a native of Delhi with a wide network, he will abscond if released.

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

7. I take first the question of what the petitioner is held for. Tapentadol is not in the Schedule to the NDPS Act, as the Supreme Court noticed in granting pre-arrest bail in **Kulwant Singh v. State of Punjab**, Criminal Appeal No. 1558 of 2025, order dated 28.03.2025, and no notification adding it to the Schedule has been brought to my notice. It is a prescription medicine, entered at serial number 48 of Schedule H1 to the Drugs Rules, 1945 by G.S.R. 258(E) dated 07.04.2021. The first information report describes the tablets as banned by the State Government, but no order of the State to that effect is placed before me. The sale or distribution of such a medicine without a prescription or a licence is, if anything, an offence under Chapter IV of the Drugs and Cosmetics Act, 1940. The police can neither register nor investigate such an offence, as held in **Union of India v. Ashok Kumar Sharma**, (2021) 12 SCC 674, which I

https://www.mhc.tn.gov.in/judis

WEB COPY

applied in **Fakurudheen Vs. State, Crl.O.P. Nos. 30741 and 30744 of 2026, dated 30.10.2026**. The respondent has not invoked that Act. The gravity of this case, and the detention of the petitioner, rest on Sections 111 and 123 of the BNS alone, and each must be examined on its own ingredients.

8. Section 123 of the BNS reads:

> *"Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

It reproduces Section 328 of the Indian Penal Code. In **Joseph Kurian Philip Jose v. State of Kerala**, (1994) 6 SCC 535, the Supreme Court set out what the prosecution must prove under that section:

- that the substance was a poison or a stupefying, intoxicating or unwholesome drug,
- that the accused administered it to a person or caused a person to take it, by himself or through another, and
- that he did so with the intent or knowledge which the section describes.

The section is about an act done to a person.

9. The first information report says what these tablets do when taken

https://www.mhc.tn.gov.in/judis

WEB COPY

without a prescription, and what follows when they are dissolved and injected. It does not say that anyone took them. The parcel was intercepted at the counter. Sending a parcel to a person who collects it does not amount to administering its contents to anyone, or to causing anyone to take them. The chemical analysis report, when it comes, may say what the tablets are. It cannot supply a person to whom they were administered. As held by this Court in **Prabhakar Vs. State, Crl.O.P. No. 23413 of 2026, dated 03.09.2026**, and in **Crl.O.P. Nos. 30741 and 30744 of 2026** (cited supra), without administration the foundation of the section is absent. This Court at Madurai took the same view of Section 328 of the Indian Penal Code in **Subramani v. State of Tamil Nadu**, Crl.O.P.(MD) No. 21404 of 2025, dated 01.06.2026, holding that mere possession of tobacco products does not satisfy it. No attempt to commit, or abetment of, an offence under Section 123 is alleged, and I say nothing about either. On the material as it stands, Section 123 is not attracted against the petitioner.

10. Section 111(1) of the BNS defines organised crime as;

> *"any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by*

https://www.mhc.tn.gov.in/judis

WEB COPY

any other unlawful means to obtain direct or indirect material benefit including a financial benefit".

By clause (i) of the Explanation, an organised crime syndicate is a group of two or more persons who, acting either singly or jointly, as a syndicate or gang, indulge in any continuing unlawful activity. Clause (ii) defines a continuing unlawful activity as

> *"an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate 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, and includes economic offence".*

11. Three things follow from the text. The *first* is that a syndicate is defined by reference to a continuing unlawful activity, so that without a continuing unlawful activity there is neither a syndicate nor organised crime.

The *second* is that a continuing unlawful activity has three parts:

- a cognizable offence punishable with imprisonment of three years or more, committed as a member or on behalf of a syndicate,
- in respect of which more than one charge-sheet has been filed within the preceding ten years and taken cognizance of.
- The activity must also be carried on by violence, threat, intimidation, coercion or other unlawful means, to obtain a material benefit.

https://www.mhc.tn.gov.in/judis

WEB COPY

The *third* is that the list of activities in sub-section (1) names the kinds of activity the section has in view, and the definition must still be met for each of them.

12. These definitions are drawn, almost word for word, from Section 2(1) of the Maharashtra Control of Organised Crime Act, 1999. Construing that Act, the Supreme Court held in **State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane**, (2015) 14 SCC 272, that the filing of earlier charge-sheets meets only one requirement, and that *"Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied"* (paragraph 8).

13. That view was followed under the corresponding Gujarat enactment in **State of Gujarat v. Sandip Omprakash Gupta**, 2022 SCC OnLine SC 1727. On petitions for bail, the High Court of Kerala in **Muhammad Rasheed v. State of Kerala**, B.A. No. 5927 of 2024, dated 13.08.2024, and the High Court of Madhya Pradesh in **Tanmay v. State of Madhya Pradesh**, M.Cr.C. No. 32864 of 2026, dated 31.07.2026, have held Section 111 prima facie not attracted where the charge-sheets the Explanation requires were not shown. Those decisions are persuasive only, and I respectfully agree with them. In **Fakurudheen Vs. State, Crl.O.P. Nos. 30741 and 30744 of 2026** (cited supra), I held that one earlier case against each of several accused, none of them said to have been committed with the others, does not amount to more than one charge-sheets.

https://www.mhc.tn.gov.in/judis

WEB COPY

14. Turning to the record, not one charge-sheet is shown. In this crime the investigation is pending and the chemical analysis report has not come. In Crime No. 139 of 2026 the investigation is also pending. Two first information reports are not two charge-sheets. Nothing is placed before me about any charge-sheet against the first accused, or against anyone said to act with him and the petitioner. Nor does the record name a cognizable offence punishable with three years or more which the petitioner is said to have committed, other than Section 123, which on this material is not attracted, and an offence under the Drugs and Cosmetics Act, 1940, which the police cannot investigate. Nothing is said of violence, threat, intimidation or coercion, or of any material benefit the petitioner obtained. Whether the word "drugs" in sub-section (1) reaches a prescription medicine I need not decide, because the definition is not met whatever the answer.

15. The respondent has relied on the allegation that the petitioner was found on the campus of the Institute with thirty-seven strips of Tapentadol tablets. That allegation led to his suspension by the Institute, which is under challenge in W.P. No. 26433 of 2026. It led to no criminal case. It is not an antecedent, and it cannot stand in for the charge-sheets that the Explanation requires.

16. On the record as it stands, I find no material on which Section 111 can be said to be attracted. If the investigation brings up earlier charge-sheets of the

https://www.mhc.tn.gov.in/judis

WEB COPY

kind the Explanation requires, the trial court will consider them. The reason the question has to be asked at this stage lies in what the section does to a case of this kind. A parcel of one hundred prescription tablets, which on the present material could at most lead to a prosecution by a Drugs Inspector under the Drugs and Cosmetics Act, 1940, becomes an offence punishable with imprisonment for not less than five years and up to life. The High Court of Karnataka, in **Avinash v. State of Karnataka**, Crl.P. No. 893 of 2025, dated 11.03.2025, asked courts to be cautious before permitting the investigating officer to add Section 111, and to look for material that shows the need for it. The same care is called for when the section is relied on to keep an accused in custody.

17. Nothing was recovered from the petitioner, and the first information report does not name him. The record does not show what connects him to the parcel, apart from the statement of the first accused and what the respondent calls enquiry. The counter affidavit the respondent filed before the Supreme Court in the connected case speaks of call detail records and of financial trails still under investigation, but no such record in this crime is placed before me. In the connected case the Supreme Court recorded that the State could not dispute that the complicity of the petitioner rested on the confession of the co-accused and that nothing incriminating was recovered from him. Nothing before me shows that the position in this crime is different. Whether he sent the parcel is a

https://www.mhc.tn.gov.in/judis

matter for the investigation.

18. Bail has since been granted in the similar case by the Supreme Court. Recovery in this case is complete.

WEB COPY

https://www.mhc.tn.gov.in/judis

WEB COPY

19. The legal position may be shortly stated: Section 111 of the BNS is attracted only where there is a continuing unlawful activity as defined in clause (ii) of the Explanation to sub-section (1). That requires more than one charge-sheet, filed within the preceding ten years and taken cognizance of, in respect of the activity of the syndicate, and a further instance of that activity. First information reports, pending investigations and the seizure in the case itself do not meet it.

Section 123 of the BNS requires that the poison or drug be administered to a person, or that a person be caused to take it. Possession, carriage, dispatch or sale of tablets, without a person who was administered them or caused to take them, does not constitute the offence. Where the material shows no more than the sale or distribution, without a prescription or a licence, of a medicine that is not a narcotic drug or a psychotropic substance, the offence, if any, lies under Chapter IV of the Drugs and Cosmetics Act, 1940, which only the persons named in Section 32 of that Act may prosecute. Neither Section 111 nor Section 123 can be invoked to give such a case a gravity that its facts do not carry.

20. **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 each**, for a like sum to the satisfaction of the **learned Judicial Magistrate, Katpadi,** and on further conditions that:

https://www.mhc.tn.gov.in/judis

WEB COPY

[a] the sureties shall affix their 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 their identity;

[b] the petitioner shall report before the respondent police daily at 10.30 a.m., for a period of 15 days and thereafter as and when required for interrogation;

[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

DRL

https://www.mhc.tn.gov.in/judis

WEB COPY

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 Judicial Magistrate,
Katpadi.

2. The Inspector of police
Brahmmapuram Police Station,
Vellore district, Tamil Nadu.

3.The Superintendent, Central Prison,
Vellore.

4. The Public Prosecutor,
High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

N.RAMESH, J.

DRL

CRL OP No. 32920 of 2026

12-11-2026

https://www.mhc.tn.gov.in/judis