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CRL OP No. 24004 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-09-2026

CORAM

THE HON'BLE MR.JUSTICE N.RAMESH

CRL OP No. 24004 of 2026

Dhilipkumar

..Petitioner(s)

Vs

The State represented by,
The Inspector of Police,
PEW Ambattur Unit,
Chennai.

..Respondent(s)

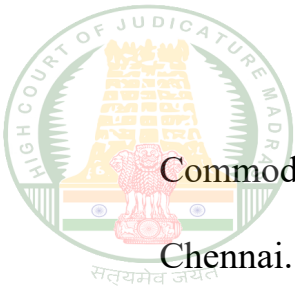
PRAYER: This criminal original petition filed under Section 482 BNSS Act to enlarge the Petitioner on bail in C.C.No.406/2026 pending on the file of the Principal Special Court for EC and NDPS Act Chennai and to pass such other order or orders that may deem fit in the light of proper circumstances of the case and thus render justice.

For Petitioner(s): Mr.S.Kasirajan

For Respondent(s): Mr.M.M.I.Khaleel,
Govt.Advocate (Crl.Side)

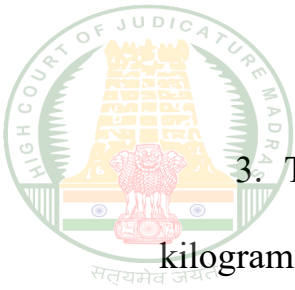
ORDER

The petitioner is the first accused in Crime No.164 of 2025 on the file of the Prohibition Enforcement Wing, Ambattur, Avadi City, registered for offences punishable under Section 8(c) read with Sections 20(b)(ii)(C), 29(1) and 25 of NDPS Act, 1985. He was arrested and remanded to judicial custody on **19.10.2025** and has been in prison since. The final report has been taken on file as C.C.No.406 of 2026 by the Principal Special Court for Essential



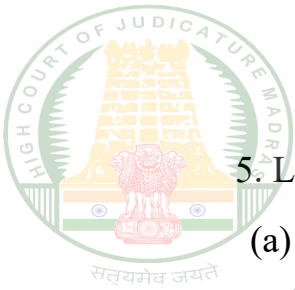
Commodities and Narcotic Drugs and Psychotropic Substances Act cases, Chennai. He seeks bail under Section 483 of BNSS. This is his second application before this Court.

2. According to the prosecution, on 19.10.2025 at about 03.10 hours the Sub Inspector of Police attached to the Ambattur Prohibition Enforcement Wing, then on station duty, received information that ganja was being carried for sale in a white Innova car bearing registration No.TN 65 H 0050 near the Ambattur–Soorapattu toll plaza. She proceeded to the spot with two head constables and intercepted the vehicle at about 04.15 hours. The petitioner and one Vignesh were found in it. After they were informed of their right to be searched in the presence of a Gazetted Officer or a Magistrate and had consented to a search by the police, the vehicle was searched. Twenty-five kilograms of ganja in a gunny bag kept beneath the rear seat, and two mobile phones, were seized from the petitioner; twenty-five kilograms of ganja in a gunny bag kept in the rear dicky, and one mobile phone, from Vignesh. The seizure was effected between 05.10 and 05.30 hours under mahazar in the presence of witnesses, and the two lots were sealed and marked P-1 and P-2. The two men were arrested at 07.10 hours. In their statements they are said to have spoken to having procured the contraband from Rajahmundry in Andhra Pradesh at the instance of the third accused Jahir Hussain, who is absconding. A report under Section 57 of the Act was submitted at 08.00 hours and the first information report came to be registered at 08.30 hours the same day.



3. The quantity attributed to the petitioner by himself is twenty-five kilograms, commercial quantity and it is on his individual recovery, and not on any aggregation with the recovery from the second accused. The embargo in Section 37 of the Act is therefore attracted against him on his own case, and the question of clubbing which commonly arises in these matters does not arise here at all. The gravest offence charged, that under Section 20(b)(ii)(C), is punishable with rigorous imprisonment for a term which shall not be less than ten years and may extend to twenty years.

4. The petitioner was remanded on 19.10.2025 and has been in judicial custody for about eleven months. The samples were forwarded to the Forensic Sciences Department on 22.10.2025, and the report in Nar.No.1991 of 2025 dated 30.10.2025 confirms that the substance is ganja. The seized contraband was produced before the Special Court on 12.11.2025 in A.No.1347 of 2025 and B.No.788 of 2025. The final report taken on file as C.C.No.406 of 2026, eleven witnesses having been cited. Charges have not been framed. On 07.09.2026 the petitioner was produced before the Special Court through video conference, the second accused did not appear, a non-bailable warrant was pending against the third accused, and the case was adjourned to 21.09.2026 for the appearance of the first and the second accused, the remand being extended till that date.



5. Learned counsel for the petitioner submitted:

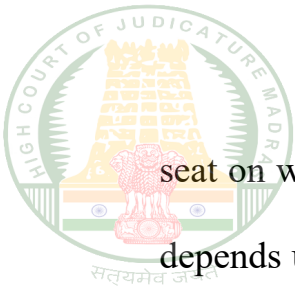
(a) that the grounds of arrest were neither furnished to the petitioner in writing nor explained to him as Section 47 of BNSS requires, and that the arrest and the consequent remand are on that account vitiated as held in **Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799**, and **Mihir Rajesh Shah v. State of Maharashtra, 2025 INSC 1288**;

(b) that what was served on him was an arrest memo under Section 36 of the Sanhita and a notice of arrest under Section 52(1) of the Act, that the notice discloses neither the quantity nor the nature of the contraband nor the penal provisions invoked, and that an arrest memo cannot be read as the grounds of arrest as held in **Ashish Kakkar v. Union Territory of Chandigarh, 2025 SCC OnLine SC 1318**, following **Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254**;

(c) that the second accused, from whom a like quantity was recovered and on whom the same form of intimation was served, was released on bail by a coordinate Bench of this Court by order dated 27.02.2026 in Crl.O.P.No.34406 of 2025 on precisely this ground, and that the petitioner stands on an identical footing;

(d) that he has no criminal antecedents, that he is willing to offer substantial sureties and to abide by any condition, and that he has now been in custody for eleven months.

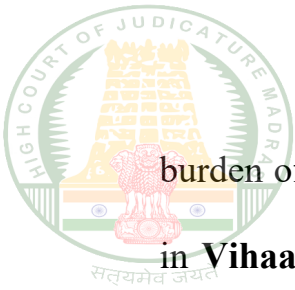
6. Per contra, learned Government Advocate (Criminal Side), on the counter affidavit of the Inspector of Police, Prohibition Enforcement Wing, Ambattur, opposed the petition. He submitted that the grounds of arrest were communicated to the petitioner at the time of his arrest; that twenty-five kilograms of ganja, a commercial quantity, were recovered from beneath the



seat on which he was travelling; that parity cannot be applied mechanically and depends upon the role attributed to each accused, the recovery from him and his antecedents; that the petitioner is an accused in Crime No.713 of 2023 on the file of the Kundrathur Police Station for offences under Sections 302, 364, 120-B, 109, 201 and 34 of IPC and Sections 25(1-B)(a), 27(1) and 3 of the Arms Act, which is pending trial; and that the first petition for bail in CrI.O.P.No.11689 of 2026 was withdrawn on 30.06.2026 and this second petition discloses no change of circumstances.

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

8. The prime submission of the learned counsel for the petitioner is that the arrest and long custody itself is unconstitutional. The document served on the petitioner is a printed notice under Section 52(1) of the Act, dated 19.10.2025 and timed at 07.10 hours. It records his name, his parentage and his address, and states that he is being arrested because ganja was found being carried in the Innova car in which he was travelling. It does not state the quantity seized, the provisions of law under which he was being arrested, or the particulars of the search and the seizure that preceded the arrest. No separate document setting out the grounds of arrest has been produced. Paragraph 8 of the counter affidavit asserts that the grounds were communicated at the time of arrest in compliance with Section 47 of the Sanhita, but the assertion stands unaccompanied by any such communication. Where an arrested person alleges non-compliance, the

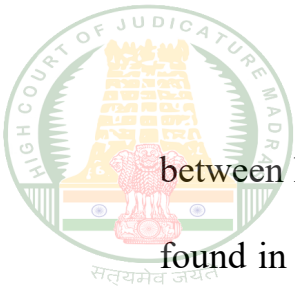


burden of proving compliance lies upon the officer who made the arrest as held in **Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799**. That burden has not been discharged.

9. The benefit of the ratio in the case of **Mihir Rajesh Shah v. State of Maharashtra, 2025 INSC 1288**, on which learned counsel placed reliance may not be available to the petitioner. That judgment, delivered on 06.11.2025, requires the grounds of arrest to be communicated in writing and, where that is not done at or soon after the arrest, at least two hours before production for remand; but the Court was explicit that the procedure it affirmed *shall govern arrests henceforth*, and this arrest was made on 19.10.2025. The petitioner does not need it. **Vihaan Kumar** governed his arrest and is sufficient for his purpose.

10. The test that **Vihaan Kumar** lays down is not one of form. Compliance is made by communicating to the arrested person, effectively and in a language he understands, sufficient knowledge of the basic facts constituting the grounds, so that he may consult a lawyer and resist his remand. To that must be added **State of Karnataka v. Sri Darshan, 2025 INSC 979**, which asks whether the omission has caused demonstrable prejudice by denying the accused a fair opportunity to defend himself.

11. On that test the notice served in this case is deficient in a particular that matters. What it withholds is the quantity. In a prosecution under this Act the quantity is not a detail; it is the fact that decides the punishment the accused faces, and it is the fact that decides whether Section 37 of the Act stands



between him and his liberty. An arrested person who is told only that ganja was found in the car he was travelling in, and is not told how much, does not know whether he is answering a charge carrying up to six months or one carrying not less than ten years. He cannot instruct counsel upon the only question that will be asked at his first remand. That is prejudice of a real and demonstrable kind, and it is not answered by paragraph 18 of the counter affidavit, which says that the omission of the precise quantity *does not erase the substantive material against the petitioner*. The substantive material is not in question. What is in question is whether the petitioner was told enough to defend himself, and he was not.

12. The consequence is settled. In **Vihaan Kumar** (cited supra) the Supreme Court concluded that non-compliance with Article 22(1) vitiates the arrest and the consequent orders of remand, and that *when a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established*. The embargo in Section 37 of the Act does not therefore stand in the way of the order I propose to make, and I make it on that ground and not upon any satisfaction recorded on the twin conditions, which I have not reached and do not reach.



13. That conclusion is fortified, and in truth is compelled, by what has already been decided in this very crime. The second accused was travelling in the same car, was arrested in the same hour, and was served with an intimation in the same printed form, differing from the petitioner's only in the name and the address. **By the order dated 27.02.2026 in Crl.O.P.No.34406 of 2025**, this Court examined that intimation, held that a closer scrutiny showed it did not contain the basic facts needed for the accused to defend himself, found that prejudice had been caused, and released him. The grounds here are not merely identical; they are the same document in the same crime. I see no reason to differ from the view taken on 27.02.2026, and were I minded to differ I could not simply depart from it. The record shows that the State has carried that order to the Supreme Court in Special Leave Petition (Criminal) Diary No.38255 of 2026, in which delay was condoned and notice was ordered on 15.07.2026, returnable on 21.08.2026. No stay has been brought to my notice, and until that Court says otherwise the order binds me.

14. The first is the petitioner's antecedent. The counter affidavit discloses that he has one previous case under IPC and Arms Act, pending trial. It is not an antecedent under this Act, and it bears upon the second limb of Section 37, which is not the ground on which this order proceeds. Where the custody is vitiated at its root, the answer is release upon conditions.



15. Accordingly, 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 **Principal Special Court for EC and NDPS Act, 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;

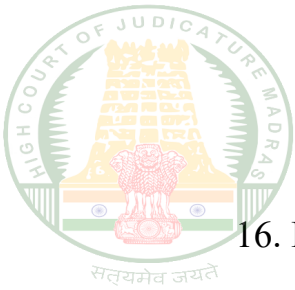
(b) the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders.

[d] the petitioner shall not abscond either during investigation or trial;

[e] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[f] 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]**;

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



16. In the result, this Criminal Original Petition is allowed.

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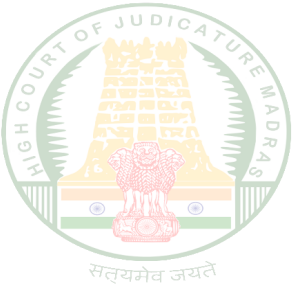
Note:

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. Principal Special Court for EC and NDPS Act, Chennai.
2. The Superintendent of Police,
Central Prison, Puzhal.
3. The Inspector of Police,
PEW Ambattur Unit,
Chennai.
4. The Public Prosecutor
High Court, Madras.



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N.RAMESH, J.

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