



CRL OP(MD). No.21643 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 11.12.2024

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.21643 of 2024

Mohamed Hussain

... Petitioner /Sole Accused

Vs

The State of Tamil Nadu
The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
(Crime No.320 of 2022)

... Respondent / Complainant

For Petitioner : Mr.S.Muniyandi,
Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS,2023.

PRAYER :-

For Bail in Crime No.320 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner / Sole Accused, who was arrested and remanded to judicial



CRL OP(MD). No.21643 of 2024

custody on 30.11.2022 for the alleged offences under Sections (**) 8(c) r/w 20(b), (ii), (B), 22(C) of NDPS Act in C.C.No.781 of 2023, in Crime No.320 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on reliable information, the respondent conducted a raid along with the police party. The respondent found that the petitioner was in possession of 1.100 kgs of Ganja and 100 grams of Magic Mushroom illegally without any valid permission.

3. This is the third application for bail.

4. The learned counsel appearing for the petitioner would submit that even according to the respondent, the petitioner was in possession of 1.100 kgs of Ganja and 100 grams of Magic Mushroom. The Ganja weighing 1.100 kgs is below the commercial quantity and the Magic Mushroom 100 grams is comes under the category of commercial quantity.

5. He relied upon the Forensic examination of report in respect of the Magic Mushroom which was sent for analysis. The report dated 17.03.2023 revealed that the contraband deducted Psilocybin in the above sample and however, does not mention the quantum of Psilocybin. If the Psilocybin takes 50 grams it was comes under the below commercial quantity.



CRL OP(MD). No.21643 of 2024

WEB COPY

6. In similar issue, this Court in the case of Mohan vs. State of Tamil Nadu, the Inspector of Police, Kodaikanal Police Station in Crl.O.P(MD)No.19504 of 2024 held as follows:-

"9. In the instant case, magic mushroom per se does not satisfy the requirement of the narcotic drug under Section 2(xiv) or a psychotropic substance defined under Section 2 (xxiii) of the NDPS Act. Magic mushroom per se cannot be called contraband and it is construed as a contraband only because it contains psilocybin. The same is evident from the FSL report submitted by the Deputy Director dated 09.10.2024. If that is the case, it cannot be assumed that the entire 60 grams of magic mushroom must be equated to 60 grams of psilocybin. In the absence of satisfying the percentage of psilocybin in the mushroom, it cannot be assumed that it is 60 grams. In the absence of any material to come to a definite conclusion as to whether the psilocybin contained in the magic mushroom is a small quantity or a in between quantity or a commercial quantity, the Court cannot assume that it falls within the scope of commercial quantity and apply the rigour under Section 37 of the NDPS Act."



CRL OP(MD). No.21643 of 2024

WEB COPY

7. In the case on hand also the petitioner was found in possession of 100 grms of Magic Mushroom. Therefore, the entire 100 grams of Magic mushroom cannot be taken as Psilocybin. In view of the forensic examination report, dated 17.03.2023 though Psilocybin was deducted in the sample, it cannot be assumed that the entire 100 grams must be equal to 100 grams of Psilocybin. In the absence of satisfying the percentage of Psilocybin in the mushroom, it cannot be assumed that it is 100 grams. In the absence of any material to come to a definite conclusion as to whether the Psilocybin contained in the magic mushroom is a small quantity or a in-between quantity or a commercial quantity to apply the provision under Section 37 of the NDPS Act.

8. Taking into consideration the facts and circumstances of the case and considering the fact that the incident occurred in the year 2022 and the petitioner has suffered incarceration from 30.11.2022 and the investigation has almost been completed in this case, this Court is inclined to grant bail to the petitioner subject to the following conditions:

9. Accordingly, the petitioner is ordered to be released on bail on his executing



CRL OP(MD). No.21643 of 2024

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a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned (*)1st Additional District Judge for NDPS Act Cases, Madurai, and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the trial Court daily at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

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

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the



CRL OP(MD). No.21643 of 2024

learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court

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in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS, 2023.

sd/-
11/12/2024

(*)AMENDED AS PER ORDER OF THE COURT DATED 16.12.2024 IN CRL MP(MD) NO.13786 OF 2024 IN CRL OP(MD)NO.21643 OF 2024 BY NAVJ)

(**) AMENDED AS PER ORDER OF THE COURT DATED 07.01.2025 IN CRL MP(MD) NO.159 OF 2025 IN CRL OP(MD)NO.21643 OF 2024 BY NAVJ)

/ TRUE COPY /

07/01/2025
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

AM
TO
TO BE SUBSTITUTED WITH THE ORDER DATED 11.12.2024 ALREADY DESPATCHED

1 THE PRINCIPAL SPECIAL JUDGE
FOR NDPS ACT CASES, MADURAI.



CRL OP(MD). No.21643 of 2024

2. THE 1ST ADDITIONAL DISTRICT JUDGE FOR NDPS ACT CASES,
MADURAI,

3 THE INSPECTOR OF POLICE,
KODIAKANAL POLICE STATION,
DINDIGUL DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.MUNIYANDI, Advocate (SR-143[I] dated 07/01/2025)

ORDER
IN

CRL OP(MD) No.21643 of 2024

Date :11/12/2024

SS/SAR- /11/12/2024/ 7P/6C

RK/ (16.12.2024) 7P/7C

PSP/ (07.01.2025) 7P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023