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CrI.O.P.No.377 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2025

PRONOUNCED ON : 02.04.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.377 of 2025

Askar

... Petitioner/A3

Vs.

Union of India,
Rep. by The Intelligence Officer,
NCB, Chennai.
[R.R.No.21 of 2023]

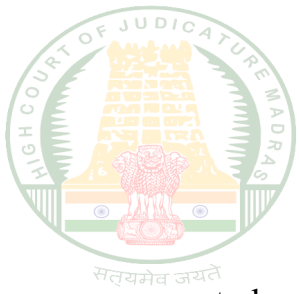
... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 483 of BNSS, pleaded to enlarge the petitioner on bail, in connection with the case in C.C.No.129 of 2024 in RR No.21 of 2023 in NCB F.No.48/1/09/2024-NCB/MDS on the file of the respondent.

For Petitioner : Mr.G.Martin Manivannan
for Mr.C.M.Ramakrishnan
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner, who was



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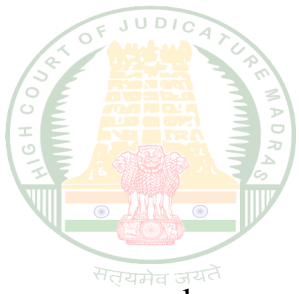
arrested and remanded to judicial custody on 16.07.2023 seeking bail in connection with the case in NCB.F.No.48/1/9/2024-NCB/MDS, registered for the offence under Sections 8(c) r/w 22(c), 23(c), 28 & 29 of NDPS Act, 1985.

2. The case of the prosecution is that on 14.07.2023, the respondent seized 1Kg of white substance believed to be Amphetamine from A1[Ragumathulla]; that his confession revealed that the petitioner/A3 and one Rilwan @ Rizwan used him for testing the contraband; and that one K.Sadhik Ali (A4) gave the contraband to him.

3. This is the second bail application before this Court. The earlier bail application in Crl.OP.No.13613 of 2024 was dismissed on 05.07.2024 by Hon'ble Mrs.Justice T.V.Thamilselvi, by making the following observations.

“5. Accordingly, this Criminal Original Petition stands dismissed. However, the trial Court is directed to dispose the case as expeditiously as possible, within a period of three months from the date of receipt of a copy of this order and the petitioner is directed to engage the counsel before the trial court and also co-operate with the trial proceedings.”

4. Though, the earlier bail petition was dismissed by Hon'ble Mrs.Justice T.V.Thamilselvi, this bail petition, is listed before this Court, pursuant to the



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orders passed by the Hon'ble Division Bench of this Court in Crl.O.P.No.31787 of 2024 on 04.03.2025.

5. The learned counsel appearing for the petitioner/A3 would submit that though there was a direction to conclude the trial within a period of three months, the trial has not concluded and eight months have elapsed, since the dismissal of the earlier petition; that the co-accused [K.Sadhik Ali] similarly placed, was granted bail by this Court [Hon'ble Mr.Justice P.Dhanabal] on 19.10.2024 in Crl.OP.No.23629 of 2024, considering the fact that the contraband was recovered only from A1 and A2 and that the petitioner therein did not have bad antecedents; and that in view of the same, the petitioner is also entitled to the same relief.

6. The learned Special Public Prosecutor, appearing for the respondent per contra submitted that the petitioner, who is arrayed as A3 and the co-accused/A4, who was granted bail by Hon'ble Mr.Justice P.Dhanabal, do not stand on the same footing; that the petitioner was the main person who was dealing with the contraband along with the co-accused/A2 [Mohammed Rilwan] and had used the first accused [Ragumathulla] to test the quality of the product; and that therefore, the petitioner would not be entitled to the same relief and opposed the grant of

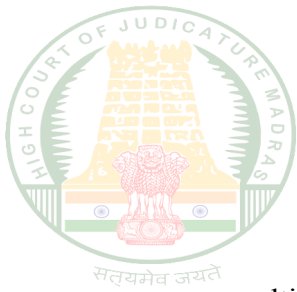


7. It is not in dispute that the petitioner is in custody from 16.07.2023. No contraband was seized from the petitioner. The *overt acts* attributed to the petitioner is only revealed from the confession of the co-accused. Apart from the confession, the prosecution had relied upon certain call records, to show that the petitioner had spoken to the co-accused.

8. Though the earlier bail petition was dismissed with a direction to the trial Court to complete the trial within three months, the trial has not been completed so far. For the fourth accused who was also implicated on the confession of the co-accused and on the basis of call records, this Court had granted bail as aforesaid by the order dated 19.10.2024.

9. The Hon'ble Supreme Court in *Ankur Chaudhary vs. State of Madhya Pradesh* in **Special Leave to Appeal (Crl).No.4648 of 2024**, had held as follows;

“it is to observe that failure to conclude the trial within a reasonable time



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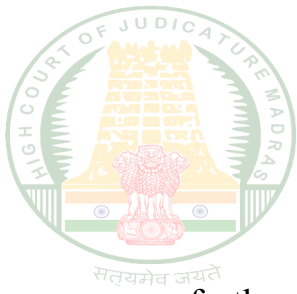
resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered”

10. Further, in ***Rabi Prakash vs. State of Odisha*** reported in **2023 SCC Online SC 1109**, the Hon'ble Supreme Court held as follows:

“The Prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) of the NDPS Act.”

11. Considering the aforesaid facts, the period of incarceration, the fact that the petitioner has no bad antecedents, similarly placed co-accused has been granted bail, and the observations of the Hon'ble Supreme Court in the above two decisions, this Court is inclined to grant bail to the petitioner with certain conditions.

12. Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of **Rs.15,000/- (*Rupees Fifteen Thousand only*)** with two sureties each for a like sum to the satisfaction of the **learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai**, and



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on further conditions that:-

(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(b) the petitioner shall appear before the trial Court on all working days at 10.30 a.m., regularly without fail. If any deviation in complying any of the conditions, bail granted to the petitioner shall stand cancelled;

(c) the petitioner shall not commit any offences of similar nature;

(d) the petitioner shall not abscond either during investigation or trial;

(e) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(f) on breach of any of the aforesaid conditions, the learned Judicial 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 learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.



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SUNDER MOHAN., J.

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To

- 1.The Principal Special Judge, Special Court under EC & NDPS Act, Chennai.
- 2.The Intelligence Officer, NCB, Chennai.
- 3.The Superintendent of Prison, Central Prison, Puzhal.
- 4.The Public Prosecutor, High Court, Madras

Pre-delivery order
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02.04.2025