



CRL O.P. No.790 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRL O.P. No.790 of 2025

Kamalraj

... Petitioner / accused

Versus

The State Rep. By
The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 483 of B.N.S.S., praying to enlarge the petitioner on bail pending investigation in Crime No.1379 of 2024 on the file of the respondent Police.

For petitioner : Mr. P. Santhosh.

For Respondent : Mr. Leonard Arul Joseph Selvam,
Government Advocate (Crl. Side).

ORDER



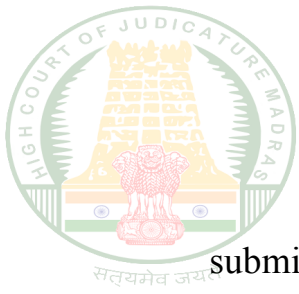
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This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 15.11.2024, seeking bail in Crime No.1379 of 2024 registered for the offence under Sections 8(c) read with 20(b)(ii)(c), 29(1) and 25 of the NDPS Act, 1985 and 25(1A) of the Arms Act, 1959.

2.The case of the prosecution is that on secret information, the petitioner (A1) along with two other accused were found in possession of 2 kgs of Ganja each; that on the confession of the petitioner, 15 kgs of Ganja was seized from his residence; that the petitioner was thus possession of 17 kgs of Ganja and the co-accused A2 and A3 were found in possession of 4 kgs of Ganja. Hence, the case.

3.Learned counsel for the petitioner submitted that the prosecution had initially registered the case under Section 20(b)(ii)(b) of NDPS Act which is for possession of intermediate quantity; that the allegations are false and in any case, the petitioner was found only in possession of 17 kgs of Ganja which is an intermediate quantity and hence, rigors of Section 37 of the NDPS Act would not be applicable to him; He further



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submitted that the petitioner is in custody from 15.11.2024 and he is ready to abide by any stringent conditions that may be imposed by this Court and since further custody is not required, the petitioner may be released on bail.

4. Learned Government Advocate (Crl.Side) reiterated the case of the prosecution and submitted that originally the case was registered for intermediate quantity and since, the total quantity recovered from A1 to A3 was 21 kgs, the case was altered to 8(c) of the NDPS Act and hence, opposed for grant of bail.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent Police and perused the materials available on record.

6. Admittedly, the petitioner and the other accused were in joint possession of 6 kgs of Ganja, 2 kgs each at the time of seizure; and that on the petitioner's confession, 15 kgs was seized from his residence. Considering the fact that the contraband seized from the residence cannot



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be said to be in joint possession of A2 and A3, this Court is of the view that contraband seized from A2 and A3 cannot be added to make it commercial quantity. Hence, rigors of Section 37 of the NDPS Act would not be applicable. Since the petitioner was found in possession of 17 kgs which is an intermediate quantity and the period of incarceration, this Court is of the view that further custody is not required for the purpose of investigation and inclined to grant bail to the petitioner with conditions.

7. Accordingly, the petitioner is ordered to be released on bail on his executing 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 XVI Metropolitan Magistrate, George Town, Chennai.

[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 respondent police everyday at 10.30 a.m., until further orders;

[c] the petitioner shall not abscond either during



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investigation or trial;

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

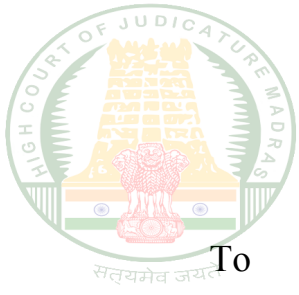
[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***;

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

[g] Since the petitioner is a Nigerian National, the respondent shall communicate the order of granting bail, to the concerned Registration Officer appointed under Rule 3 of Registration of Foreigners Rules, 1992 as per the decision of the Hon'ble Supreme Court in ***Frank Vitus Vs. Narcotics Control Bureau and others*** in Crl.Appeal Nos.2814-2815 of 2024 dated 06.01.2025.

24.02.2025

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To

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- 1.The Public Prosecutor,
High Court of Madras,
Chennai.
- 2.The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai District.
- 3.The XVI Metropolitan Magistrate,
George Town, Chennai.
- 4.The Central Prison,
Puzhal, Chennai.



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SUNDER MOHAN. J,

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