



Crl. O.P. No.2578 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl. O.P. No.2578 of 2025

Aneesh S/o. Anadhan

... Petitioner/Accused No.1

Vs.

State represented by:

The Inspector of Police,
NIB CID Salem.

... Respondent/Complainant

[Cr. No.14 of 2023]

PRAYER: Criminal Original Petition filed under Section 483 of BNSS, pleaded to enlarge the petitioner on bail, in connection with the case in Spl. C.C.No.237 of 2023 on the file of the Special Court for EC / NDPS Act Cases, Salem District.

For Petitioner : Ms.J. Devi

For Respondent : Ms. J.R. Archana,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 23.03.2023 seeking bail in connection with the case in Cr. No.14 of 2023, registered for the offences under



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Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act.

2. The case of the prosecution is that on secret information, the petitioner/A1 along with A2 was found in possession of 100 kgs of Ganja; and that from the confession of A1 and A2, it was revealed that A3 and A4 had also been involved in the aforesaid offences.

3. This is the third bail application before this Court. The second bail application in Crl.OP.No.24132 of 2023 was dismissed on 06.11.2023 by Hon'ble Mr.Justice C.V. Karthikeyan and this bail petition is listed before this Court pursuant to the orders passed by the Hon'ble Division Bench of this Court in Crl.O.P.No.31787 of 2024 on 04.03.2025.

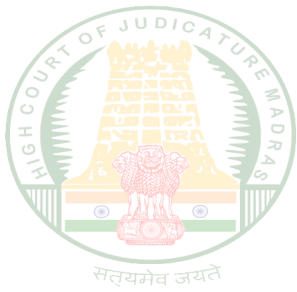
4. While dismissing the earlier bail application, this Court had made the following observations.

“4. It is stated by the respondent that the petitioners were intercepted at Salem Railway Station with four travel bags and other bags full of Ganja. It is also stated that the recovery had been effected.

5. The investigation is still in progress.

6. In view of the particular fact, this Court is not inclined to grant bail to the petitioner.

7. Hence, the Criminal Original Petition stands dismissed”



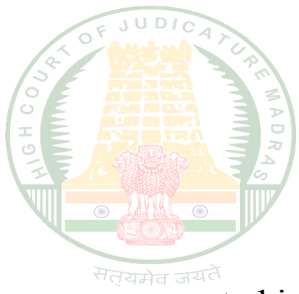
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5. The learned counsel appearing for the petitioner would submit that the petitioner is in custody from 23.03.2023 i.e., for more than 2 years and the trial is yet to commence; that since A3 and A4 were absconding for a long time, the charges were framed only recently and the trial is not likely to be completed in the near future; that the petitioner's fundamental right under Article 21 of the Constitution of India is violated due to his continuous incarceration and therefore, considering the period of incarceration, the rigors of Section 37 of the NDPS Act would not be applicable and relying upon the judgment of the Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha*** reported in **2023 SCC Online SC 1109** and ***Ankur Chaudhary vs. State of Madhya Pradesh*** in **Special Leave to Appeal (Crl).No.4648 of 2024**, sought for bail.

6. The learned Government Advocate (Crl.Side) however, vehemently opposed the grant of bail stating that the accused 3 and 4 were arrested, charges have been framed; that trial has now commenced and is likely to be completed in the near future and sought for dismissal of the bail petition.

7. The Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha***



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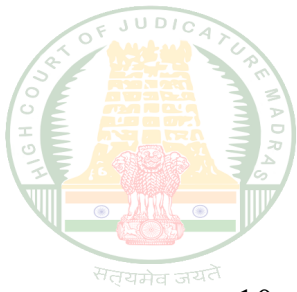
reported in **2023 SCC Online SC 1109**, held as follows:

“4.....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.”

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

“6..... It is to observe that failure to conclude the trial within a reasonable time 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”

9. Hence, considering the fact that the petitioner is in custody from 23.03.2023, the fact that the charges were framed only now and the trial is not likely to be concluded in the near future and taking note of the aforesaid observations of the Hon'ble Supreme Court, this Court is of the view that the right of the accused under Article 21 of the Constitution of India would override the statutory embargo.



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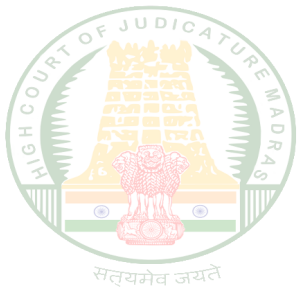
10. Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of **Rs.25,000/- (Rupees Twenty-five Thousand only)** with two sureties, **one surety should be a blood surety and another surety should be a local surety**, each for a like sum to the satisfaction of the **learned Special Judge for NDPS and EC Act Cases, Salem District**, and 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 report before the respondent police daily at 10.30 a.m. until further orders and apart from that, he shall appear for every hearing before the trial Court 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;



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(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]***;

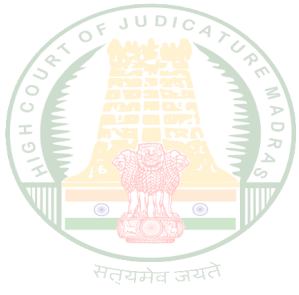
(g) If the accused thereafter absconds, a fresh FIR can be registered under Section 269 B.N.S.

25.03.2025

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To

- 1.The Special Judge for NDPS and EC Act Cases, Salem District .
- 2.The Inspector of Police,NIB CID Salem.
- 3.The Superintendent of Prison, Central Prison, Salem.
- 4.The Public Prosecutor, High Court, Madras



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SUNDER MOHAN., J.
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