



Crl. O.P. Nos.2431 and 2440 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2025

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THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl. O.P. Nos.2431 and 2440 of 2025

Thennu @ Thennarasan S/o. Malleshwaran ... Petitioner/Accused No.2
[Crl. O.P. No.2431 of 2025]

Elaya @ Elavarasan S/o. Malleshwaran ... Petitioner/Accused No.1
[Crl. O.P. No.2440 of 2025]

Vs.

State represented by:

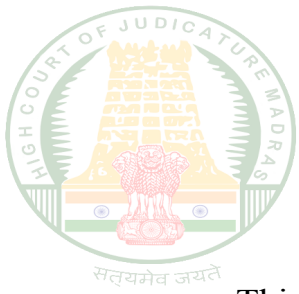
The Inspector of Police,
H6 R.K. Nagar Police Station,
Chennai ... Respondent/Complainant
[Cr. No.2269 of 2021]

COMMON PRAYER: Criminal Original Petitions filed under Section 483 of BNSS, pleaded to enlarge the petitioners on bail, in connection with the case in Cr. No.2269 of 2021 on the file of the respondent police.

For Petitioners : Mr. P. Santhosh [Both Crl. O.Ps.]

For Respondent : Ms. J.R. Archana, [Both Crl. O.Ps.]
Government Advocate (Crl. Side)

COMMON ORDER



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This Criminal Original Petitions have been filed by the petitioners, who were arrested and remanded to judicial custody on 11.12.2021 and 23.12.2021 respectively seeking bail in connection with the case in Cr. No.2269 of 2021, registered for the offences under Sections 8(c) r/w 20(b)(ii)(A), 22(C) and 29(1) of NDPS Act.

2. The case of the prosecution is that the respondent police found A2 with possession of 664.8 grams of Nitrovet tablets and on seeing the respondent police, A1 escaped from the scene of occurrence. Hence the case.

3. This is the fifth bail application before this Court. The earlier bail application in Crl.OP.Nos.16222 and 16225 of 2024 was dismissed on 10.07.2024 by Hon'ble Mrs.Justice T.V. Thamilselvi 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.

“Considering the facts and circumstances of the case and also the fact that the contraband seized from the petitioners is commercial quantity and also they are

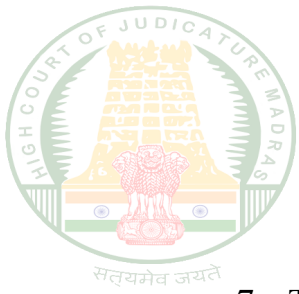


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having more than 10 previous cases including 302 IPC case. Hence, this Court is not inclined to allow these petitions. Accordingly, these petitions are dismissed. However, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order”

5. The learned counsel appearing for the petitioner would submit that this Court had directed the trial Court to complete the trial within a period of 3 months, but the trial has not been completed and considering the period of incarceration from 2021; that in spite of the directions of this Court, the trial has not been completed; that the petitioner is on bail in all other previous cases, which are registered for the offences under IPC and one case under the NDPS act; that contraband seized from this petitioner is intermediate quantity; and the respondent had erroneously registered this case for the possession of commercial quantity and sought for bail.

6. The learned Government Advocate (Crl.Side), per contra, vehemently opposed the grant of bail stating that 4 witnesses have been so far examined by the prosecution; that the trial will be completed soon; that petitioner Elaya @ Elavarasan has 10 previous cases and the petitioner Thennu @ Thennarasan has 14 previous cases and sought for dismissal of the bail petition.



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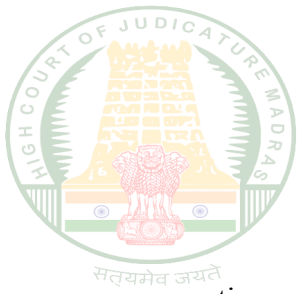
7. This Court perused the list of previous cases against the petitioners. In respect of the petitioner in Crl. O.P. No.2431 of 2025, it is seen that most of the offences are registered under IPC and one case is for the possession of commercial quantity of contraband and he is on bail in those cases. As far as the petitioner in Crl. O.P. No.2440 of 2025 is concerned, it is seen that most of the cases are IPC cases and one case is for possession of commercial quantity of contraband and he is on bail in that case. This Court, in the earlier order, directed the Court to complete the trial within a period of 3 months. But the trial has not yet been completed so far.

8. The Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha*** reported in **2023 SCC Online SC 1109**, has 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.”

9. 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



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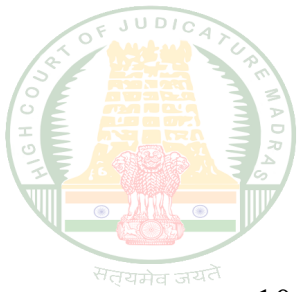
time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered”

10. Hence, considering the fact that the petitioners are in custody from 11.12.2021 and 23.12.2021 respectively, the fact that the trial could not be completed inspite of the earlier direction of this Court, taking note of the aforesaid observations of the Hon'ble Supreme Court, this Court is inclined to grant bail to the petitioners with certain conditions.

11. Accordingly, the petitioners are ordered to be released on bail on condition that the petitioners shall each 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 II Additional Judge for NDPS Act Cases, Chennai**, 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 trial Court daily at



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10.30 a.m. until further orders;

(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 269 B.N.S.

25.03.2025

mjs

To

1.The II Additional Judge for NDPS Act Cases, Chennai



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- 2.The Inspector of Police, H6 R.K. Nagar Police Station, Chennai
3.The Superintendent of Prison, Central Prison, Vellore.
4.The Public Prosecutor, High Court, Madras

SUNDER MOHAN., J.
mjs

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