



Crl. O.P. No.2450 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.2450 of 2025

Hathiram S/o. Gokul Ram

... Petitioner/Accused

Vs.

State represented by:

The Sub-Inspector of Police,
C3 Seven Wells Police Station,
Chennai.

... Respondent/Complainant

[Cr. No.127 of 2024]

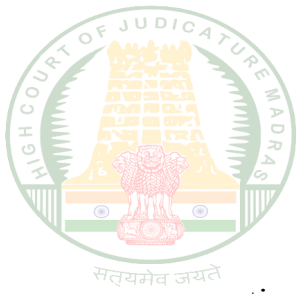
PRAYER: Criminal Original Petition filed under Section 483 of BNSS, pleaded to enlarge the petitioner on bail, in connection with the case in Cr. No.127 of 2024 pending investigation on the file of the respondent police.

For Petitioner : Mr. S. Kasirajan

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 08.05.2024 seeking bail in



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connection with the case in Cr. No.127 of 2024, registered for the offences under Sections 8(c) r/w18(C) and 29(1) of NDPS Act.

2. The case of the prosecution is that on secret information, the 1st accused was found in possession of 500 grams of Opium and Rs.80,000/- cash and subsequently, the respondent police seized 3 kgs of Opium with cash of Rs.1 lakh from A1 in the presence of A2 and A3. Hence this case.

3. This is the fourth bail application before this Court. The earlier bail application in Crl.OP.No.28578 of 2024 was dismissed on 28.11.2024 by Hon'ble Mrs.Justice 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.

“5. Considering the nature of offence and also considering the fact that the contraband seized from the petitioner/A2 and A3 is a commercial quantity, and the petitioner is hailing from Rajasthan, there is a possibility of absconding, therefore, this Court is not inclined to grant bail to the petitioner.

6. Accordingly, the Criminal Original Petition stands dismissed”



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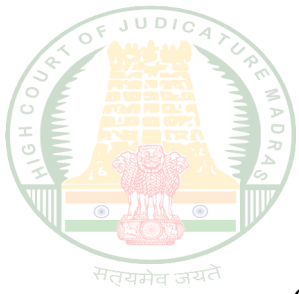
5. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A2; that A1 and A3 were granted vide orders dated 23.01.2025 and 26.09.2024; that the petitioner's fundamental right under Article 21 of the Constitution of India has been violated due to his continuous incarceration and therefore, considering the period of incarceration, he may be released on bail.

6. The learned Government Advocate (Crl.Side) appearing for the respondent police, while opposing the grant of bail to the petitioner, reiterated the prosecution case and on instructions submitted that, the petitioner has no bad antecedents and the co-accused were granted bail by this Court.

7. While granting bail to A3 vide order dated 23.01.2025 in Crl.O.P. No.31865 of 2024, this Court, in para nos.6 and 7, has held as follows:-

"6. Considering the facts of the case, it reveals that based on the confession of A1, the contraband was recovered from the house of A1 at that time A2 and A3 were present. Whether they were found in possession of contraband or it was belonged to the A1 is a subject matter for trial. Further, the learned counsel for the petitioner pointed out that as per chemical analysis report morphine level in the seized opium is very low, but it is also a matter for trial.

7. Heard the learned counsel for the petitioner and the learned



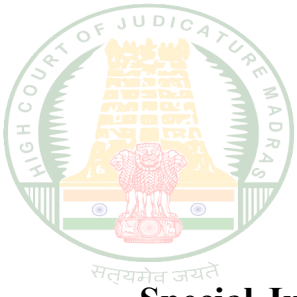
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Government Advocate (Criminal Side) for the respondent Police and perused the materials available on record, and taking note of the fact that the investigation is completed and the charge sheet has been filed and also taking into consideration the judgements of the Hon'ble Supreme Court in case of Ankur Chaudhary vs. State of Madhya Pradesh, wherein the Hon'ble Supreme Court held that “ 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' and the dictum laid down in the case in Rabi Prakash vs. State of Odisha reported in 2023 SCC Online SC1109 that “ The Prolonged incarceration, general 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. Considering the period of incarceration undergone by the petitioner and also there is no bad antecedents against the petitioner and co-accused also released on bail and also the ratio laid down by the Apex Court in the above cases, this Court is inclined to grant bail to the petitioner.....”

8. The petitioner/A2 and A3 are similarly placed accused. The above observations are squarely applicable to the petitioner as well. Considering the fact that the petitioner is in custody from 08.05.2024, he has no bad antecedents, the co-accused were granted bail by this Court and taking note of the aforesaid observations of the Hon'ble Supreme Court, this Court is inclined to grant bail to the petitioner with certain conditions.

9. 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**



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Special Judge for NDPS and EC 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;

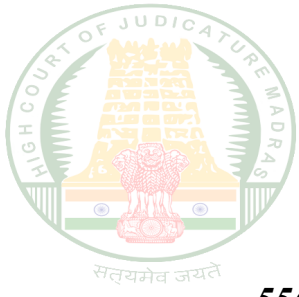
(b) the petitioner shall report before the trial Court daily at 10.30 a.m. until further orders;

(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***



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(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 Principal Special Judge for NDPS and EC Act Cases, Chennai.
- 2.The Sub-Inspector of Police, C3 Seven Wells Police Station, Chennai.
- 3.The Superintendent of Prison, Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court, Madras



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SUNDER MOHAN., J.
mjs

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