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Crl. O.P. No.3082 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl. O.P. No.3082 of 2025

Ajith Kumar Naik
S/o. Benarjinaik

... Petitioner/Accused

Vs.

State represented by:

The State Rep. by
Inspector of Police
NIB-CID Salem Police Station
Salem District
(Crime No. 39/2024)

... 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 Spl.CC.No. 67 of 2021 on the file of Additional District and Presiding Officer, Special Court under EC Act, Salem.

For Petitioner : Mr. C.Deepakkumar

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



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ORDER

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This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 02.10.2021 seeking bail in connection with the case in Crime No. 39/2024, registered for the offences under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act.

2. The case of the prosecution is that the petitioner was found in possession of 23 kg of Ganja when he was intercepted by the respondent police based on a secret information and he was remanded to judicial custody on 02.10.2021 and the trial is likely to be completed in the near future. The earlier bail application in Crl.OP.No. 32197 of 2022 was dismissed on 06.01.2023, directing the trial court to complete the trial within a period of four months.

3. The learned counsel appearing for the petitioner would submit that the petitioner is in judicial custody from 02.10.2021 and he is innocent and he did not commit any offence as alleged by the prosecution; that false case was foisted against the petitioner for the statistical purpose; that the respondent not followed the section 50 of NDPS Act while conducting search. The learned counsel for the



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petitioner has submitted that custody of the petitioner for a prolonged period would violate his right of the petitioner under Article 21 of the Constitution of India and therefore, considering the period of incarceration 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.

4. The learned Government Advocate (Crl.Side) reiterated the prosecution case and submitted that the trial could not be completed as directed by the learned Judge in the earlier bail application and that the petitioner is a resident of Orissa and if he is released on bail, he will abscond and hence opposed the grant of bail.

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



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6. 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”

7. Though the contraband said to have been possessed by the petitioner is a commercial quantity and the rigors of Section 37 of NDPS Act would be applicable, it is seen that the petitioner is in custody from 02.10.2021. Though there was an earlier direction by this Court to complete the trial within a period four months, the trial has not been completed so far. The prosecution has cited 8 witnesses on their side and examined only PW1 as of now, and according to the prosecution there was no Presiding Officer in the trial Court for a considerable time. Therefore, taking note of the above facts and the aforesaid observations of the Hon'ble Supreme Court, this Court is inclined to grant bail to the petitioner with certain conditions.



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(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;



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(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.

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To

- 1.The Judicial Magistrate Court No.II, Salem
- 2.The Inspector of Police, NIB-CID Salem Police Station, Salem District
- 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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