



Crl.O.P.No.3351 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2025

PRONOUNCED ON : 26.02.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.3351 of 2025

Precious Nkemakonamu

... Petitioner/A7

Vs.

Union of India,
Rep. by Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai – 77.

... Respondent/Complainant

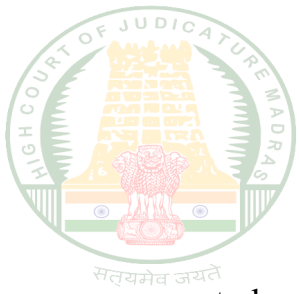
PRAYER: Criminal Original Petition filed under Section 483 of BNSS, pleaded to enlarge the petitioner on bail, in connection with the case in C.C.No.203 of 2024 on the file of II Additional Special Court for exclusive trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.M.Hussaini Basha

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner, who was



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arrested and remanded to judicial custody on 06.09.2023 seeking bail in connection with the case in Cr.No.24 of 2023, registered for the offence under Sections 8(c) r/w 21(c), 22(c), 28 and 29(1) of NDPS Act as amended and punishable under Section 8(c) r/w 22(c), 28 and 29(1) of NDPS Act.

2. The case of the prosecution is that on 01.09.2023, on secret information, the respondent seized 7.45 grams of white-coloured powder believed to be cocaine and 7.20 grams of different coloured tablets believed to be MDMA from A1 at Royapettah, Chennai; that on his confession it was revealed that his Associate/A8 had told him that on 03.09.2023, three of his Nigerian friends viz., A2, A3, and a lady by name Precious Kim might come to Chennai from Bangalore and likely to deliver contraband to another person; that on surveillance, the respondent apprehended three Nigerian nationals viz., A2-Chibuze Chinonso Emmanuel, A3-Okey Kingsley Bothlome and A4-Favouv Oke; that on their confession, it was revealed that the petitioner was staying with them in their rental house at Bangalore; that the respondent conducted a search in the house, which led to further seizure of 601 grams of Amphetamine and 172 grams of different coloured MDMA pills and Indian currency of Rs.1,70,000/-; and that thereafter, the petitioner was arrested on 05.09.2023 and the statement under



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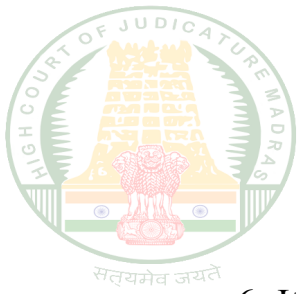
Section 67 of the NDPS Act was recorded.

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3. The learned counsel appearing for the petitioner would submit that the petitioner is in custody from 05.09.2023; that there are number of witnesses cited by the respondent and trial is not likely to be completed in the near future; that the co-accused/A1 was granted bail by this Court in Crl.O.P.No.28956 of 2024 dated 23.01.2025 and sought for bail.

4. The learned Special Public Prosecutor, appearing for the respondent vehemently opposed to the grant of bail; that the quantity seized from the petitioner and two others during the house search is of commercial quantity; that the petitioner has to overcome the rigours of Section 37 of the NDPS Act; and that if she is released on bail, she would tamper with the witness and hamper the investigation and opposed the grant of bail.

5. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.



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6. It is not in dispute that the respondent have conducted an investigation and filed the complaint before the Special Court. It is also not in dispute that the petitioner has no previous cases and is in custody from 05.09.2023. Though the complaint was filed in the year 2023, the trial has not concluded so far.

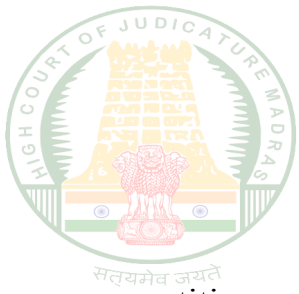
7. In *Ankur Chaudhary vs. State of Madhya Pradesh* in Special Leave to Appeal (Crl).No.4648 of 2024, the Hon'ble Supreme Court had held as follows;

“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”

8. In *Rabi Prakash vs. State of Odisha* reported in 2023 SCC Online SC 1109, the Hon'ble Supreme Court held as follows:

“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. Though in the order dated 23.01.2025 passed by this Court in Crl.OP.No.28956 of 2024 in respect of the co-accused and relied upon by the



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petitioner, there is a mention that the petitioner therein was in possession of intermediate quantity, the bail was granted taking into consideration the long period of incarceration and by referring to the above two judgments. The petitioner is a lady and is also in custody from 05.09.2023. Therefore, the observations of the Hon'ble Supreme Court in the above two decisions would be applicable to the petitioner's case also. Hence, considering all the aforesaid aspects, this Court is inclined to grant bail to the petitioner with certain conditions.

10. 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 II Addl. Special Judge, Special Court under EC & NDPS Act, 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 respondent police daily at 10.30 a.m. for the period of four months and apart from that, he shall appear for every hearing before the trial Court



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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;

(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 229A IPC.

[h] 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.**



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SUNDER MOHAN., J.

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To

- 1.The II Addl. Special Judge, Special Court under EC & NDPS Act, Chennai.
- 2.The Jr. Intelligence Officer, Narcotics Control Bureau, Chennai – 77.
- 3.The Superintendent of Prison, Central Prison, Puzhal.
- 4.The Public Prosecutor, High Court, Madras

Pre-delivery order
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