



Crl.O.P.No.3217 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.3217 of 2025

Selvam

...Petitioner/Accused

Vs.

State through
The Inspector of Police,
E-5, Pattinabakkam Police Station,
Chennai.

(Crime No.69 of 2023)

...

Respondent

PRAYER: This criminal original petition has been filed under Section 483 of BNSS to enlarge the petitioner on bail in Crime No.69 of 2023 pending investigation on the file of the respondent police.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 20.03.2023, seeking bail in Crime No.69 of 2023 registered for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.

2.It is the case of the prosecution that the petitioner was found in possession of 40 kgs of ganja and thus committed the aforesaid offences. Hence, the case.

3.The learned counsel for the petitioner would submit that the petitioner is in custody from 20.03.2023 and in view of the judgments of the Hon'ble Supreme Court in *Rabi Prakash Vs. The State of Odisha* reported in 2023 LiveLaw (SC) 533 and *Ankur Chaudhary Vs. The State of Madhya Pradesh* reported in 2024 SCC Online SC 2730 and submitted that the requirement of satisfying Section 37 of NDPS Act would not be applicable in view of the long incarceration and the delay in concluding the trial and sought for bail.



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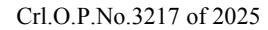
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4.Per contra, the learned Government Advocate submitted that the trial has commenced and two witnesses have already been examined and that more witnesses have to be examined. He further submitted that the petitioner is having one previous case under the NDPS Act for possession of intermediate quantity.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) for the respondent Police and perused the materials available on record.

7.Admittedly, the petitioner is in custody from 20.03.2023 and that in the pending previous case, the respondents are yet to file final report. The Hon'ble Supreme Court in *Rabi Prakash's case*, 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)(ii) of the NDPS Act.”



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, condition liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”

7. Considering the nature of allegations, period of incarceration and in view of the aforesaid observations of the Hon'ble Supreme Court and since further custody of the petitioner is not required, this Court this Court is inclined to grant bail to the petitioner with certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail on his executing 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 **I Additional Special Judge for NDPS Act, Chennai**, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb



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Impression in the surety bond and the 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, everyday at 10.30 a.m., until further orders;

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned 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]*;

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 B.N.S.

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SUNDER MOHAN, J.



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Copy to:

- 1.The Inspector of Police,
E-5, Pattinabakkam Police Station,
Chennai.
- 2.The I Additional Special Judge for NDPS Act, Chennai.
- 3.The Superintendent of Prison,
Central Prison I, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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