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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.3796 of 2025

Afzal Ahamed

...Petitioner/Accused 3

Vs.

State rep by
The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai – 600 001.
(Crime No.233 of 2024)

... Respondent

PRAYER: This criminal original petition has been filed under Section 483 of BNSS to enlarge the petitioner on bail in Crime No.233 of 2024 pending investigation on the file of the respondent police.

For Petitioner : Mr.P.Sundararajan

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



ORDER

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This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 30.12.2024, seeking bail in Crime No.233 of 2024 registered for the offence under 8(c) r/w 22(c), 25, 29(1) of NDPS Act.

2.It is the case of the prosecution that on a secret information, the respondent police intercepted a two-wheeler in which A1 and A2 were travelling and they were found in possession of 50 grams of Methamphetamine; that on the confession of A1 and A2, the petitioner is implicated and the allegation against the petitioner is that he obtained the contraband from A1 and A2 and made retail sale for his personal gain and that he was found in possession of 5 grams of Methamphetamine. Hence, the case.

3.The learned counsel for the petitioner would submit that the quantity of contraband seized from A1 and A2 is not commercial quantity; that he has nothing to do with the alleged offence committed by A1 and A2



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and that the quantity of contraband seized from the petitioner is 5 grams and it cannot be said to be joint possession with A1 and A2 and hence, the petitioner may not be required to satisfy the twin conditions under Section 37 of the NDPS Act and sought for bail.

4.Per contra, the learned Government Advocate (Crl. Side) reiterated the prosecution case and submitted that it is the case of joint possession between A1 to A5 of 59 grams of Methamphetamine and hence, it is commercial quantity; that rigors of Section 37 of NDPS Act would be applicable and further submitted that the petitioner has no previous case and opposed for the grant of bail.

5.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, including the counter affidavit.

6.Admittedly, A1 and A2 were found together in a two-wheeler and in possession of 50 grams of Methamphetamine. The petitioner is sought to



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be implicated only on the confession of A1 and A2. The petitioner was found in possession of 5 grams of Methamphetamine which is not commercial quantity. Apart from the confession statement, there is nothing on record to suggest that the petitioner had joint possession with A1 and A2.

7. Considering the nature of materials against the petitioner, this Court is of the view that the rigor of Section 37 of NDPS Act would not be applicable to the petitioner. Hence, considering the aforesaid facts, period of incarceration, the fact that no previous case is pending against the petitioner and the contraband has been seized and since further custody of the petitioner is not required for the purpose of investigation, 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 **Principal Sessions Judge, EC & NDPS Court, Chennai**, and on further conditions that:



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

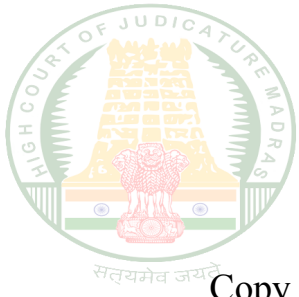
[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[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.

26.02.2025

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- 1.The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai – 600 001.
- 2.The Principal Sessions Judge, EC & NDPS Court,
Chennai.
- 3.Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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