



Crl.O.P.No.4987 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2025

PRONOUNCED ON : 20.03.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.4987 of 2025

Dube Favour @ Abera Ature Oga @
Aloba Anthony ... Petitioner/Accused

Vs.

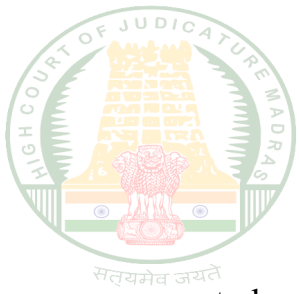
Union of India,
Rep. by its Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai. ... Respondent/Complainant

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.277 of 2024 on the file of II Additional Special Court for exclusive trial of cases under NDPS Act, Chennai.

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

ORDER

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



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arrested and remanded to judicial custody on 03.12.2022 seeking bail in connection with the case in NCB.F.No.48/1/15/2022-NCB/MDS, registered for the offence under Sections 8(c) r/w 21(c), 28 and 29 of NDPS Act.

2. (i) The case of the prosecution is that on a specific information, the officers of the respondent seized 2 Kgs of Cocaine from black-coloured trolley suitcase belonging to a South African national viz., Bruce Henri Van Laun on 29.11.2022 at the arrival hall of the Anna International Airport, Chennai; that a statement under Section 67 of the NDPS Act was recorded from him and on his confession it was revealed that the petitioner was also involved in the offence and the said Bruce Henri Van Laun [A1] had brought Cocaine into India for the petitioner, who in turn was to distribute it at various places in India.

(ii) It is the further case of the prosecution that the petitioner and his girl friend were arrested on the information of the first accused and that on the search conducted by the respondent at the rented house of the petitioner, 980 gms of Amphetamine in different colours and 40 grams of Cocaine from the car of the petitioner, were seized; that the main accused is one Nelson @ Abuchi, who had supplied the drugs from South Africa on many occasions earlier; and thus



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committed the aforesaid offences.

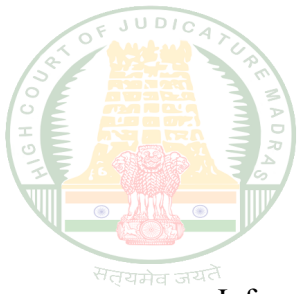
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3. This is the second bail application before this Court. The earlier bail application in Crl.OP.No.12592 of 2023 was dismissed on 03.07.2023 by Hon'ble Mr.Justice G.Chandrasekharan and this bail petition is listed before this Court pursuant to the 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.

“3. In response, learned Special Public Prosecutor strongly opposes the petition on the ground that, the allegations against the petitioner are that, petitioner collected the contraband namely 2kgs of cocaine from one Bruce Henry Van Launn, who was arrested at Arrival Hall, Anna International Airport, Chennai on 29.11.2022. Not only that, on search of the petitioner's house at Bombay, 980 grams of Amphetamine in different colours along with 40 grams of cocaine were recovered. During the course of the investigation, it came to light that, petitioner's passport is a fake passport. Investigation in this case is not completed.

4. Considered the rival submissions and perused the records. The allegations as against the petitioner is that, petitioner in connivance with co-accused had involved in illegal procurement, transportation and sale of commercial quantity of cocaine weighing 2 kg. Not only that, 980 grams of Amphetamine in different colours and 40 grams of cocaine were recovered from the petitioner's house.



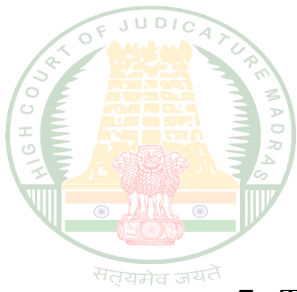
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Information obtained by the respondent shows that, petitioner's South African passport bearing No. 459236799 in the name of Dube Favour does not exist. Similarly, South African passport of the petitioner's wife by name Dube Stella bearing No.459236798 also does not exist.”

5. The learned counsel appearing for the petitioner would submit that the petitioner is in custody from 03.12.2022; that the trial is not likely to be completed in the near future; that therefore, considering the period of incarceration, the rigors of Section 37 of the NDPS Act would not be applicable 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.

6. The learned Government Advocate (Crl.Side) however, vehemently opposed the grant of bail stating that the petitioner is a foreign national and if he is released on bail, he would not be available for the trial and further submitted that there is no change in the circumstances after the dismissal of the earlier bail application and sought for dismissal of the bail petition.



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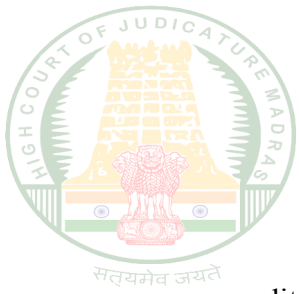
7. The petitioner is in custody from December, 2022 and the earlier bail application was dismissed by this Court on 03.07.2023 [in the counter, the respondent has wrongly mentioned the date of dismissal as 04.07.2024]. Though the rigors of Section 37 of the NDPS Act may be applicable, it is admitted in the counter affidavit filed by the respondent that a final report has been filed and number has been assigned as C.C.No.277 of 2024. The case is pending trial and is not likely to be completed in the near future.

8. In this regard, the Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha*** reported in **2023 SCC Online SC 1109**, 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) of the NDPS Act.”

9. 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,



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

10. Hence, considering the fact that the petitioner is in custody from December 2022, the fact that the trial is pending and charges are yet to be framed and taking note of the aforesaid observations of the Hon'ble Supreme Court, this Court is of the view that further custody of the petitioner is not required for the purpose of investigation and is inclined to grant bail to the petitioner with certain conditions, since the petitioner is a South African national.

11. 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 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 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 South African 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 Principal Special Judge for NDPS and EC Act Cases, Chennai.
- 2.The Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit, Chennai.
- 3.The Superintendent of Prison, Central Prison, Puzhal.
- 4.The Public Prosecutor, High Court, Madras

Pre-delivery order
Crl.O.P.No.4987 of 2025

20.03.2025