



Crl.OP.No.11126 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2025

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THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.11126 of 2025

A.Prabhu

.. Petitioner/Accused

Vs.

The State rep by
The Inspector of Police,
Gobinathampatti Police Station,
Dharmapuri District.
(Crime No.58 of 2023)

.. Respondent

PRAYER: This criminal original petition has been filed under Section 483 of BNSS to enlarge the petitioner on bail in Spl.C.C. No.56 of 2024 on the file of Special Judge for EC/NDPS Act Cases, Salem in Crime No.58 of 2023 on the file of the respondent police.

For Petitioner : Mr.A.Rajakumar

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



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Crl.OP.No.11126 of 2025

ORDER

This is the third bail application filed by the petitioner.

2. Though the earlier bail petitions of the petitioner was dismissed by my learned predecessor, Hon'ble Justice P.Dhanabal, this 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.

3. This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 12.12.2023, seeking bail in Crime No.58 of 2023 registered for the offence under Sections 8(c), 20(b)(ii)(c) of NDPS Act, 1985.

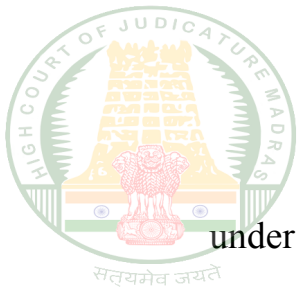
4. The case of the prosecution is that based on secret information, the petitioner was found in illegal possession of 21 kgs of ganja which is commercial quantity and thus committed the aforesaid offence.



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5. The learned counsel for the petitioner submitted that this is the third bail application; that the first bail application was dismissed on 25.09.2024 with a direction that the trial Court to dispose of the case within a period of four months and the second bail application was dismissed as withdrawn on 27.11.2024; that since the trial has not commenced and the petitioner is in custody from 12.12.2023, his continuous incarceration has violated his right under Article 21 of the Constitution of India and relied the judgments of the Hon'ble Supreme Court in the cases of *Rabi Prakash Vs. The State of Odisha* reported in 2023 LiveLaw (SC) 533 and *Ankur Chaudhary Vs. State of Madhya Pradesh* reported in 2024 SCC Online SC 2730 and sought for bail.

6. The learned Government Advocate appearing for the respondent police reiterated the prosecution case and submitted that though there was an earlier direction of this Court to dispose the trial, the trial could not be completed since there was no Presiding Officer in the Special Court and further submitted that now the summons were sent to the witnesses viz., L.W.1 to L.W.3 and the petitioner has not satisfied the twin conditions



under Section 37 of the NDPS Act and sought for dismissal.

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7. Admittedly, the petitioner is in custody from 12.12.2023. Even though there was a specific direction by this Court to complete the trial within four months, the trial could not be completed. The witnesses are yet to be examined. The Hon'ble Supreme Court in *Rabi Prakash Vs. The State of Odisha* reported in 2023 *LiveLaw* (SC) 533, 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.”

and in *Ankur Chaudhary's case*, the Hon'ble Supreme Court has 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, condition liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”



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8. Considering the aforesaid observations made by the Hon'ble Supreme Court, the fact that the earlier direction of this Court to complete the trial within a period of four months could not be complied with and since the trial is not likely to be completed in the near future, this Court is of the view that further incarceration would violate the petitioner's right under Article 21 of Constitution of India. Hence, this Court is inclined to grant bail to the petitioner with certain conditions.

9. 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 **Special Judge for EC & NDPS Act Cases, Salem** and on further conditions that:

[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 Special Judge for EC & NDPS Act Cases, Salem everyday at 10.30 a.m., until further orders;



Crl.OP.No.11126 of 2025

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

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[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.

29.04.2025

Index : Yes / No
Internet : Yes / No
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Crl.OP.No.11126 of 2025

To

1.The Inspector of Police,
Gobinathampatti Police Station,
Dharmapuri District.

2.The Special Court under EC & NDPS Act cases, Salem.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Public Prosecutor,
High Court, Madras.



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Crl.OP.No.11126 of 2025

SUNDER MOHAN , J.
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Crl.O.P.No.11126 of 2025

29.04.2025