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CrI.O.P.No.5798 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2025

PRONOUNCED ON : 24.03.2025

CORAM

**THE HON'BLE MR. JUSTICE SUNDER MOHAN**

CrI.O.P.No.5798 of 2025

Madiyazhagan ... Petitioner/A2

Vs.

Union of India,  
Rep. by its Intelligence Officer,  
Narcotics Control Bureau,  
Chennai Zonal Unit,  
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.524 of 2022 on the file of the Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.N.P.Kumar  
Special Government Pleader

### **ORDER**

This Criminal Original Petition has been filed by the petitioner,



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who was arrested and remanded to judicial custody on 09.01.2022 seeking bail in connection with the case in C.C.No.524 of 2022 registered for the offence under Sections 8(c) r/w 20(b)(ii)(C), 27A, 28 and 29 of NDPS Act.

2. The case of the prosecution is that on 08.01.2022, on a secret information, the respondent intercepted two vehicles viz., Mahindra Bolero bearing Regn.No.TN72-AV-4700 and one Maruthi Swift bearing Regn.No.TN10-AL-1816 at a toll plaza at Chennai and arrested the petitioner, who was travelling in the Maruthi Swift vehicle which was used for escorting the ganja loaded Mahindra Bolero vehicle in which 369 Kgs of Ganja was found; and thus committed the aforesaid offences.

3. The learned counsel for the petitioner submitted that the petitioner is suffering from cancer; that he is in custody from 09.01.2022; that against the order dismissing his bail application, he had filed SLP (Crl.) No.10496 of 2024 before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 04.10.2024 had directed the trial Court to conclude the trial within a period of three months and further



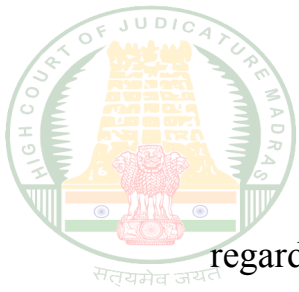
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observed that if the trial is not concluded within the said period, the petitioner is entitled to move for regular bail before the Special

Court; that the Special Court however had erroneously dismissed the bail application filed although, the trial was not completed within the time period stipulated by the Hon'ble Supreme Court; and that considering the period of incarceration, he sought for bail.

4. The learned Special Public Prosecutor *per contra* submitted that though the Hon'ble Supreme Court had directed the trial Court to complete the trial, the List Witness No.10 was not present for examination, since the Presiding Judge was absent; that the petitioner has also filed a petition for recall of a few witnesses and the same was allowed by the trial Court; and that the prosecution is not at fault for the delay in the trial and hence, opposed the grant of bail.

5. This Court in order to verify as to whether the petitioner is suffering from cancer, directed the Additional Public Prosecutor for the State to obtain a report from the Superintendent of Prisons, Chennai as



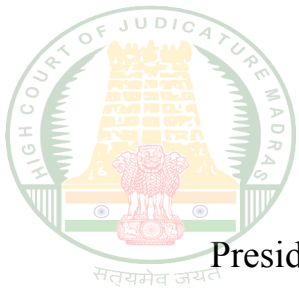
regards the medical condition of the petitioner. The communication sent by the Superintendent of Prisons, Central Prison-I, Chennai, to the Public Prosecutor, High Court, Madras, confirms that the prisoner was affected with oral mouth cancer and that he was sent to Government Stanley Hospital on 11.03.2025 and was admitted to the hospital for treatment and he is still undergoing treatment.

6. The petitioner is in custody from 09.01.2022. Against the dismissal of the earlier bail order, he filed SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court made the following observations.

“We have considered the arguments advanced at the bar and we find that having regard to the fact that the trial is at its fag end inasmuch as according to learned ASG only one more witness have to be examined, we direct the concerned Special Court to conclude the trial within a period of three months from today.

It is needless to observe that in the event, the trial does not conclude within the said period, the petitioner is entitled to move for regular bail before the concerned Special Court.”

7. The reason attributed to the delay, even according to the respondent is that LW10 could not be examined, because the learned



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Presiding Judge was absent and a petition was filed by the petitioner for recall of a few witnesses. Admittedly, the petitioner is suffering from serious ailment as stated above. From the submissions it is seen that it would take some more time to conclude the trial.

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



**WEB COPY** 10. Hence, considering the aforesaid facts, the period incarceration and the observations of the Hon'ble Supreme Court in the above referred judgments, 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. However, if the petitioner delays the process of trial, it is needless to say that the respondent can move a petition for cancellation of bail.

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, Principal 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 trial Court on all hearing dates, without fail;
- (c) the petitioner shall not commit any offences of



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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.

24.03.2025

*ars*



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**SUNDER MOHAN., J.**

*ars*

To

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

**Pre-delivery order**  
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**24.03.2025**