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Crl.OP.No.9312 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.OP.No.9312 of 2025

1. Nabeel
2. Jamsheed

... Petitioner(s) /Accused

Vs.

The State rep. by
The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.

... Respondent(s)/ Complainant

Prayer: Criminal Original Petition filed under Section 483 of BNSS 2023,
to enlarge the petitioner on bail in Spl.CC.No.168 of 2023 pending trial
before the learned Special Judge for EC/ NDPS Act cases, Salem.

For petitioner(s) : Mr.R.C.Paul Kanagaraj

For Respondent(s) : M/s.J.R.Archana
Government Advocate (Crl.Side)

ORDER

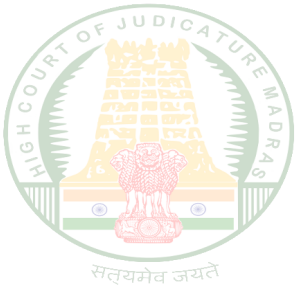
This is the seventh bail application filed by the petitioner before this
Court.



WEB COPY 2. This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 17.06.2023, seeking bail in Crime No.228 of 2023 registered for the offences under Sections 8(c) and 20(b)(ii)(c) of NDPS Act.

3. It is the case of the prosecution that, based on secret information, the petitioners car was intercepted, and they were found in illegal possession of 30 kgs of Ganja and thus, committed the aforesaid offences.

4. The learned counsel for the petitioner would submit that the petitioners have been in custody since 17.06.2023; that although the earlier bail application was dismissed on 17.12.2024 with a direction to complete the trial within a period of three months from the date of receipt of a copy of that order, only P.W-1 has been examined so far; that there are totally 9 witnesses in the case; that the trial is not likely to be completed in the near future; and that the seizure mahazar does not bear the signature of the witnesses, and hence, the seizure itself is doubtful.



WEB COPY 5. The learned Government Advocate (Crl. Side) appearing for the respondent, while opposing the grant of bail to the petitioners, confirmed the fact that P.W-1 has been examined and eight more witnesses are yet to be examined; that the petitioners are residents of Kerala; and that, if they are released on bail, they may not be available for the trial.

6. The previous bail application of the petitioners was dismissed on the following observations:

“6. Considering the rival submissions made on either side, considering the fact that quantity of contraband involved in this case is a commercial quantity and considering the gravity of offences, this Court is declined to grant bail to the petitioners at this stage.

7. Accordingly, the Criminal Original Petition is dismissed. The Special Court under EC & NDPS Act cases, Salem is directed to complete the trial within 3 months from the date of receipt of a copy of this order.”

7. However, the trial has not been completed as per the earlier



direction of this court by the order dated 17.12.2024. It is reported that only

P.W-1 has been examined so far. In such circumstances, trial is not likely to be concluded in the near future.

8. 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.”

9. 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



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

10. Considering the aforesaid facts, the fact that the petitioners have no bad antecedents and taking into consideration the aforesaid observations of the Hon'ble Supreme Court, this Court is of the view that the petitioners cannot be kept in continuous incarceration. However, their presence for the trial has to be ensured.

11. Accordingly, the petitioners are ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Fifteen Thousand only)** with **two sureties, one being a blood relative surety and the other a local surety**, each for a like sum to the satisfaction of the **learned 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 the trial



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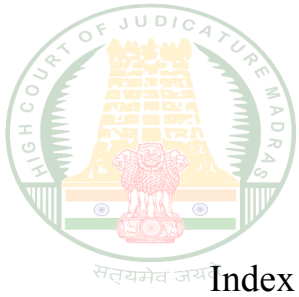
court on all hearing dates;

[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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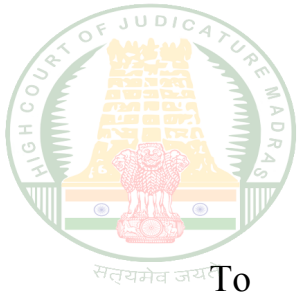
Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Internet: Yes/No

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To
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1. The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
2. The Public Prosecutor,
Madras High Court,
Chennai.
3. Special Judge for EC/ NDPS Act cases, Salem.
4. The Superintendent of Prison,
Central Prison, Salem



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SUNDER MOHAN, J.

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