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Cr1.O.P.No.8102 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2025

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THE HON'BLE MR. JUSTICE SUNDER MOHAN

Cr1.O.P.No.8102 of 2025

Ashura Mohammed Sabani

... Petitioner

Vs.

The Superintendent of Customs
Rummaging and Intelligence Unit (AIR)
New Custom House, Meenambakkam,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 483 of BNSS, to enlarge the petitioner on bail in C.C.No.448 of 2023, pending on the file of the learned II Additional Special Court for exclusive trial of Cases under NDPS Act, Chennai in R.R.No.37/2022 on the file of the respondent.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.Vishnu,
Special Public Prosecutor for Customs

ORDER

This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 14.08.2022, seeking bail in in C.C.No.448 of 2023, pending on the file of the learned II Additional Special Court for exclusive trial of Cases under NDPS Act, Chennai in R.R.No.37/2022 registered for the offence under Section 8(c) r/w. Sections 21(c), 23(c), 28 and 29



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of the NDPS Act 1985.

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2.The case of the prosecution is that the petitioner was found to be in possession of 600.05 grams of Cocaine.

3.Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He also submitted that the petitioner is in custody from 14.08.2022 and there is a delay in the progress of trial and referred the counter affidavit filed by the respondent and the judgment of the Hon'ble Supreme Court in *Rabi Praksh Vs. The State of Odisha* reported in 2023 LiveLaw (SC) 533 and *Ankur Chaudhary Vs. The State of Madhya Pradesh* reported in 2024 SCC Online SC 2730 and submitted that the requirement of satisfying Section 37 of NDPS Act would not be applicable in view of the long incarceration and the delay in including the trial and sought for bail.

4.Learned Special Public Prosecutor for Customs appearing for the respondent police, while opposing for grant of bail to the petitioner, reiterated the prosecution case. He also submitted that though the chief examination of PW1 commenced in the year 2023, it could not be concluded because of the absence of the witness and the trial would be concluded in the near future.

5.Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor for Customs for the respondent Police and perused the



materials available on record.

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6. Admittedly, the petitioner is in custody from 14.08.2022. Though examination of PW1 commenced in the year 2023, the examination of PW1 has not been completed so far. 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.”

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.”

7. Considering the nature of allegations, period of incarceration and in view of the aforesaid observations of the Hon'ble Supreme Court and since further custody of the petitioner is not required, this Court is inclined to grant bail to the petitioner with certain conditions. However, since the petitioner is a Tanzanian national, the respondent shall inform the Registration Officer under the



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Registration of Foreigners Rules, 1992 about this order.

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8. 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 II Additional Special Court for exclusive trial of Cases under 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 the trial Court on all working days at 10.30 am., If any deviation in complying the condition, 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



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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; and

(h) since the petitioner is a Tanzania 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 CrI. Appeal Nos.2814-2815 of 2024 dated 06.01.2025.**

24.03.2025

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SUNDER MOHAN, J.
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To

1.The II Additional Special Court for exclusive trial
of Cases under NDPS Act, Chennai,

2.The Superintendent of Customs
Rummaging and Intelligence Unit (AIR)
New Custom House, Meenambakkam, Chennai.

3.The Superintendent,
Central Prison,
Puzhal.

4.The Public Prosecutor,
High Court of Madras.

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