



Crl.O.P.Nos.8673 and 11519 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28-11-2025**

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NOS.8673 and 11519 of 2025

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|-------------------------|--|
| 1. Akkala Siva Kottaiah | ... Petitioner in Crl.O.P.No.8673 of 2025/ A2 |
| 2. B. Rukesh @ Suresh | ... Petitioner in Crl.O.P.No.11519 of 2025/ A3 |

Vs

Union of India, Rep. by,
The Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai - 600 077.
(F.No.48/1/06/2023-NCB/MDS)

... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in C.C.No.230 of 2024 on the file of the Hon'ble II Additional Special Judge, Special Court for EC & NDPS Act, Chennai.

For Petitioner in Crl.O.P.No.8673 of 2025 : Mr. S. Kasirajan

For Petitioner in Crl.O.P.No.11519 of 2025 : Mr. M.G. Martinmanivannan

For Respondent(s) : Mr. N.P. Kumar
Special Public Prosecutor



ORDER

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The petitioner/ Akkala Siva Kottaiah was arrested and remanded to judicial custody on 14.06.2023 and the petitioner/ B.Rukesh @ Suresh was arrested and remanded to judicial custody on 16.06.2023 in C.C.No.230 of 2023 on the file of the Hon'ble II Additional Special Judge, Special Court for EC & NDPS Act, for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of NDPS Act, 1985, seek bail.

2. The case of the prosecution is that on 13.06.2023, based on a secret information, the Narcotics Control Bureau, Chennai Zonal Unit went near the place of occurrence, intercepted a vehicle bearing Registration No.AP-35-G-4546 and seized 160 kilograms of dark green colour dry leaves along with flowering tops believed to be ganja from the accused/ A1; that upon his confession statement, the respondent apprehended the petitioner/ Akkala Sivakotayya/A2 on 14.06.2023, who alleged to have been involved in procurement, purchase, transportation and trafficking of the seized ganja; that on further investigation, A2 revealed that the petitioner/ B. Rukesh @ Suresh/ A3 is the main person, who supplied Ganja at Andhra Pradesh to him; that thereafter, the respondent apprehended A3 on 16.06.2023 and based on his



confession, 1760 kilograms of ganja was seized from the possession of one Sunder Rao/ A4, who is the main supplier of the seized 160 kilograms of ganja from A1. Hence, this case.

3. The learned counsels appearing for the petitioners submitted that the petitioners have been falsely implicated in this case and there is no seizure of contraband from the petitioners herein. He further submitted that the petitioners are in judicial custody since June 2023 and there are number of witnesses cited by the respondent and there is no progress in the trial. He also relied on the judgments of the Apex Court in *Naeem Ahmed Alias Naim Ahmad vs. Government of NCT of Delhi [2024 SCC Online SC 220]*, *Rabi Prakash vs. The State of Odisha [2023 LiveLaw (SC) 533]*, *Santhosh Sahoo @ Santhosh Saho vs. The Union of India / Special Leave to Appeal (Crl).No.1737 of 2025 dated 17.03.2025/* and *Ankur Chaudhary vs. State of Madhya Pradesh /Special Leave to Appeal (Crl).No.4648 of 2024 dated 28.05.2024/* in support of his contention; and that the petitioners are ready to abide by any conditions that may be imposed by this Court and sought for bail to the petitioners.



4. The learned Special Public Prosecutor appearing for the respondent while opposing the bail to the petitioners, reiterated the prosecution case and submitted that this case could not be equated with other cases involved in commercial quantity, since huge quantity of contraband has been seized in this case; that the petitioners are big kingpin operating in South India, who are involved in illegal trafficking of huge quantity of Ganja for several years by adopting various modes; that these petitioners were arrested after a long surveillance with huge quantity of contraband; that initially 243 kilograms of ganja was seized in NCB Case No.48/1/14/2022-NCB/MDS, in which the petitioner/ B. Rukesh @ Suresh was arrayed as A8; that another 160 kilograms of ganja was seized in this case and based on the statement recorded from the arrested accused, another 1760 kilograms of ganja were separately seized. He further submitted that the petitioner/ B. Rukesh @ Suresh, who arrayed as A3 in this case was formally arrested while he was in prison and the petitioner/ Akkala Siva Kottaiah, who arrayed as A2 in this case was arrested, while he was involved in illegal trafficking of contraband; that the NCB had followed all the mandatory provisions and complied within the prescribed time, however due to vacancy of the Presiding Officer, the trial process has been stalled and now effective steps were taken to proceed and conclude the trial as early as



possible; and that if the petitioners are released on bail, they would tamper with the witness and hamper the trial process.

5. Heard the learned counsel appearing for the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

6. The Apex Court in *Naeem Ahmed's case* cited supra has held in paragraph Nos.8 to 10 as follows:

“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.”



7. The Apex Court in **Ankur Chaudhary's case** cited supra has held as follows:

“Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. 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.”

8. The Apex Court in **Rabi Prakash's case** cited supra, 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. The Apex Court in the above judgments has held that the continuous incarceration of the accused without any progress in the trial, militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, overriding the statutory embargo under Section 37(1)(b) of the NDPS Act, may in such circumstances to be considered, however apart from that, the Apex Court has also considered the stage of each cases and granted bail.



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10. Though in this case, it is stated that there is no progress in the trial, admittedly the petitioners herein are gang members, who had continuously involved in trafficking of huge quantity of ganja across South India. Further, they have several cases, since they also been properly produced before the Court for the purpose of concluding the trial, the petitioners are having bad antecedents and if they are granted bail, there is likelihood of absconding, stall the trial proceedings and also they will indulge in similar offence.

11. A three-Judge Bench in ***Narcotics Control Bureau vs. Mohit Aggarwal [(2022) 0 Supreme (SC) 619]***, considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held that:

“In our opinion the narrow parameters of bail under section 37 of the Act ,have not been satisfied in the facts of the instant case .At this stage,it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him,for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”



12. The Apex Court in *Union of India vs. Vigin K. Varghese [2025*

INSC 1316] has considered the scope of Section 37 of the NDPS Act and also the continuous incarceration of the petitioners and the relevant paragraphs are extracted hereunder:

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

.....

20. We are of the view that, in the facts of this case, it would not be appropriate for this Court at the threshold stage itself to render findings on whether there are or not reasonable grounds, for believing that the respondent is not guilty, or on whether he is



likely to commit any offence while on bail. That factual assessment, which the statute requires to be made and recorded with reasons, is one that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.”

13. Considering the fact that the accused involved in this case are kingpins, who are handling big network for illegal trafficking of huge quantity of ganja across South India, their case could not be equated with other cases and the contraband involved in this case is also commercial quantity, these kind of exceptional cases could to be dealt with the ratio laid down in regular cases. This case shall be decided on the basis of the exceptional facts narrated in this case. I am of the view that, since recoveries effected and it is alleged that there are materials available to connect the accused with the seized contraband and these materials have to be considered only during trial and mere raising suspicion over the certain facts and non-compliance of certain provisions could not be considered at the time of hearing the bail. For the purpose of protecting the right of speedy trial of the petitioners herein, it would be appropriate to direct the Trial Court to complete the trial of this case on priority basis and conclude the trial within a period of six months.



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K. RAJASEKAR, J.

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14. Accordingly, this criminal original petition stands dismissed with a direction to the Trial Court concerned to conclude the trial within a period of six months from the date of receipt of copy of this order.

28.11.2025

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To

1. The II Additional Special Judge,
Special Court for EC & NDPS Act, Chennai.
2. The Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai - 600 077.
(F.No.48/1/06/2023-NCB/MDS)
3. The Public Prosecutor,
High Court of Madras.

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