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Crl.OP.No.12632 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.OP.No.12632 of 2025

DineshKumar

... Petitioner(s) /Accused No.3

Vs.

The State rep. by
Inspector of Police,
PEW-Steel Plaint Ps
Salem District
Crime No.376 of 2023

... Respondent(s)/ Complainant

Prayer: Criminal Original Petition filed under Section 483 of BNSS 2023,
to enlarge the petitioner on bail in Spl.C.C.No.32 of 2024, on the file of the
Special Court for EC/ NDPS Act Cases, Salem.

For petitioner(s) : Mr.C.Deepakkumar

For Respondent(s) : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed by the petitioner, who



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was arrested on 21.04.2023, seeking bail in Crime No.376 of 2023, registered for the offences under Sections 8(c) r/w Sections 20(b)(ii)(C) and 25 of the NDPS Act.

2.It is the case of the prosecution that 12.04.2023 at about 08.00 p.m. the respondent received a secret information and when they intercepted a vehicle, they found the petitioner along with A2, A5 and A6 in possession of 200kgs of Ganja and on seeing the police, the accused persons tried to escape from the place of occurrence; On their confession other accused were implicated. Later on 21.04.2023, petitioner was arrested and on the confession the other accused were implicated.

3.The petitioner would submit that the co-accused were arrested on 18.04.2023 were released on bail by this Court; that considering the law laid by the Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha*** reported in **2023 SCC Online SC 1109**, and the period of incarceration he may be released on bail as the trial is not likely to be completed in the near future.



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4.The learned Government Advocate reiterated the prosecution case and submitted that petitioner is the main accused and that petitioner has to satisfy the twin conditions under Section 37 of NDPS Act which has not been done and hence opposed the grant of bail.

5.It is seen that the co-accused was granted bail by this Court in Crl.O.P.No.9332 of 2025 dated 07.04.2025 and Crl.O.P.No.4979 of 2025 dated 17.03.2025 considering the prolonged incarceration.

6.The Hon'ble Supreme Court in *Rabi Prakash vs. State of Odisha* reported in **2023 SCC Online SC 1109**, 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.”

7. Further, in *Ankur Chaudhary vs. State of Madhya Pradesh* in



Special Leave to Appeal (Crl).No.4648 of 2024, the Hon'ble Supreme

WEB COPY 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”

8.Hence, considering the fact that the petitioner is in custody from 21.04.2023, the trial is not likely to be concluded in the near future, taking note of the aforesaid observations of the Hon'ble Supreme Court, and since the co-accused were granted bail by this Court, 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 condition to execute a bond for a sum of **Rs.25,000/- (*Rupees Twenty-five Thousand only*)** with two sureties, **one surety should be a blood surety and another surety should be a local surety**, each for a like sum to the satisfaction of the **learned Judicial Magistrate No.2, Salem District**, and



on further conditions that:-

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(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 respondent police once a week at 10.30 a.m. until further orders and apart from that, he shall appear for every hearing before the trial Court regularly without fail. If any deviation in complying any of the conditions, 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



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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 269 B.N.S.

24.04.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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To

- 1.The Deputy Superintendent of Police,
PEW - STEEL PLAINT,
Salem.
2. The Public Prosecutor,
Madras High Court,
Chennai.
3. The Superintendent of Prison,



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Central Prison, Salem.

4.The Judicial Magistrate, Salem.

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SUNDER MOHAN, J.

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