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Crl.O.P.No.28644 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.28644 of 2024

Destiny C Samuel,
S/o. Samuel E.N

... Petitioner

Versus

State Rep. by,
The Inspector of Police,
N3, Muthiyalpet Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023, pleaded to enlarge the petitioner on bail in C.C.No.1025 of 2023 on the file of the learned Special Judge Principal Court of Cases under NDPS Act, Chennai.

For Petitioner : Mr. K.A.M. Jagadish Kumar

For Respondent: Mr. J. R. Archana,
Government Advocate (Crl.side)



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ORDER

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This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody under PT (Prisoner Transit) warrant on 24.07.2023, seeking bail in Crime No.94 of 2023 registered for the offence under Sections 8(c), 22(b), 25 of the Narcotic Drugs and Phsycotropic Substances Act, (NDPS), 1985.

2. The case of the prosecution is that based on the secret information received on 10.06.2023 at about 21:30 hours, the respondent Police went to the spot, where they found the accused-A1 was in possession of 20 grams of Cocaine. Additionally, a car “Maruthi Suzuki Wagnor” bearing Registration No.TN-01-BB-2440 was also seized. Subsequently, based on the confession statement of the accused/A1, the respondent Police went to the house of the accused /A2 on 11.07.2023 and seized 5 grams of Cocaine. Thereafter, based on the confession statement given by the accused/A2, the present petitioner was arrayed as the accused/A3. Consequently, the respondent police filed a Police Custody Petition for further investigation in Crl.M.P.No. 5230 of 2024, which was allowed. The accused/A2 was taken into custody and confessed. Based on the confession statement of the accused/A2, dated 24.07.2023, once again the



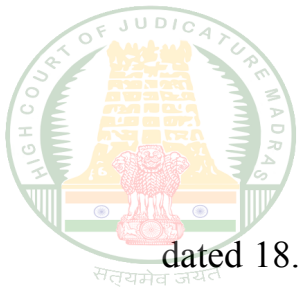
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respondent police went to the house of the accused/A2, recovered 41 Ecstasy Tablets weighing 20 grams. Hence, the case.

3. This is the 6th bail application before this Court. The earlier bail application in Crl.O.P.No.23112 of 2024 was dismissed by this Court on 18.10.2024, considering the gravity of the offence and the fact that there was no change in circumstances after the dismissal of the earlier bail application.

4. Though the earlier bail application was dismissed on 18.10.2024 in Crl.O.P.No.23112 of 2024 by the Hon'ble Mrs.Justice T.V.Thamilselvi and this bail petition is listed before this Court pursuant to the orders passed by the ***Hon'ble Division Bench of this Court in Crl.O.P.No.31787 of 2024 on 04.03.2025.***

5. Learned counsel for the petitioner submits that there was no recovery from the petitioner, and he is implicated in this case solely based on the confession statement of the accused/A2. The petitioner has one one previous case under NDPS Act, pending against him, which involves an intermediate quantity. The trial has not yet commenced and is pending for framing of charges. After the dismissal of the bail application in Crl.O.P.No.23112 of 2024



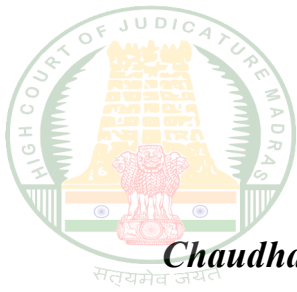
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dated 18.10.2024, the co-accused was granted bail by this Court, by order dated 06.02.2025, in Crl.OP.No.22153 of 2024. Therefore, he prays that the petitioner may be released on bail.

6. Learned Government Advocate (Crl.Side) appearing for the respondent police reiterated the prosecution case and submitted that the petitioner was implicated based on the confession of A2, with no seizure made from the petitioner. The petitioner has one previous cases and is on bail in that case. Further, she submitted that the Trial Court now posted the case on 04.04.2025 for serving copies and for framing of charges.

7. It is observed that after the dismissal of the earlier bail application, the co-accused was granted bail in Crl.O.P.No.22153 of 2024 by this Court, by order dated 06.02.2025. In that case, a commercial quantity of contraband was seized from the co-accused, whereas, no contraband was seized from this petitioner. The petitioner was arrayed as an accused based on the confession statement of A2.

8. In the light of the judgment of the Hon'ble Suprme Court in ***Rabi Praksh Vs. The State of Odisha*** reported in ***2023 LiveLaw (SC) 533*** and ***Ankur***



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Chaudhary Vs. The State of Madhya Pradesh reported in ***2024 SCC Online***

SC 2730, the requirement of satisfying Section 37 of NDPS Act would not be applicable, in view of the long incarceration and the delay in concluding the trial.

9. Considering the aforesaid facts, the fact that the co-accused was granted bail in Crl.O.P.No.22153 of 2024 by an order dated 06.02.2025, the fact that the trial has not commenced so far and in view of the observations made by the Hon'ble Supreme Court in the aforesaid decisions, this Court is inclined to grant bail to the petitioner with certain conditions.

10. Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with two sureties each for a like sum to the satisfaction of the **learned Special Judge Principal Court 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;



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(b) the petitioner shall report the Trial Court on all
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(c) the petitioner shall not commit any offences of similar nature;

(d) the petitioner shall not abscond either during the investigation or during the trial;

(e) the petitioner shall not tamper with evidence or witness either during the investigation or during the 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 was 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 petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC;

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1. The Special Judge Principal Court of Cases under NDPS Act, Chennai.
2. The Inspector of Police, N3, Muthiyalpet Police Station, Chennai.
3. The Superintendent, Central Prison, Puzhal.
4. The Public Prosecutor, High Court of Madras.



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SUNDER MOHAN, J.

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