



Crl.O.P.No.25196 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 NO.25196 of 2025

1. M. Murugan
2. M. Rajavel
3. R. Jothi
4. M. Manjulam
5. Venkatesan

... Petitioner/ Accused

Vs

State Rep. by,
The Inspector of Police,
Thirupatur Taluk Police Station,
Thirupattur District.
(Crime No.30 of 2025)

... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in Spl.C.C.No.146 of 2025 pending trial on the file of the learned Additional District & Sessions Special Judge for EC & NDPS Cases, Salem in connection with Crime No.30 of 2025 on the file of the respondent police.

For Petitioner(s) : M/s. Jermiah
For Mr. M.R. Elavarasan

For Respondent(s) : Mr. A. Gopinath
Government Advocate (Crl. Side)



ORDER

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The petitioners 1 to 4 were arrested and remanded to judicial custody on 21.01.2025 and the 5th petitioner was arrested and remanded to judicial custody on 18.02.2025 in Spl.C.C.No.146 of 2025 pending trial on the file of the learned Additional District & Sessions Special Judge for EC & NDPS Cases, Salem, for the offences punishable under Section 8(c) , 20(b)(ii)(C), 25 & 29(1) of NDPS Act, 1985 in Crime No.30 of 2025, registered on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 20.01.2025, based on a secret information, the police party went near Thoranampatty Check Post, Salem to Thirupattur Highway, intercepted the petitioners and found that they were involved in illegally transportation of 20.600 kilograms of ganja in a car bearing Registration No.TN-11-Y-1163; that the petitioners 1 to 4 were detained and the 5th petitioner herein/ A5 had escaped from the place of occurrence; that upon investigation, it is revealed that the petitioners have jointly purchased the aforesaid contraband from Andhra Pradesh and involved in trafficking of the same for their personal gain. Hence, this case.



3. The learned counsel appearing for the petitioners submitted that the petitioners have been falsely implicated in this case; that the investigation of the case has been completed and final report filed in Spl.C.C.No.146 of 2025 and the trial is not yet commenced. He further submitted that A5 in this case was arrested only based on the confession statement recorded from the arrested accused and there is no recovery effected from A5; that the contraband seized herein could not be considered as a commercial quantity, since it is categorically stated that it contains seeds and leaves, hence if the seeds and leaves were removed, the same could not fall within the category of commercial quantity. He also relied on the definition of the Ganja interpreted in the judgment of the Andhra Pradesh High Court in ***Killo Subbarao and others vs. State of Andhra Pradesh [2025 SCC AP 2280]***; 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 Government Advocate (Criminal Side) appearing for the respondent while opposing the bail to the petitioners, reiterated the prosecution case; that there are totally five accused involved in this case and the petitioners are arrayed as A1 to A5. He further submitted that the



contraband seized is of commercial quantity, hence rigours of Section 37 of the NDPS Act is applicable to the present case; that the petitioners have previous cases under NDPS Act; and that the investigation of this case has been completed and final report filed in Spl.C.C.No.146 of 2025 pending trial on the file of the learned Additional District & Sessions Special Judge for EC & NDPS Cases, Salem.

5. I have considered the submissions made on either sides and perused the materials available on record. The High Court of Andhra Pradesh in ***Killo Subbarao's case*** cited supra has considered the point whether the contraband seized in the case therein falls within the definition of Ganja or not, it has observed in paragraph Nos.6, 7 and 8 as follows:

“6. Learned Counsel for the Petitioners would submit that the contraband articles which are seized from the possession of petitioners is not a Ganja within the definition under Section 2(iii)(b) and (c) as the leaves, flowers, nuts and stems are excluded from the definition of Ganja and the mandatory provisions are also not followed. The police while weighing the contraband shall separate the leaves, flowers, nuts and stems from flowering tops. Learned counsel would further submit that no adverse presumption under Section 37 of NDPS Act can be justifiably drawn against the petitioners.

7. Learned Assistant Public Prosecutor vehemently opposed for allowing the application since it involves commercial quantity. Hence, prays for dismissal of the present application.



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8. *As rightly put by the learned counsel for the petitioner, the definition of Ganja under NDPS Act takes in its ambit only the flowering or fruiting tops of cannabis plant and excludes the seeds and leaves when not accompanied by the tops. Thus, the definition of 'Ganja' is restricted and it does not include the seeds and leaves of Ganja plant. As can be seen from the record the police while weighing the contraband did not segregate flowering tops from other material."*

6. Section 2(iii)(b) of the NDPS Act, 1985 defines "ganja" (a form of cannabis) as "the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops)".

7. The above definition shows that if the seeds and leaves were not accompanied by the Tops of the cannabis plant, it could not be termed as ganja, however, if the same contains seeds and leaves combined by the tops and stems, it falls within the definition of ganja. Whereas in this case, the seizure memo, FIR and connected documents reveal that, the contraband seized herein is greenish colour leaves, seeds, flowers and also the entire part of the cannabis plant. Since the seeds and leaves have not been seized separately and the same were formed part of the flowers and entire plant, the seized contraband herein falls within the definition of ganja, hence the contention of the petitioners that the seized contraband not falls within Ganja



is liable to be rejected.

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8. It is also stated that A5 has been implicated only based on the statement recorded from the seized accused, however there is a categorical statement recorded from the officers, who have intercepted the vehicle and while seizing the contraband, A5 was also seen travelled in the vehicle along with other accused by the other witnesses including the officer, who seized the contraband.

9. In ***Union of India through NCB vs. Md. Nawaz Khan [2021 (10) SCC 100]***, the Apex Court while deciding the concept of possession has held in paragraph Nos.25 and 26 as follows:

“25. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

26. What amounts to “conscious possession” was also considered in Dharampal Singh vs. State of Punjab, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of



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conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal vs. State of Rajasthan, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

10. In this case, as discussed in the earlier paragraph, all the persons have travelled in the case and they have carried 20.600 kilograms of ganja, which is a commercial quantity and they were known to each other, hence I am of the view that the ratio made by the above judgment, the petitioners have to establish that they were not in conscious possession through trial and same could not be decided during bail hearing.

11. Considering all the above facts, the petitioners have also alleged to have previous cases under NDPS Act, the quantity of contraband seized is of commercial quantity and the petitioners have not satisfied the twin conditions of Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioners.



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K. RAJASEKAR, J.

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12. Accordingly, this criminal original petition stands dismissed.

28.11.2025

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To

1. The Inspector of Police,
Thirupatur Taluk Police Station,
Thirupattur District.
(Crime No.30 of 2025)
2. The Public Prosecutor,
High Court of Madras.

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