



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 31865 of 2024

Har Dev Ram

...Petitioner

Vs.

The State Rep. by
The Inspector of Police
C-3 Seven Wells Police Station,
Chennai.Crime No. 127 of 2024

...Respondent

PRAYER : This petition has been filed under Section 483 of BNSS, 2023, pleaded to enlarge the petitioner on bail pending trial in C.C No. 718 of 2024, on the file of the Principal Special Judge for NDPS Act Cases, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondent : Mr. V. Meganathan,
Government Advocate (Crl. side)

**ORDER**

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The petitioner, who was arrested and remanded to judicial custody on **08.05.2024** for the alleged offences punishable under Sections **8 (c) , 18(c) , 29(1) of NDPS Act 1985 in crime No. 127 of 2024** on the file of the respondent, seeks bail.

2. The case of the prosecution is that the respondent police found the accused persons with possession of 3 kgs of opium and cash of Rs.1,00,000/-. Hence, the case.

3. Heard both sides.

4. The submission of the learned counsel for the petitioner that the petitioner is ranked as A3 among the other accused persons, who has been falsely implicated in this case as if he was found in possession of 3 kgs of opium. In fact, as per the confession statement of the first accused, the investigating agency went to the house of A1 and recovered 3 kgs of opium in the presence of A2 and A3, but there is no recovery from this petitioner. Hence, the petitioner is no way connected with this case, he prays to allow this petition.

5. The submission of the learned Government Advocate (Crl.side) is that based on the confession of A1, the respondent police went to the A1's



house found A2 and A3 with the possession of 3kgs of opium.

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6. Considering the facts of the case, it reveals that based on the confession of A1, the contraband was recovered from the house of A1 at that time A2 and A3 were present. Whether they were found in possession of contraband or it was belonged to the A1 is a subject matter for trial. Further, the learned counsel for the petitioner pointed out that as per chemical analysis report morphine level in the seized opium is very low, but it is also a matter for trial.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent Police and perused the materials available on record, and taking note of the fact that the investigation is completed and the charge sheet has been filed and also taking into consideration the judgements of the Hon'ble Supreme Court in case of **Ankur Chaudhary vs. State of Madhya Pradesh**, wherein the **Hon'ble Supreme Court** held that “ 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' and the dictum laid down in the case in

Rabi Prakash vs. State of Odisha reported in 2023 SCC Online SC1109

that “ The Prolonged incarceration, general 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. Considering the period of incarceration undergone by the petitioner and also there is no bad antecedents against the petitioner and co-accused also released on bail and also the ratio laid down by the Apex Court in the above cases, this Court is inclined to grant bail to the petitioner with the the following conditions.

8. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with **two sureties (one blood surety and one local surety)**, each for a like sum to the satisfaction of the **learned Principal Special Judge, for NDPS Act Cases, Chennai**, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;



[b] the petitioner shall report before the Trial Court daily at 10.30 a.m, for a period of four months and shall stay at Chennai, and shall cooperate for Trial.

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned 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 the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**;

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 269 of BNS.

23.01.2025

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To



1. The **Principal Special Judge, for NDPS Act Cases, Chennai.**
2. The Inspector of Police
C-3 Seven Wells Police Station,
Chennai.
3. The Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.

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