



Crl. O.P. No.2298 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2025

CORAM

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl. O.P. No.2298 of 2025

Akash S/o. Venkatesan

... Petitioner/Accused No.2

Vs.

State represented by:

The Intelligence Officer,
Narcotics Control Bureau,
Chennai.

... Respondent/Complainant

[NCB F. No.48/1/7/ 2023-NCB/MDS]

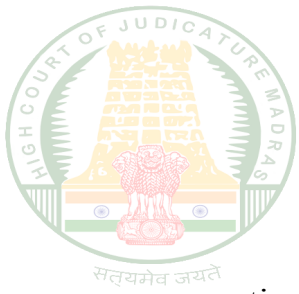
PRAYER: Criminal Original Petition filed under Section 483 of BNSS, pleaded to enlarge the petitioner on bail, in connection with the case in C.C. No.470 of 2024 on the file of the II Additional Special Judge for NDPS Act cases at Chennai.

For Petitioner : Mr. R.C. Paul Kanagaraj

For Respondent : Ms. J.R. Archana,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner, who was arrested and remanded to judicial custody on 27.09.2023 seeking bail in



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connection with the case in NCB F. No.48/1/7/ 2023-NCB/MDS, registered for the offences under Sections 8(c) r/w 22(c) of NDPS Act.

2. The case of the prosecution is that the petitioner had received a parcel in his name despatched from Coimbatore, in which, 100 blots of thick multi colored square shaped designed paper believed to be LSD weighing 1.110 gms, which is a commercial quantity.

3. The learned counsel appearing for the petitioner would submit that the petitioner had denied the fact that the parcel was meant for him; that he had not approached the post office for collecting the parcel; that an unknown person namely one Parthasarathy had enquired about the parcel; that in any case, further custody of the petitioner for a prolonged period would violate his right of the petitioner under Article 21 of the Constitution of India and therefore, considering the period of incarceration and relying upon the judgment of the Hon'ble Supreme Court in *Rabi Prakash vs. State of Odisha* reported in **2023 SCC Online SC 1109** and *Ankur Chaudhary vs. State of Madhya Pradesh in Special Leave to Appeal (Crl).No.4648 of 2024*, sought for bail.



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4. The learned Government Advocate (Crl.Side) however, vehemently opposed the grant of bail stating that there is evidence to show that the contraband was meant for the petitioner; that on the confession of the co-accused Mohammed Fawaz, it was revealed that the contraband was despatched from Coimbatore to the petitioner, who contacted him through Darknet and revealed his mobile number, which matched with that of the petitioner; that final report has been filed and the copies are yet to be served to the petitioner, since, one of the accused appeared through Video Conference.

5. 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.”

6. Further, in *Ankur Chaudhary vs. State of Madhya Pradesh* in **Special Leave to Appeal (Crl).No.4648 of 2024**, the Hon'ble Supreme Court had held as follows;



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“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”

7. Though the contraband said to have been consigned to the petitioner is a commercial quantity and the rigors of Section 37 of NDPS Act would be applicable, considering the fact that the petitioner is in custody from 27.09.2023, the fact that the trial is yet to commence, the petitioner is on bail in the previous case against him, the fact that the trial is not likely to be completed in the near future and taking note of the aforesaid observations of the Hon'ble Supreme Court, this Court is inclined to grant bail to the petitioner with certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of **Rs.15,000/-** (***Rupees Fifteen Thousand only***) with two sureties, each for a like sum to the satisfaction of the **learned II Additional Special Judge for NDPS Act cases at 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



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their identity;

(b) the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders except on the hearing dates before the trial Court 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 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.

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SUNDER MOHAN., J.

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To

- 1.The II Additional Special Judge for NDPS Act cases at Chennai.
- 2.The Intelligence Officer, Narcotics Control Bureau, Chennai.
- 3.The Superintendent of Prison, Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court, Madras.

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