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CrI.O.P.(MD) No.230 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	20.01.2025
Delivered on	22.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD) No.230 of 2025

M.Sathesh Kumar

... Petitioner/ Accused No.3

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
NIB CID Police Station,
Dindigul District.
Crime No.15 of 2023

... Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to enlarge the petitioner/ Accused No.3 on bail in C.C.No.161 of 2024 in Crime No.15 of 2023 pending on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, on the file of the respondent police.

For Petitioner : Mr.M.Jegadessh Pandian, Advocate
for Mr.K.Sakthivel

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

ORDER

The petitioner/accused No.3, who was arrested and remanded to judicial



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custody for the offences under Sections 8(C) r/w 20(b)(ii)(C), 25 and 29(1) of the 'Narcotic Drugs and Psychotropic Substances Act, 1985' (hereinafter referred to as 'NDPS Act' for brevity), on the file of the respondent, seeks bail.

2. The case of the prosecution is that on 24.11.2023 at about 6.00 hours, a secret information was received by the Inspector of Police and the same was informed to the Deputy Superintendent of Police and it was also recorded in the general diary. After obtaining prior permission, a team of police went to Dindigul-Batlagundu Road. A white car bearing Registration No.TN07BX745 was intercepted and 3 persons were occupying the car. After ascertaining their names, they were informed about their rights under Section 50 of the NDPS Act to be checked in the presence of the Gazetted Officer or Judicial Magistrate but they waived their rights and permitted the police to search them. Upon search, 2 kilograms of ganja was seized. A1 upon enquiry confessed that he went to Andhra Pradesh and purchased 100 kilograms of ganja from A10 and it was transported through train and 98 kilograms were handed over to A6, for which, he received a sum of Rs.5,48,500/-. A1 to A3 were arrested on the spot. Based on the confession of A1, A6 was nabbed around 13.30 hours and 21.600 kilograms of ganja was seized. It is alleged that the remaining contraband was smuggled to Sri Lanka with the help of A7 to A10. There are totally



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13 accused persons in this case and the petitioner has been arrayed as A3.

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3.The learned counsel for the petitioner submitted that no contraband was recovered from the petitioner and the only allegation against the petitioner is that he was also travelling in the same car. The learned counsel further submitted that even insofar as the recovery made from A6, it was only based on the confession of A1 and the petitioner has no role to play insofar as the dealing between A1 and A6. The learned counsel further submitted that the investigation has been completed and police report has been filed and the case is now pending in C.C.No.161 of 2024. The learned counsel also brought to the notice of this Court that the petitioner is suffering incarceration from 24.11.2023 onwards. The learned counsel also brought to the notice of this Court the order passed by this Court in Crl.O.P.(MD) No.21253 of 2024 dated 06.01.2025 wherein, A2 was enlarged on bail.

4. The learned Additional Public Prosecutor placing reliance upon the counter-affidavit filed by the respondent submitted that the petitioner was initially arrested along with A1 and A2 on the spot on 24.11.2023. Thereafter he was taken along with the other accused persons to the Government Hospital, Dindigul, for medical examination. At that point of time, the petitioner escaped from the custody of



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the police and he was able to be secured only on 24.08.2024. The learned Additional Public Prosecutor further submitted that there are 5 previous cases against the petitioner out of which, 2 cases are for the offence under NDPS Act. The learned Additional Public Prosecutor submitted that at the time of filing the police report, the petitioner was shown as an absconding accused. The case is now posted for examination of other witnesses on 27.01.2025 and already P.W.1 and P.W.2 have been examined on the side of the prosecution. It was submitted that considering the previous conduct of the petitioner, the petitioner does not satisfy the twin conditions under Section 37 of the NDPS Act. Accordingly, the learned Additional Public Prosecutor sought for the dismissal of this petition.

5. Heard Mr.K.Sakthivel, learned counsel for the petitioner and Mr.S.Ravi, learned Additional Public Prosecutor appearing on behalf of the respondent.

6. This Court has carefully considered the submissions made on either side and materials available on record.

7. It is an admitted fact that there was no individual recovery made from the petitioner. The main allegation against the petitioner is that the petitioner also



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travelled in the same car from which the contraband was seized. Even while dealing with the bail application filed by A2, this Court rendered a finding to the effect that A2 by travelling in the same car along with A1, by itself cannot be construed as conscious possession of 21.600 kilograms of ganja. The confession of A1 nowhere talks about the involvement of the petitioner (A3) at any stage. He only talks about the individual involvement about A10 and A6. Hence, the said finding will also enure in favour of the petitioner.

8. The other ground is with regard to the previous conduct of the petitioner who is said to have escaped from the police custody when he was taken to the hospital and was able to be arrested only on 24.08.2024. Yet another ground raised is that there are two previous cases against the petitioner for offence under NDPS Act. One case had ended in acquittal and in other case which involved 1.250 kilograms, the petitioner pleaded guilty and paid fine.

9. Taking into consideration the facts and circumstances of the case and considering the fact that the petitioner has an arguable case before the trial Court and no individual recovery was made from the petitioner and taking into account the fact that the petitioner has satisfied the twin requirements under Section 37 of the NDPS



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Act and the petitioner has suffered incarceration from 24.08.2024 and the case is now at the stage of examination of witnesses, this Court is inclined to grant bail to the petitioner subject to the following conditions:

10. 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, each for a like sum to the satisfaction of the Principal Special Court for EC and NDPS Act Cases, Madurai 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 during every date of hearing without fail;

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.



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[d] the petitioner shall not abscond 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 petitioners 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 absconds, a fresh FIR can be registered under Section 269 of B.N.S.2023.

sd/-
22/01/2025

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/02/2025
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN



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TO COPY

- 1 THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE,
NIB CID POLICE STATION.
DINDIGUL DISTRICT.
- 3 THE OFFICER INCHARGE,
DISTRICT PRISON, DINDIGUL.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.230 of 2025
Date :22/01/2025

SS/SKN/SAR- /03/02/2025/ 8P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023