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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/03/2025

PRESENT

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRL OP (MD) No.327 of 2025

Sivaneshwaran,
S/o.Deivam,
D.No.64/ A/3,
Gurankumayan Street,
Uthamapalayam, Cumbum,
Theni District.

... Petitioner/ Accused No.3

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
S.S.Colony Police Station,
Madurai.
Crime No.227/2024

... Respondent/ Complainant

For Petitioner : Mr.J.Jeya Aron Raja,
Advocate

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS



PRAYER :-
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To release the petitioner/ Accused No.3 on bail in C.C.No.395/2024 on the file of I Additional Special Court for NDPS Act cases, Madurai in connection with Crime No.227/2024 on the file of the respondent-police.

ORDER : The Court made the following order :-

This Criminal Original Petition has been filed by the petitioner on 06.01.2025 under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, praying to grant bail.

2. The petitioner/ Accused No.3 was arrested and remanded to judicial custody on 15.05.2024. The petitioner is facing trial in C.C.No.395 of 2024 on the file of the learned I Additional Special Judge for NDPS Act Cases, Madurai for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act, in connection with Crime No.227 of 2024 on the file of the respondent-police.

3. The case of the prosecution is that on 02.05.2024, at about 18.50 hours, based on secret information received, the respondent-police were conducting a vehicle check-up near Viratipathu Union Office, Madurai, on Kalavasal to Theni Main Road.



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At that time, the police found that Accused No.1 was in possession of 1.600 kgs of ganja in a Ford Aspire car bearing Registration No. TN-58-AL-9513. The respondent-police arrested Accused No.1 and seized the contraband. Based on the confession of Accused No.1, on 15.05.2024, the petitioner/A3 was arrested. Following the same, on the same day, based on the information given by the petitioner/A3, A4 and A5 were arrested, and the respondent-police seized 13.500 kgs of ganja from them. Following the same, on 18.05.2024, near the entrance of the Omni Bus Stand, Mattuthavani, A6, A7 & A8 were arrested, and 8.500 kgs of ganja was seized from A6 and A7. Hence, the case.

4. Mr.J.Jeyaaron Raja, the learned counsel for the petitioner, submits that the petitioner has nothing to do with the alleged offence and that a false case has been foisted against the petitioner. He further submits that the petitioner has been in judicial custody from 15.05.2024 and is ready to abide by any conditions that may be imposed by this Court. Hence, he prays for granting bail to the petitioner.

5. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent-police, submits that in this case, 1.500 kgs of ganja was seized from the Accused No.1 on 02.05.2024, 13.500 kgs of ganja was seized from



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Accused Nos.3, 4 and 5 on 15.05.2024 and 8.500 kgs of ganja was seized from Accused Nos.6 and 7 on 18.05.2024. He further submits that there is one previous case pending against the petitioner, which is similar in nature. He further submits that there was a money transaction of Rs.85,500/- between Accused No.2 and the petitioner/A3. He also submits that since the petitioner and the other accused persons purchased the contraband with a common intention to sell it illegally and earn money and all the recoveries and seizures arose out of the same course of events, the recovery of ganja from the other accused persons should be taken into account while deciding whether the contraband constitutes a commercial quantity or not, and that the total contraband seized from all the accused persons comes within the category of commercial quantity. Further, he submits that the rigors stated in Section 37 of the NDPS Act would be applicable to this case. He relies upon the judgment of the Hon'ble Supreme Court in Narcotics Control Bureau v. Mohit Aggarwal, reported in (2022) 18 SCC 374. The learned Additional Public Prosecutor therefore prays to dismiss this Criminal Original Petition.

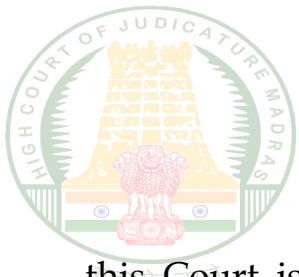
6. This Court has considered the submission made on either side.



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7. A bare perusal of the FIR would show that on 02.05.2024, at about 18.50 hours, the respondent-police intercepted the Ford Aspire car of A1 and seized 1.600 kgs of ganja from him, which is admittedly an intermediate quantity. A perusal of the Final Report filed by the respondent-police and the other records would show that on 15.05.2024, i.e., 13 days after the first seizure, the respondent-police arrested the petitioner/A3. At that time, no contraband was recovered from the petitioner/A3. Based on the information given by the petitioner/A3, the respondent-police proceeded to arrest A4 and A5. Thereafter, the respondent-police arrested A4 and A5 and recovered 13.500 kgs of ganja from them. Subsequently, on 18.05.2024, the respondent-police arrested A6 to A8 and recovered 8.500 kgs of ganja from A6 and A7.

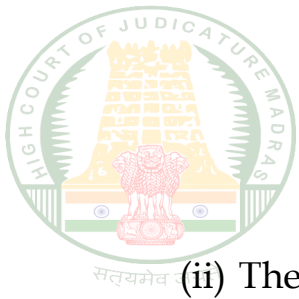
8. The submission of the learned Additional Public Prosecutor is that the previous and further recoveries of ganja from the co-accused persons should be taken into account while deciding whether the contraband constitutes a commercial quantity or not. This Court is not inclined to accept the above submission for the reason that the seizures were not made at the same time, particularly when no contraband was recovered at the time of arrest of the petitioner/A3. Hence,



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this Court is of the view that even though the case of the prosecution is that on 18.05.2024, 13.500 kgs. of ganja was recovered from the petitioner/ A3, A4 and A5, the quantity of contraband seized from them is intermediate, and the rigors stated in Section 37 of the NDPS Act would not be applicable to the case. To be noted, the above view is recorded only for the purpose of deciding the bail petition. The above view, in any way, would not cause any prejudice to the rights of the prosecution in establishing the case during the trial.

9. Considering the above, and also considering the facts that the petitioner has permanent residence, and therefore, there is less possibility of absconding, and with a view to give one more opportunity to the petitioner to reform himself, this Court is inclined to grant an order of bail to the petitioner, however, subject to the following conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) along with two sureties each for a like sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the satisfaction of the learned I Additional Special Judge for NDPS Act Cases, Madurai;



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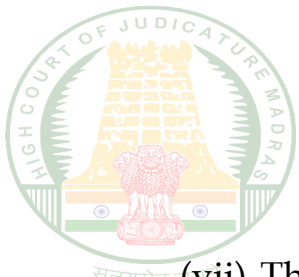
(ii) The sureties shall affix their photographs and left thumb impression in the Application for Suretyship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned I Additional Special Judge for NDPS Act Cases, Madurai shall obtain a copy of any one of identity proofs to ensure their identity;

(iii) The petitioner shall attend in accordance with the conditions of the bond to be executed under Chapter XXXV of BNS, 2023;

(iv) The petitioner shall not commit an offence similar to the offence of he is accused, or suspected, of the commission of which he is suspected;

(v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(vi) The petitioner shall not directly or indirectly cause any threat to the defacto complainant, and the witnesses;



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(vii) The petitioner shall furnish his residential address and mobile number to the learned I Additional Special Judge for NDPS Act Cases, Madurai;

(viii) The petitioner shall appear and sign before the learned I Additional Special Judge for NDPS Act Cases, Madurai on all working days at 10:30 a.m., until further orders; and

(ix) On breach of any of the aforementioned conditions, the learned I Additional Special Judge for NDPS Act Cases, Madurai is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by him as laid down by the Hon'ble Supreme Court in P.K. Shaji vs. State of Kerala [(2005) 13 SCC 283].

10. Accordingly, this Criminal Original Petition is allowed subject to the conditions stated supra.

Sd/-
19/03/2025

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21/03/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO
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- 1 THE I ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES,
MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE,
S.S.COLONY POLICE STATION,
MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.J.JEYA ARON RJA, Advocate (SR-3118[I] dated 19/03/2025)
(SR-3139[I] dated 20/03/2025)

ORDER IN
CRL OP(MD) No.327 of 2025
Date :19/03/2025

ES/ 21.03.2025/9P/7C

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