



CRL.OP(MD).No.3316 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2025

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.OP(MD).No.3316 of 2025

V.Aandi Selvam,
S/o.Velmurugan

... Petitioner / Accused No.1

Vs.

The State of Tamil Nadu
Rep. by The Inspector of Police,
NIB CID, Thoothukkudi.
(Crime No.14 of 2022)

... Respondent / Complainant

PRAYER :- Criminal Original Petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to enlarge petitioner on bail in connection with the case in C.C.No.41 of 2023 pending on the file of the learned II Additional District Judge for NDPS Act cases, Madurai, in Crime No.14 of 2022 on the file of the respondent-police.

For Petitioner : Mr.NA.Manimaran,
Advocate.

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

ORDER

This Criminal Original Petition has been filed by the petitioner on 19.02.2025 under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, praying to grant bail.



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2. The petitioner/Accused No.1 was arrested and remanded to judicial custody on 16.07.2022 for the alleged offences punishable under Sections 8(c) read with 20(b) (ii)(C), 25 and 29(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.14 of 2022 on the file of the respondent-police. After completion of investigation, the charge sheet has been filed before the learned II Additional District Judge for NDPS Act cases, Madurai and the same was taken on file in C.C.No.41 of 2023.

3. The case of the prosecution is that on 15.07.2022, at about 08:30 p.m., based on secret information, the respondent-police conducted a raid behind Bharath Petroleum near Pudhur Pandiyapuram Toll Plaza, where the accused persons had parked their vehicles bearing Registration Nos.TN-84-M-4213 (Eicher) and TN-19-F-5555 (red-coloured Volkswagen). Upon seeing the police party, they attempted to escape. However, the respondent-police apprehended the petitioner (A1) on the spot and interrogated him. Upon inquiry, it was found that the petitioner and the other accused were in joint possession of contraband (ganja) weighing 437 kg. Hence the case.

4. Mr.N.A.Manimaran, learned counsel for the petitioner, submits that the petitioner is an innocent person and has not committed any offence as alleged by the prosecution. He further submits that the petitioner has been arrayed as A1 and that



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he was an acting driver who proceeded to the place for driving whenever he was called for duty, without any refusal. On the date of occurrence, the petitioner went to the spot to take the vehicle parked at the place of occurrence, unaware of the contraband contained in the said vehicle. At that time, the respondent-police arrested and remanded him. He further submits that, despite having no connection with the crime, the petitioner has been incarcerated for more than three years. Additionally, he submits that there is no imminent possibility of the trial being conducted and that the petitioner's continued detention, despite the lack of material evidence, violates his right to a speedy trial under Article 21 of the Constitution of India. In this regard, the learned counsel places reliance on the Judgment of the Hon'ble Supreme Court in Rabi Prakash -vs- State of Odisha reported in 2023 LiveLaw(SC) 533 (Special Leave to Appeal (Crl.) No.4169/2023), wherein it has been held thus:

“ 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)(ii) of the NDPS Act.”

4.1. He further submits that A2 and A5 were already enlarged on bail by this Court in Crl.O.P.(MD) No.11341 of 2023 and Crl.O.P.(MD) No.2821 of 2024



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respectively. He further submits that the petitioner is ready to abide any stringent conditions that may be imposed by this Court. He therefore prays to grant bail to the petitioner.

5. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent-police, submits that this is the third bail application filed by the petitioner before this Court. Earlier petition filed by the petitioner in CrI.O.P.(MD).No.21384 of 2023 was dismissed as there was no change in circumstance on 02.01.2024. The relevant portion is extracted hereunder:-

“ 3.The learned counsel for the petitioner would submit that the petitioner has not committed any offence as alleged by the prosecution and based on the confession statement of the co-accused, he was implicated in this case. He would further submit that the petitioner was not available in the scene of occurrence and he is in judicial custody since 17.07.2022. Hence, he prays for grant bail to the petitioner.

4.The learned Additional Public Prosecutor for the State would submit that this is the petitioner's second application for bail and the earlier application for bail in CrI.O.P.(MD)No.8906 of 2023 was dismissed as withdrawn on 15.06.2023. He would further submit that



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the quantity involved in this case is a commercial quantity and the petitioner has not satisfied the twin conditions as required under Section 37 of the NDPS Act. Hence, he opposed to grant bail to the petitioner.

5.Considering the above facts and circumstances of the case and also considering the fact that there is no change in circumstances, since the dismissal of the earlier petition and the quantity involved in this case is a commercial quantity and the petitioner has not satisfied the twin conditions as required under Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioner.

6.In the result, this Criminal Original Petition is dismissed.”

5.1. He further submits that the contraband seized in this case by the respondent-police is of a commercial quantity. There is sufficient material available on record to show the involvement of the petitioner. He further submits that the petitioner is the prime accused and that the petitioner and other accused persons conspired together and planned to illegally transport ganja to Sri Lanka. He further submits that the investigating agency has collected toll gate receipts and documents, which prima facie establish the involvement of the petitioner in the crime and that, in the Trial Court, the case is posted on 24.04.2025 for trial. He further submits that at



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this stage, if the petitioner is released on bail, he will tamper with the witnesses, flee from Tamilnadu and thereby delay the trial. In support of his argument, the learned Additional Public Prosecutor relies upon the judgment in Narcotics Control Bureau -vs- Mohit Aggarwal, reported in (2022) 18 SCC 374. Thus, the learned Additional Public Prosecutor vehemently opposes to grant bail to the petitioner and prays for dismissal of this petition.

6. Heard on both sides and perused all the materials available on record.

7. A perusal of the records reveals that after the completion of the investigation, the respondent-police filed a charge sheet against the petitioner and five other accused persons, which was taken on file by the learned II Additional District Judge for NDPS Act cases, Madurai, in C.C.No.41 of 2023. It is the fact that there are 57 prosecution witnesses who have yet to be examined. Hence, there is no possibility of concluding the trial within a short span of time. The petitioner has been in judicial custody since 16.07.2022, i.e., for more than three years. In Rabi Prakash's case [cited supra], the Hon'ble Supreme Court has held that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and that in such a situation, conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Therefore, in light of the above decision and the period of incarceration, this Court is of the opinion



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that bail should be granted to the petitioner. Moreover, this Court has already
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enlarged A2 and A5 on bail in CrI.O.P. (MD) No. 11341 of 2023 and CrI.O.P. (MD)
No. 2821 of 2024, respectively.

8. Considering the above, and also taking into account the facts that the case is posted for trial before the Trial Court on 24.04.2025 and that there are no previous cases against the petitioner and with a view to give an opportunity to the petitioner to reform himself, this Court is inclined to grant bail to the petitioner, 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 II Additional District Judge for NDPS Act cases, Madurai.

(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 II Additional District Judge for NDPS Act cases, Madurai shall obtain a copy of any one of identity proofs to ensure their identity.

(iii) The petitioner shall appear and sign before the learned II Additional District Judge for NDPS Act cases, Madurai, on all working days, at 10.00 a.m. and 05.00 p.m, until further orders.

(iv) The petitioner shall furnish his residential address and mobile number to



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the learned II Additional District Judge for NDPS Act cases, Madurai, and shall keep his mobile phone switched on and reachable.

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

(vi) The petitioner shall not commit any offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(vii) 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.

(viii) The petitioner shall also not directly or indirectly, cause any threat to the defacto complainant and witnesses.

(ix) The petitioner shall not leave the State of Tamil Nadu without prior permission of the Trial Court.

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



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

sd/-
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/04/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL
TO

1 THE II ADDITIONAL DISTRICT JUDGE FOR NDPS ACT CASES,
MADURAI.

2 THE OFFICER INCHARGE,
DISTRICT PRISON, THENI.

3 THE INSPECTOR OF POLICE,
NIB CID, THOOTHUKKUDI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.NA.MANIMARAN, Advocate (SR-3739[I] dated 01/04/2025)

ORDER IN
CRL OP(MD) No.3316 of 2025
Date :01/04/2025

SA/SAR. /02.04.2025/9P/6C

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