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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 27/02/2025

PRESENT

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRL OP(MD) No.2249 of 2025

Vijayan

... Petitioner/ Accused Rank Not Known

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Pettai Police Station,
Tirunelveli District.
Crime No. 236/2024.

... Respondent/Complainant

For Petitioner : Mr.C.Saravanakumar
Advocate.

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

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :-

For Bail in Crime No.236 of 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 03.02.2025 under

<https://www.mhc.tn.gov.in/judis>



Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) praying to grant bail.

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2. The petitioner / Accused was arrested and remanded to judicial custody on 20.10.2024 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act, 1985 in Crime No.236 of 2024 on the file of the respondent-police.

3. The case of the prosecution is that, on 19.10.2024, at about 14:00 hours, based on secret information received by the Sub-Inspector of Police, he, along with his team, went near Pettai, Mylapuram Kallarai Thootam, and conducted an inspection. At that time, they found that A1 to A3 were in possession of ganja. A1 was found in possession of one kilogram of ganja and Rs.20,000/- in cash. A2 was found in possession of two kilograms of ganja and Rs.20,000/- in cash, and similarly, A3 was found in possession of one kilogram of ganja, Rs.20,000/- in cash, one Vivo cellphone, and a two-wheeler without registration. When they were questioned, they stated that the total quantity of ganja was purchased from Madurai and distributed among the accused persons.

4. In the course of the investigation, A1 confessed that more ganja was available at her residence. Accordingly, a search was conducted, and a further 8 kilograms of ganja was seized from the house. A1 further confessed that the other accused persons, namely A4 to A9, were also involved in this case. Acting on this, A4 and A5 were arrested on 20.10.2024, and 2 kilograms of ganja was seized from each of them.

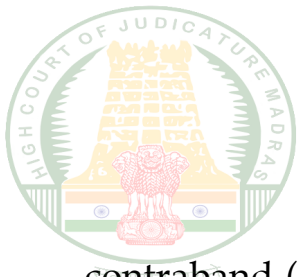


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A6 was arrested on the same day, and 2 kilograms of ganja was seized from him. A7 and A8 were arrested with one kilogram of ganja and 1.5 kilograms of ganja, respectively. A9 was arrested on 27.10.2024, and he was found in possession of 400 grams of ganja. The case of the prosecution is that all the accused persons acted with a common intention and were aware of each other's possession of ganja. Hence, the total seizure of 20.9 kilograms of ganja was attributed to A1 to A9.

5. Mr.C.Saravanakumar, learned counsel appearing for the petitioner, submits that the petitioner did not commit any offence as alleged by the prosecution and that the petitioner is an innocent person. He further submits that, according to the FIR, the petitioner was in possession of 2 kgs of contraband (ganja), which does not constitute a commercial quantity. He further submits that the petitioner has been in incarceration from 20.10.2024. He further submits that this Court has granted bail to Accused Nos.4, 5, 8 and 9 in CrI.O.P.(MD).Nos.21935, 13125 of 2024 and CrI.O.P.(MD).Nos.143 and 281 of 2025 vide order dated 10.01.2025. Thereafter, A3 was also granted bail by this Court on 21.02.2025 in CrI.O.P.(MD)No.2214 of 2025. He further submits that he is ready to abide by any conditions to be imposed by this Court. Therefore, he prays for granting bail to the petitioner.

6. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent-Police, submits that totally there are 20.900 kgs of



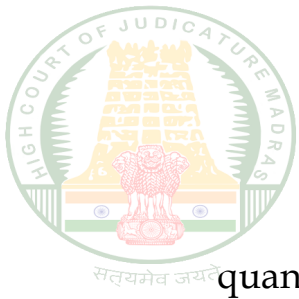
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contraband (ganja) involved in this case. He further submits that Accused Nos.1 and 2 are still in judicial custody. He further submits that the petitioner has two previous cases, out of which, one is similar in nature. However, he vehemently opposes to grant bail to the petitioner, by stating that if bail is granted, the petitioner may cause delay to the trial proceedings. He further submits that the petitioner has not satisfied the twin conditions stipulated in Section 37 of the NDPS Act. Accordingly, he prays to dismiss the petition.

7. Heard on both the sides. This court has perused the records.

8. In the FIR, only the involvement of A1 to A3 has been mentioned. The FIR was registered for the offences punishable under Sections 8(c), 20(b)(ii)(B), 25, and 29 (1) of the NDPS Act. The respondent-police seized only 4 kilograms of ganja from A1 to A3. Based on the confessions of A1 to A3, other accused persons were arrested, and contraband was seized. To be noted, Accused Nos.3, 4, 5, 8, and 9 were enlarged on bail by this Court. It is apposite to extract a portion of the bail order passed by this Court in CrI.O.P.(MD) No. 21935 of 2025, etc., on 10.01.2025, which reads as follows:

6. ... There is no indication in the FIR that other accused persons are also involved in this case. Thereafter, the prosecution has developed the case based on the alleged confession of A1 and seized contraband from other accused persons on various dates, various



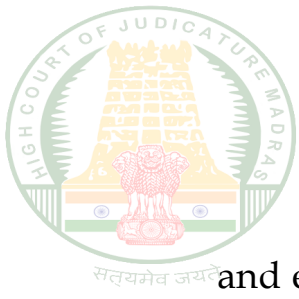
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quantities, which per se are in between quantities. In other words, these are all individual recoveries made from the other accused persons.

7.The main ground that has been raised is that the subsequent contraband seized from the other accused persons cannot be said to be in the course of the same transaction and it cannot be brought within the scope of Section 34 of IPC on the ground that the procurement/possession of ganja by the accused persons was in furtherance of a common intention.

8.The learned Additional Public Prosecutor in order to substantiate his submission relied upon the judgment in Mohamed Ali and another v. The State, reported in [2017 (1) L.W. (CrI.) 842] and specifically relied upon paragraph No.28 in that judgment. In that judgment, this Court had interpreted the scope of Section 34 of IPC and has held that where there are various acts in furtherance of common intention, all these acts can be put together in order to determine the quantity of the contraband seized.

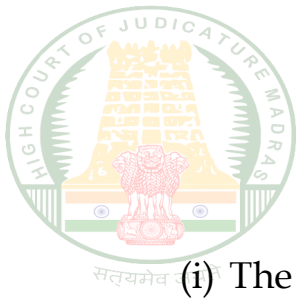
9.In the considered view of this Court, the seizure of the contraband from A4 and A5 took place on 20.10.2024 at 7.00 hours



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and each was found in possession of 2 kilograms of ganja. Insofar as A8, what was seized was 1.500 kilograms of ganja on 23.10.2024. similarly, what was seized from A9 was 400 grams of ganja on 27.10.2024. Whether all these seizure at various dates from the other accused persons can be brought within the scope of Section 35 of the NDPS Act on the ground that each accused person had a culpable state of mind and knew about the possession of ganja by the other accused person also, is a matter which can be dealt with only at the time of trial. In the same way, the fact as to whether the accused persons were operating as a gang is also a matter which can be established only in the course of trial. ...

9. In view of the same, this Court is of the view that the contraband seized from the petitioner is below the limit of a commercial quantity. To be noted, the above view is recorded only for the limited purpose of deciding the bail petition. The above view, in any way, would not prejudice the rights of the prosecution to establish its case during the trial. The petitioner has permanent residence. Therefore, there is less possibility of absconding. Considering the same and with a view to give an 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:



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(i) The petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand only) along with two sureties each for a like sum of Rs.10,000/- (Rupees Ten Thousand Only) to the satisfaction of the learned Judge, Principal Special Court for trial of NDPS Act Cases, Madurai;

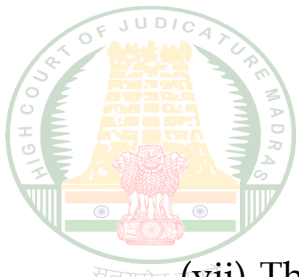
(ii) The sureties shall affix their photographs and left thumb impression in the Application for Suretyship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Judge, Principal Special Court for trial of NDPS Act Cases, Madurai shall obtain a copy of any one of identity 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 furnish his residential address and mobile number to the learned Judge, Principal Special Court for trial of NDPS Act Cases, Madurai;



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(vii) The petitioner shall appear and sign before the respondent-Police daily at 10.30 a.m., and 05.30 p.m., until further orders; and

(viii) On breach of any of the aforementioned conditions, learned Judge, Principal Special Court for NDPS and EC 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/-
27/02/2025

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27/02/2025
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE JUDGE,
PRINCIPAL SPECIAL COURT FOR TRIAL OF NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

<https://www.mhc.tn.gov.in/judis>



3 THE INSPECTOR OF POLICE,
PETTAI POLICE STATION,
TIRUNELVELI DISTRICT.

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

ORDER
IN
CRL OP(MD) No.2249 of 2025
Date :27/02/2025

NBF /SAR/ (27/02/2025) 9P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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