



CRL.OP (MD) No.3628 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.05.2025

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THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.OP (MD) No.3628 of 2025

Eswaran,
S/o.Murugan

... Petitioner / Accused No.5

Vs.

The State of Tamil Nadu rep by,
The Inspector of Police,
Kadamalaikundu Police Station,
Theni District.
(Crime No.35 of 2023)

... Respondent / Complainant

PRAYER :- The Criminal Original Petition filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023 praying to grant bail to the petitioner in
C.C.No.808 of 2023 pending on the file of the Principal Special Court for Trial of
Narcotic Drugs and Psychotropic Substances Act Cases, Madurai in connection with
Crime No.35 of 2023 on the file of the respondent-police.

For Petitioner : Mr.S.Jeyaprakash,
Advocate.

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



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WEB COPY For respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

ORDER : The Court made the following order :-

This Criminal Original Petition has been filed by the petitioner on 24.02.2025 under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to grant bail to the petitioner in C.C.No.808 of 2023 pending on the file of the Principal Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai, in connection with the Crime No.35 of 2023 on the file of the respondent-police.

2. The petitioner / Accused No.5 was arrested and remanded to judicial custody on 24.11.2023 for the alleged offences punishable under Sections 8(c) r/w 20 (b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [in short "NDPS Act"], in Crime No.35 of 2023 on the file of the respondent-police. After investigation, the charge sheet has been filed and the same was taken on file by the Principal Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai in C.C.No.808 of 2023.

3. The case of the prosecution is that on 24.01.2023, at about 15:30 hours, the Sub-Inspector of Police, Kadamalaikundu Police Station, received secret information regarding the possession of ganja. The Sub-Inspector, accompanied by other police



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officials, proceeded to conduct vehicle checks near Ayyanar Temple, Ayyanaarpuram. During the vehicle check, a Bolero Pickup vehicle bearing Registration No.TN-55-CZ-1518 was intercepted and conducted a search which led to the recovery of 61 kgs of ganja from A1 and A2. Based on the confession statement of the co-accused, the petitioner herein, who is arrayed as A5, was implicated in the case. Hence, the case.

4. Mr.S.Jeyaprakash, the learned counsel for the petitioner, submitted that the petitioner is an innocent person and that he has not committed any offence as alleged by the prosecution. He further submitted that the petitioner has been falsely implicated in this case based on the confession statement of A1 and A2. He further submitted that there was no recovery of contraband from the Petitioner/Accused No.5, and that he was not present at the scene of occurrence at the time of seizure. He further submitted that the respondent-police has not followed any mandatory procedures provided under the NDPS Act. He also submitted that the investigation has been completed and the charge sheet has been filed in C.C.No.808 of 2023 before the learned Principal Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai. He further submitted that the case has been posted for trial on 07.05.2025 and, since the case is in its nascent stage, the trial is not likely to be completed within a short span of time. However, he, submitted that the



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petitioner is ready to abide by any stringent conditions that may be imposed by this Court. Accordingly, he prayed to grant bail to the petitioner.

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5. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent-police, submitted that the respondent-police, after complying with the provisions of the Act and Rules, seized 61 kgs of ganja in this case, which constitutes a commercial quantity. He further submitted that the Petitioner and Accused No.2, who is a receiver of the contraband, were in contact through frequent phone calls. The Call Detail Records (CDR) also corroborate this and thereby evidencing their criminal conspiracy. He also submitted that the above facts would prove that the accused was involved in the conspiracy attracting Section 29 of the NDPS Act. He further submitted that investigation revealed that A1 was engaged in loading and unloading goods between Visakhapatnam and Kochi. During this time, A3 instructed A1 to load 60 kilograms of ganja into his pickup truck along with fish and to deliver the contraband to A2 near K.Vilakku Junction. Following the instructions of A3, A1 identified A2, and both proceeded via a crossroad towards Kerala. It was during this journey that they were apprehended with the ganja. Subsequently, A2 confessed that he, along with his friend (petitioner herein) was involved in procuring ganja from Andhra Pradesh. Based on this confession and other materials collected during



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the investigation, the present case was registered against the petitioner and others under Sections 8(c) read with 20(b)(ii)(C), 25, and 29(1) of the NDPS Act. The Petitioner has been arrayed as Accused No.5. All the accused persons conspired together in furtherance of a common intention and were part of the same transaction. The total quantity of ganja seized from the accused persons, collectively amounting to 61 kgs of ganja, forms the subject matter of Crime No.35 of 2023. Hence, rigors stated in Section 37 of the NDPS Act would be applicable to petitioner. Therefore, he vehemently opposed to grant bail to the petitioner, stating that if bail is granted, the petitioner may abscond and thereby delay the trial proceedings. Accordingly, he prayed to dismiss the petition.

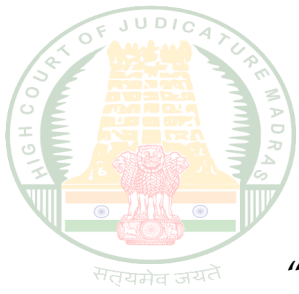
6. Heard on both sides. This Court has perused the records.

7. This the third bail application filed by the petitioner. The first bail application in Crl.O.P(MD).No.6479 of 2024 was dismissed on 03.06.2024. The relevant portions are extracted hereunder:

“5.Considering the antecedents of the petitioner and the frequency of contact with A2 from whom the contraband has been recovered, this Court is not inclined to grant bail to the petitioner.

6.Accordingly, this Criminal Original Petition is dismissed ”

7.1. The second bail application in Crl.O.P(MD).No.16291 of 2024 was dismissed on 27.09.2024. The relevant portions are extracted hereunder:



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“4.Considering the materials as against this petitioner, considering the quantity involved in this case and the bar under Section 37 of the NDPS Act, this Court is not inclined to grant bail to this petitioner. Accordingly, this Criminal Original Petition is dismissed.”

8. Admittedly, the petitioner has been arrayed as an accused only based on the confession statements given by A1 and A2. It is pertinent to note that A4 has already been granted bail by this Court in CrI.O.P.(MD).No.4695 of 2024, dated 22.04.2024. A perusal of the case records, including the Call Detail Records (CDR), reveals that the petitioner and A2 were in contact; however, since they are residents of the same locality, such communication may be considered natural and not inherently suspicious. Apart from this, there is no other prima facie material available to directly connect the petitioner with the alleged crime. A further perusal of the records reveals that there are no other materials available against the petitioner, except the confession of co-accused. In the absence of any material connecting the petitioner (A5) with the alleged offence, it cannot be stated that the rigors stated in Section 37 of the NDPS Act would be applicable to the petitioner. Therefore, this Court is of the opinion that further custody of the petitioner is not necessary in this case. It is to be noted that the above view is recorded only for the limited purpose of deciding this bail petition. This view, in any way, would not cause any prejudice to the rights of the prosecution in establishing its case during the trial. Considering the



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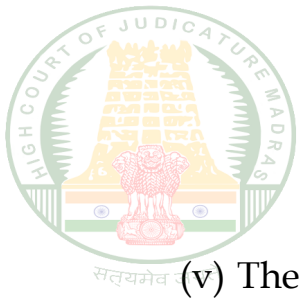
above and also considering the fact that after investigation, the charge sheet has been filed and the same was taken on file by the Principal Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai in C.C.No.808 of 2023 and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner. Accordingly, bail is granted to the petitioner subject to the following conditions:

(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 Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances 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 Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances 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 BNSS, 2023.

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



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(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 appear and sign before the learned Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai on all working days at 10.30 a.m. until further orders.

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

(viii) The petitioner shall appear on all hearing dates and co-operate with the Trial Court for speedy disposal of the case.

(ix) The petitioner shall furnish his residential address and mobile number to the concerned learned Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai.

(x) On breach of any of the aforementioned conditions, the learned Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances 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].



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

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

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TO

- 1 THE PRINCIPAL SPECIAL JUDGE FOR TRIAL OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT CASES, MADURAI.
- 2 THE OFFICER-INCHARGE, SUB-JAIL, THENI.
- 3 THE INSPECTOR OF POLICE,
KADAMALAIKUNDU POLICE STATION, THENI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.3628 of 2025
Date :08/05/2025

NBF/SAR/09.05.2025 9P/5C

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