



CRL.OP (MD) No.5333 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.04.2025

Pronounced on : 29.04.2025

COROM

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.OP (MD) No.5333 of 2025

M.Naina Mohamed

... Petitioner / Accused No.2

Vs.

Union of India through
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai in NCB.

(F.No.48/1/12/2023/NCB/MDS)

... 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 the case in C.C.No.65 of 2024 pending on the file of the Special Court for EC and NDPS Act Cases, Pudukkottai, Pudukkottai District in connection with F.No.48/1/12/2023/NCB/MDS on the file of the respondent-NCB.

For Petitioner : Mr.S.Atham Ali,
Advocate

For Respondent : Mr.Arul Vadivel @ Sekar,
Special Public Prosecutor
for NCB Cases



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ORDER : The Court made the following order:

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This Criminal Original Petition has been filed by the petitioner on 19.03.2025 under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to grant bail to the petitioner.

2. The petitioner/Accused No.2 was arrested and remanded to judicial custody on 18.08.2023 for the alleged offences punishable under Sections 8(c), 20(b)(ii)(C), 25, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in F.No.48/1/12/2023/NCB/MDS on the file of the respondent-NCB. After investigation, the charge sheet has been filed and the same was taken on file by the Special Court for EC and NDPS Act Cases, Pudukkottai, Pudukkottai District in C.C.No.65 of 2024.

3. The case of the prosecution is that, on 16.08.2023, based on secret information, the respondent-NCB seized 423 kilograms of Ganja from a Mahindra Bolero Pickup Vehicle on the R.S.Mangalam-Paramakudi Road, near Pitchankottai Village, Ramanathapuram District. As per the investigation and the confession statement, one Pavithra had purchased the contraband from Andhra Pradesh and transported it in an Ashok Leyland Vehicle. The contraband was then delivered to Accused Nos. 1 to 3 (including the petitioner) at Viralimalai, under the direction and escort of Accused Nos.4 and 5. Accused Nos.4 and 5 transferred the said quantity from the Ashok



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Leyland Vehicle to the Mahindra Bolero Pickup. Thereafter, Accused Nos.1 to 3 (including the petitioner) proceeded to transport the contraband to Sri Lanka. While en route, they were apprehended by the respondent-NCB near Pitchankottai Village. Hence, the case.

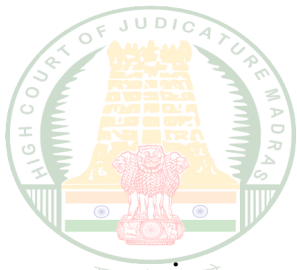
4. Mr.S.Atham Ali, learned counsel for the petitioner, submitted that the petitioner is an innocent person and that he has not committed any offence as alleged by the prosecution. He further submitted that the petitioner (A2) has been in judicial custody since 18.08.2023. He further submitted that the petitioner owns and operates his own share auto and occasionally works as an acting driver for others. He has known A1 for the past four years, and on prior occasions, A1 had engaged the petitioner as an acting driver and paid him wages accordingly. On the date of the alleged occurrence, A1 contacted the petitioner over the phone, requesting him to work as an acting driver. In response, the petitioner went to assist, and since another driver was already present, he sat beside him in the vehicle. After the primary driver became tired, the petitioner took over driving. It was at this juncture that the respondent-NCB intercepted the vehicle and conducted a search, during which the petitioner became aware, for the first time, that ganja was being transported in the vehicle. He further submitted that the petitioner has no previous case. He also submitted that the investigation has been completed and the charge sheet has been



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filed in C.C.No.65 of 2024 before the learned Special Court for EC and NDPS Act Cases, Pudukkottai, Pudukkottai District. He further submitted that the case is posted for framing of charges and, therefore, there is no possibility of the trial being completed in the near future. He also submitted that the petitioner is ready to abide by any stringent conditions that may be imposed by this Court. Accordingly, he prays to grant bail to the petitioner.

5. Per contra, Mr.Arul Vadivel @ Sekar, learned Special Public Prosecutor appearing for the respondent-NCB, submitted that the respondent-police, after complying with the provisions of the Act and Rules, seized 423 kgs of ganja in this case, which constitutes a commercial quantity. He further submitted that the petitioner had knowledge of the contraband present in the said vehicle. The vehicle from which the contraband was recovered is a private vehicle, and only three persons were travelling in it, along with a substantial quantity of contraband. In such circumstances, the petitioner cannot plausibly claim ignorance of the contraband. The concept of "conscious possession" was elaborated upon by the Hon'ble Supreme Court in Dharampal Singh v. State of Punjab, reported in (2010) 9 SCC 608, wherein it was held that the knowledge of possession of contraband must be inferred from the facts and circumstances of each case. The standard for determining conscious possession varies depending on whether the vehicle is a public transport vehicle



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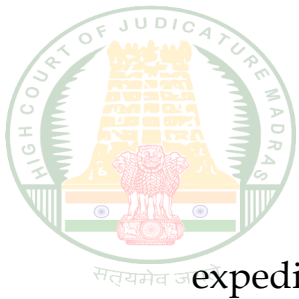
carrying numerous unknown passengers or a private vehicle occupied by a few individuals who are known to one another. He further submitted that given that the recovery in the present case was made from a private vehicle, the petitioner cannot credibly contend that he was unaware of the contraband contained therein. He also submitted that the above facts would prove that the accused was involved in the conspiracy attracting Section 29 of the NDPS Act. Hence, rigors stated in Section 37 of the NDPS Act would be applicable to petitioner. Therefore, he vehemently opposes to grant bail to the petitioner, stating that if bail is granted, the petitioner may abscond and thereby delay the trial proceedings. Accordingly, he prays to dismiss the petition.

6. Heard on both sides and perused the records.

7. The earlier bail application in Crl.O.P. (MD) No.17573 of 2024 was dismissed on 17.10.2024. The relevant portions are extracted hereunder:

“5. Considering the fact that the recovery was also made from the petitioner and that the contraband is of commercial quantity, this is not a fit case for enlarging the petitioner on bail.

6. Accordingly, this Criminal Original Petition is dismissed. Since the petitioner's prayer for bail is being dismissed, the prosecution shall ensure that the trial being conducted expeditiously and a copy of this order shall also be placed before the trial court to conduct the trial as



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expeditiously as possible.”

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8. A perusal of the records reveals that, since the contraband was recovered from A1 to A3 (the petitioner), there arises a statutory presumption of a culpable mental state under Section 35 of the NDPS Act. In view of this presumption, it is for the petitioner to rebut the same during the course of trial by proving that he had no such mental state in relation to the act constituting the offence. It is true that the above facts would prove that the accused was involved in the conspiracy attracting Section 29 of the NDPS Act. In this case, A1 (Parimala Doss @ Doss) had preferred a Petition for Special Leave to Appeal (Crl.) No(s).15025-15026 of 2024 before the Hon'ble Supreme Court of India, and the same was dismissed. It is also learnt that the contraband seized in the present case is a commercial quantity under the provisions of the NDPS Act. Hence, the rigors stated in Section 37 of the NDPS Act would be applicable to the present case. 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 cause prejudice to the rights of the petitioner to defend the case during the Trial. In view of the facts and circumstances of the case, the nature of the offence allegedly committed by the petitioner, and considering the quantity of contraband involved in the case, which constitutes a commercial quantity, this Court is not inclined to grant bail to the petitioner.



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9. Accordingly, this Criminal Original Petition is dismissed.

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Sub-Assistant Registrar

(C.S. I / II / III / IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL

TO

1 THE SPECIAL JUDGE FOR EC AND NDPS ACT CASES,
PUDUKKOTTAI.

2 THE OFFICER INCHARGE,
DISTRICT JAIL, PUDUKOTTAI.

3 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI IN NCB.

4 THE SPECIAL PUBLIC PROSECUTOR FOR NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.5333 of 2025

Date :29/04/2025

SA/SAR. /08.05.2025/7P/5C

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