

Crl.O.P.(MD)No.7581 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 12.09.2025

Pronounced on: 25.09.2025

PRESENT

The HONOURABLE MRS.JUSTICE S.SRIMATHY

CRL OP(MD)No.7581 of 2025

Sabithamathi

... Petitioner

Vs.

State through
the Inspector of Police,
Gudalur North Police Station,
Theni District.
(Crime No.225 of 2024)

... Respondent

For Petitioner : Mr.K.Kumaran

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS, 2023.

PRAYER :- For Bail in Cr.No.225 of 2024 on the file of the respondent police.

ORDER: The Court made the following order:-

The petitioner/Accused No.5, who was arrested and remanded to judicial

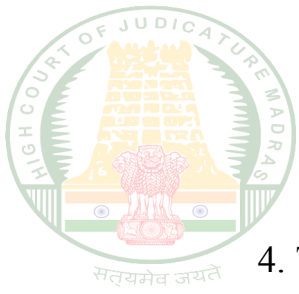


Crl.O.P.(MD)No.7581 of 2025

custody on 28.10.2024 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1), 27A and 25 of NDPS Act, in Crime No.225 of 2024, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 28.10.2024 at about 3.00 Hrs., three persons came in a two-wheeler bearing registration No.TN 60 X 4338 attempted to escape on seeing the police, but the accused 1 to 3 were napped by the respondent. On search, it was found that 1.100 Kgs of Hashish Extracts was available in the petrol tank cover of the bike. The respondent police arrested all the three accused and recovered the contraband. Based on the confession of the accused 1 to 3, the accused 5 was arrested and remanded to judicial custody. Hence, this case.

3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and she has not committed any offence as alleged by the prosecution. However, she has been arrested and she is languishing in jail from 25.11.2024. Further stated that the 2nd limb of section 37 of NDPS Act is not attracted in the case, since the petitioner has no previous cases of similar in nature. Further the petitioner was arrested based on confession. Therefore, she prays for grant of bail.



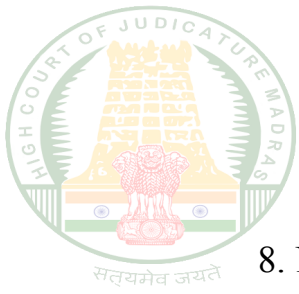
Crl.O.P.(MD)No.7581 of 2025

4. The learned Additional Public Prosecutor appearing for the respondent police opposed for grant of bail on the ground that the petitioner/ Accused 5 was involved in the case of 1 kg 100 gm of Hashish oil which is commercial quantity, hence the provisions of sections 35 and 54 would come into play. Further stated it is the 2nd bail application.

5. It is seen that the petitioner was not arrested with possession of contraband, but implicated based on the confession of the co-accused.

6. As far as prolonged incarceration is concerned, the case was registered on 28.10.2024 and the petitioner was arrested and remanded on 25.11.2024. The charge sheet has been filed on 04.04.2025. It is seen the charge sheet has been filed within the period of 180 days which is the outer limit granted for filing charge sheet. Therefore, this Court is of the considered opinion that there is no delay in filing the charge sheet.

7. As far as the Trial of the case is concerned, the case was posted for Trial on 15.05.2025, then posted on 25.07.2025, then in the month of September. Hence it is clear that the trial is in initial stage.



8. Now the twin test stated in Section 37(1) of the NDPS Act ought to be considered. The provision is reproduced hereunder:

“37. Offences to be cognizable and non- bailable.-

(1) Notwithstanding anything contained in the [Code of Criminal Procedure](#), 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

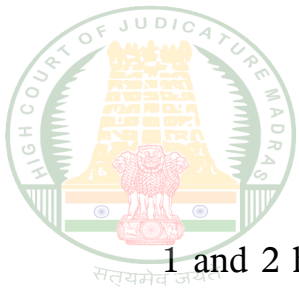
(b) no person accused of an offence punishable for 2[offences under [section 19](#) or [section 24](#) or [section 27A](#) and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

In the present, the Public Prosecutor was given an opportunity and he had filed detailed counter and had vehemently opposed the bail application since it is commercial quantity.

9. The next test is whether the petitioner / accused 5 would be guilty of the offence. It is seen that the petitioner / accused 5 was implicated based on the confession of the co-accused. Even as per the prosecution case the accused



Crl.O.P.(MD)No.7581 of 2025

1 and 2 had given confession statement stating that the accused 1,2,3,4 and 5 have jointly put money to buy the Ganja and sell it for higher price at Kerala.

Hence it is based on the confession of the accused 1 and 2, the accused 5 was arrayed as party. As regards of value of confession, the ratio laid down by the Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1*** is extracted hereunder:

“158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confession statement made to them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict an accused under the NDPS Act.

159.2 That a statement recorded under Section 67 of the NDPS Act cannot be used as a confession statement in the Trial of an offence under the NDPS Act”

10. The grant of bail for an offence involving commercial quantity is subject to the limitation provided under section 37(1)(b) of the NDPS act, the prosecution has filed their objections by way of a counter. The limitations for grant of bail or that the Public Prosecutor must be given an opportunity to oppose the bail application and there must exist reasonable grounds to believe



Crl.O.P.(MD)No.7581 of 2025

that the accused is not guilty for the offence and he is not likely to commit any offence while on bail.

11. In the present case, as held supra based on the confession of the accused 1 and 2, the accused 5 was arrayed as party. The prosecution has not produced any material other than confession which has been held inadmissible in law in Tofan Singh's case. The expression "reasonable grounds" had been interpreted by the Hon'ble Supreme Court in Union of India Vs. Shiv Shankar Desari (2007) 3 SCC CrI. 505 which is held as under:

"7. The expression used in section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances or sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged".

Hence there are reasonable grounds to believe that there are no material other than confession in the present case. Further as the petitioner is not having previous case, therefore, the petitioner is not likely to commit any offence while on bail.



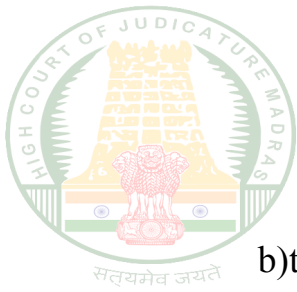
Crl.O.P.(MD)No.7581 of 2025

12. It is seen that the commercial quantity is one kg. In the present case it is 1.100 kg. It is seen that where ever there are one kg is prescribed as commercial quantity, the seizure invariably is one kilogram and 100 grams. The quantity of “one kilogram and 100 grams” same seems to be magic quantity. Of course, this is only an observation, but this fact was not taken as a ground to decide the case.

13. Considering the facts and circumstances and the observations stated supra and considering the duration of the custody, this Court is inclined to grant bail to the petitioner on certain conditions.

14. Accordingly, the petitioner is ordered to be released on bail, on executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Principal Special Court for Trial of NDPS Act Cases, Madurai, and on further conditions that,

a)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;



Crl.O.P.(MD)No.7581 of 2025

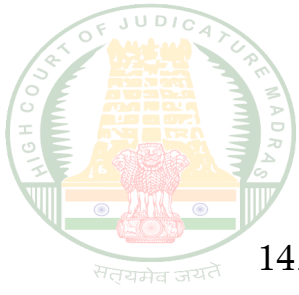
b)the petitioner shall report before the respondent police daily at 10.30 a.m., for two weeks and thereafter, at 10.30 a.m., once in a week, until further orders;

c)the petitioner shall not tamper with evidence or witness;

d)the petitioner shall not abscond during trial;

e)On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

f) If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS.



Crl.O.P.(MD)No.7581 of 2025

14. Accordingly, this Criminal Original Petition is allowed.

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25.09.2025

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TO

1.The Principal District EC and
NDPS Session Judge,
Madurai.

2. The Special Women Prison,
Madurai.

3.The Inspector of Police,
Gudalur North Police Station,
Theni District.

4.The Additional Public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.7581 of 2025

S.SRIMATHY,J

TMG

ORDER
IN
CRL OP(MD) No.7581 of 2025

Date : 25.09.2025