

CrI.O.P(MD).No.10902 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 23.07.2025

Pronounced on : 25.08.2025

PRESENT

THE HONOURABLE MR.JUSTICE P.VADAMALAI

CrI.O.P(MD).No.10902 of 2025

Kamesh @ Kameshwaran
S/o.Eswaran

... Petitioner/Accused No.5

Vs.

The State rep. by
The Inspector of Police,
Keerathurai Police Station,
Madurai City.
(Crime No.413 of 2021)

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 483 of BNSS, to enlarge the petitioner on bail who is in judicial custody in Crime No.413 of 2021 in connection with pending trial in C.C.No.361 of 2022 on the file of the Additional District and Sessions Judge, Special Principal Court for EC and NDPS Cases, Madurai.

For Petitioner	: Mr.J.Vijayaraja
For Respondent	: Mr.B.Thanga Aravindh Government Advocate (CrI.side)



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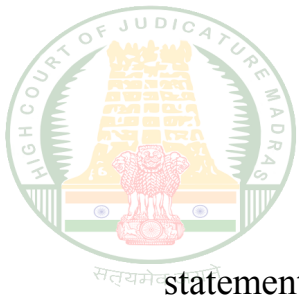
ORDER

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The petitioner seeks bail in connection with the case in C.C.No.361 of 2022 on the file of the Special Principal Court for EC and NDPS Act Cases, Madurai. in Crime No.413 of 2021 of respondent police.

2.The case of the prosecution is that on 08.07.2021 at about 13.15 hours, the Sub Inspector of Police, Keeraithurai Police Station had received a secret information, based on that the the police party took an inspection at about 14.30 hours near old check post of Sinthamani Road at Madurai Town, at the time the car bearing Reg.No.TN-59-CK-3492 and one unregistered two wheeler came there. On search, they found Accused Nos.1, 2 and 3 were in possession of 28 kilograms of Ganja. The respondent police arrested the accused persons and seized the said car and one two wheeler along with 28 kilogram of ganja. On confession, the case has been registered against the petitioner and Accused No.4.

3. The learned counsel for the petitioner submits that the petitioner was not present at the scene of the occurrence during the alleged occurrence and the properties were recovered only from the co-accused. Based on the confession

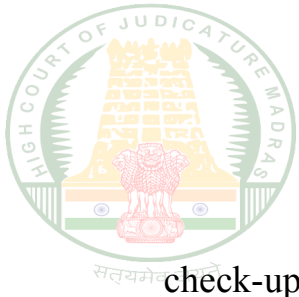


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statement of the co-accused persons, the petitioner has been implicated in this case. Originally, the final report was taken on file in C.C.No.17 of 2022 and later, the trial progressed and the petitioner's case was split up in C.C.No.361 of 2022, in which he surrendered himself on 23.02.2024 before the trial Court and is in judicial custody for the past 1 ½ years. He would further submit that as of now trial was concluded in main C.C.No.17 of 2022, in which the co-accused/Accused No.4 was acquitted from all charges whose case stands in similar footing based on confession, as such the petitioner herein arrayed as Accused No.5 stands in the same footing. He would further submit that the petitioner has moved the bail petition in CrI.M.P.No.1419 of 2025 before the Principal Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai and the same was dismissed on 23.06.2025. The petitioner is having two previous cases under 302 of IPC, and except this case under NDPS Act, no similar case is pending against him. Hence, he seeks bail

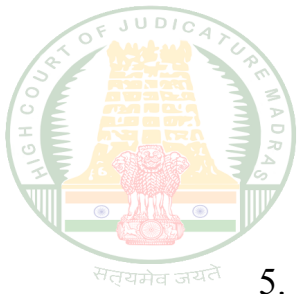
4. The learned Government Advocate (Criminal Side) would submit that there are totally five accused in this case, in which the petitioner is arrayed as Accused No.5. On secret information, the police parties conducting vehicle



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check-up, and found that Accused Nos.1 to 3 were in illegal possession of 28 kgs of ganja. Accused Nos.1 to 3 were arrested by the respondent police on the spot and the entire contraband was also recovered from them. Based on the confession statement of the arrested accused, the petitioner has been implicated in this case. He would further submit that Accused Nos.1, 4 and 5 purchased the contraband from the unknown persons in Rajamundhri, Andhra Pradesh and on returning from Andhra Pradesh, all the accused persons reached the native place of Accused No.1. The petitioner and Accused No.4 went their home. Accused Nos.1 to 3 took the ganja with them and were caught red-handed at the scene of occurrence. The petitioner has voluntarily surrendered and C.C.No.361 of 2022 is pending against him. He would further submit that Accused No.4/Rajkumar is acquitted from all the charges levelled against him and Accused Nos.1 to 3 were convicted and sentenced to undergo rigorous imprisonment for 10 years each and to pay a fine of Rs.1,00,000/- each by the learned Principal Special Judge for EC & NDPS Act Cases, Madurai on 28.05.2025. The petitioner is having two previous cases under 302 of IPC, and he strongly objected to grant bail to the petitioner.



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5. Heard and perused available records. It is seen from the records that the petitioner has been arrayed as accused in this case for joint possession of commercial quantity of 28 kg ganja. The petitioner's counsel submitted that the petitioner himself surrendered before the Court on 23.02.2024 and he is in custody for more than 1 ½ years. The learned Government Advocate (Crl.side) placed a reply that because of absconding of this petitioner, the main case was split up and the trial was conducted. A1 to A3 were convicted and A4 was acquitted, now the petitioner claims that he is on the same footing of A4 and so wants bail, which is not entertainable. Each and every charge against the accused has to be decided based on the evidences in each case and the reply of the respondent's has some force. The petitioner has two previous cases U/s.302 IPC. The petitioner has not denied it.

6. The Hon'ble Supreme Court held in a catena of orders relating to bail matters under the NDPS Act that

"no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i)the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is



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not guilty of such an offence and that he is not likely to commit any such offence while on bail. "

Moreover, while considering bail plea in case of NDPS Act cases, the Hon'ble Supreme Court held in catena of verdicts that as per provisions of Section 37 of the NDPS Act, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

The provision of Section 37 of the NDPS Act is as follows:-

“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 [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.



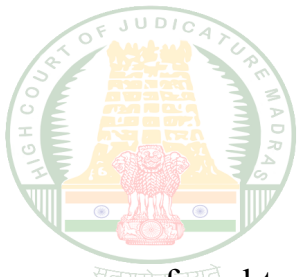
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(2) The limitations on granting of bail specified in clause (b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]”

7. The petitioner states that he has surrendered on 23.02.2024. The respondent police already filed a charge sheet and the same was taken on file as C.C.No.17 of 2022 by the Principal Special Court for EC and NDPS Act Cases, Madurai. The petitioner is also having 2 previous cases. The Hon'ble Supreme Court in the case of **Union of India Vs Md. Nawaz Khan**, reported in **AIR 2021 SC 447**, reiterated the decision taken in **Rattan Mallik case (2009 AIR SCW 3648)** and held that the absence of possession of the contraband on the person of the accused does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. That being so, the petitioner was in joint possession of commercial quantity of ganja. The other contentions would not be appropriate to discuss in depth at this stage because it is likely to influence the trial of the accused and it would be decided by the trial Court after adducing both sides evidence. But, from the perusal of the evidences collected during the investigation so far, *prima-facie*, the involvement of the accused in the present case cannot be brushed aside at this stage. No reason is



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found to falsely implicate the petitioner/accused. In Criminal Appeal No(s).**154 -157 of 2020** in the case of **State of Kerala Vs. Rajesh and Others**, the Hon'ble Supreme Court has held on 24.01.2020 that the expression "reasonable grounds" means something more than prima-facie grounds, and (ii) that the person is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. The non-obstante clause with which this Section starts should be given its due meaning, and clearly it is intended to restrict the powers to grant bail. To check the menace of dangerous drugs and psychotropic substances flooding the market, the Parliament has provided that the person accused of the offences under the Act should not be released on bail during the trial unless the mandatory conditions provided under Section 37 of the Act, 1985, are satisfied.

8. In Criminal **Appeal No(s).154 - 157 of 2020 (Supra)**, the Hon'ble Supreme Court has held that liberal approach in the matter of bail under the NDPS Act, is uncalled for. Therefore, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. The petitioner is involved in murder cases. A ratio decidendi of the judgment of the Hon'ble Apex Court in **Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018 (1)**



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CCSC 117 is that in serious crimes, the mere fact that the accused is in custody for more than one year may not be a relevant consideration to release the accused on bail. So, a long period of incarceration relating to the case of the NDPS Act is not a ground for bail. Therefore, there is no good ground to release the petitioner/accused on bail at this stage. All the contentions raised by the learned counsel for the petitioner pertain to the merits of the case and the same cannot be considered while considering the application for grant of bail. Therefore, considering the above facts and circumstances of the case and the gravity of the offence, this Court is not inclined to grant bail at this stage.

9. In the result, this Criminal Original Petition is dismissed.

25.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1. The Inspector of Police,
Keerathurai Police Station,
Madurai City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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