



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2025

CORAM

THE HONOURABLE MRS JUSTICE S.SRIMATHY

CRL OP(MD) NO. 11866 of 2025

S.Saravanan

Petitioner

Vs

The State of Tamilnadu
Rep by The Inspector of Police
NIB CID, Dindigul District.
Crime No.15/2023.

Respondent(s)

For Petitioner(s): M/s.M. Azhagan

For Respondent(s): Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

Prayer:To grant Bail for the Petitioner /Accused No.7 in Crime No.15/2023 in CC No.161/2024 in Principal Special Court for EC and NDPS Act Cases, Madurai on the file of the respondent Police.

ORDER

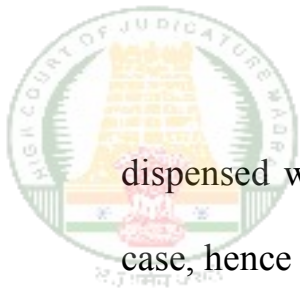
The petitioner / 7th accused was arrested and remanded to judicial custody on 18.06.2024 for the offences punishable under Sections 8(c) read with 20(b)(ii)(C) 25 and 29(1) of NDPS Act in C.C.No.161 of 2024 on the file of the Special Principal District and Sessions Court for EC and NDPS Act Cases, Madurai, seeks bail.



2. The case of the prosecution is that the petitioner was arrayed as accused based on the confession of the co-accused and there are CDR particulars and financial transactions which would prove the case of the prosecution. Further this is 5th bail application and the earlier bail applications were dismissed.

3. It is seen that the specific overt act alleged against the petitioner is that he was added as an accused based on a confession. However, the prosecution is also relying on the call detail records, which show that the petitioner had spoken 245 calls with the other accused persons and hence he was added as A-7. Subsequently, after adding A-4 and A-5, the petitioner was ranked as A-9. After the split-up trial, again the petitioner was ranked as A-7. The contention of the petitioner is that the A4's wife and the petitioner's wife are sisters and hence based on the call details the petitioner cannot be arrayed as accused. This Court is of the considered opinion that at this juncture the said plea cannot be considered and it has to be gone into elaborately at the time of trial.

4. The specific contention of the petitioner is that he has already participated in the proceedings and has cross-examined all the witnesses and the case was posted for judgment on 11.07.2025. At this stage of the trial, the prosecution has filed a petition to recall some witnesses and the same would amount to dragging of proceedings. When a specific question was raised as to why the recall petition had been filed, it was submitted that witnesses who were earlier



dispensed with, namely witnesses 10 to 24 and 27, are necessary for proving the case, hence petition was filed to recall the said witnesses.

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5. The learned Government Advocate (Criminal Side) appearing for the respondent police submitted that mere delay or dragging of proceedings cannot be a ground for granting of bail and relied on a judgment of the Hon'ble Supreme Court of India rendered in *Criminal Appeal No.--of 2025 @ Special Leave Petition (Crl.) No(s). 7768 of 2025 and 11097 of 2025, in the case of 'Union of India v. Vigin K. Varghese'*. In the said judgment it is held that misplace consideration such as delay in trial and health cannot override the statutory embargo under section 37 of NDPS Act. Therefore, this Court is of the considered opinion that delay may be factor after considering the statutory embargo. Hence in the present case the twin test stated under section 37 of NDPS Act ought to be considered and the said section is extracted 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 3[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.

(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.]

6. The section states to issue notice to the Public Prosecutor. This Court had issued notice to the Public Prosecutor, who in turn had filed objections and opposed to grant bail. Hence the said condition is satisfied.

7. The section further states if the Public Prosecutor opposes the bail, then the court ought to satisfy itself the twin test,

- (i) that there are reasonable grounds for believing that he is not guilty of such offence and
- (ii) that he is not likely to commit any offence while on bail

In the present case the charge against the petitioner is based on the confession statement but the 7th accused / petitioner's mobile has recorded 245 calls, hence the CDR calls would prove the offence. But the petitioner submitted that A4's wife and A7's wife are sisters, hence it cannot be stated that the calls are for the alleged crime. This Court is of the considered opinion that the said contention ought to be proved in the Trial Court, however there is a chance for acquittal if the calls are not supporting the case of the prosecution.



8. The Hon'ble Supreme Court in Karan Talwar vs. the State of Tamil Nadu in SLP (Crl.) No.10736 of 2022 has held that mere confession of the co-accused by itself cannot be the reason for his implicating in the crime and discharged the accused from the NDPS case. The relevant portion is extracted hereunder:

“10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of [Section 27](#), NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. **Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime.** This view has been fortified by the law laid down in Suresh Budharmal Kalani Vs. State of Maharashtra, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had (1998) 7 SCC 337; 1998 INSC 364 not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of [Section 25](#) of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in [Ram Singh v. Central Bureau of Narcotics](#)⁴. In [the said decision](#), this Court held that [Section 25](#) of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the appellant.”

9. In Surinder Kumar Khanna Vs. Intelligence Officer, the Directorate of Revenue Intelligence reported in 2018 8 SCC 271 it has been held as under:

“12. The law [laid down in Kashmira Singh](#) (supra) was approved by a



Constitution Bench of this Court in [Hari Charan Kurmi and Jogia Hajam v. State of Bihar](#)¹¹ wherein it was observed:

“As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in [Emperor v. Lalit Mohan Chuckerburty](#) a confession can only be used to “lend assurance to other evidence against a co-accused”. In re Periyaswami Moopan Reilly. J., observed that the provision of [Section 30](#) goes not further than this:

“where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in [Section 30](#) may be thrown into the scale as an additional reason for believing that evidence”.

In Bhuboni Sahu v. King the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that

“a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of “evidence” contained in [Section 3](#) of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. [Section 30](#), however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence”.

It would be noticed that as a result of the provisions contained in [Section 30](#), the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions



of [Section 30](#), the fact remains that it is not evidence as defined by [Section 3](#) of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in [Section 30](#). The same view has been expressed by this Court in [Kashmira Singh v. State of Madhya Pradesh](#) where the decision of the Privy Council in [Bhuboni Sahu](#) case has been cited with approval.”

13. The law so laid down has always been followed by this Court except in cases where there is a specific provision in law making such confession of a co-accused admissible against another accused.”

In the present case as stated supra the petitioner was not in possession of the contraband and it is based on the confession by the co-accused the petitioner was implicated. Hence, the first test of ‘chance of conviction’ is favoring the petitioner. Therefore, this Court is of the considered opinion that the petitioner deserves to be considered for bail.

10. As far as the 2nd sub clause is concerned it is seen there is no previous case against the petitioner. Hence the second test of “likely to commit the same offence” is not there. Therefore, petitioner is entitled to be considered for the bail. Further it is seen that the possession was with A-1 and A-3 and they were not granted bail but A2, A6, A7 and A8 were granted bail. Since most of the accused are already on bail, the petitioner is also entitled to bail based on long incarceration.



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11. Even though delay and dragging of proceedings may not be a ground for granting bail, in the present case, after the case was posted for judgment, then the prosecution had filed recall petition. There are several judgments wherein it is held if the accused filed recall petition it would amount to dragging of the trial. The same principle is applicable to the prosecution as well. It is made clear that the issue of dragging is considered based on the peculiar circumstances of the present case and this judgment cannot be cited for other cases for the issue of dragging on trial.

12. Taking into consideration of the facts and circumstances of the case and also considering the period of incarceration suffered by the petitioner and some of the accused are in bail, the recall petition filed by the prosecution may be dragging of trial, this court is inclined to grant bail to the petitioner, subject to the following conditions:

13. 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 Special Principal District and Sessions Court for EC and 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 may obtain a copy of



their Aadhar card or Bank pass Book to ensure their identity.

(b) the petitioner shall appear before the trial Court on all hearing dates without fail.

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness either during investigation or 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 BNS.

14-11-2025

KSA

Note : Issue a copy of order on 18.11.2025



To

- 1 The Special Principal District and Sessions Court for EC and NDPS Act Cases, Madurai.
2. The Inspector of Police,
NIB CID, Dindigul District.
3. The Superintendent of Police, District Prison, Dindigul.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.