



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 27/11/2025

PRESENT

The HONOURABLE MRS. JUSTICE S.SRIMATHY

CRL OP(MD). No.13860 of 2025

Arivalagan

... Petitioner/Accused

Vs

The State of Tamilnadu,
Rep by the Inspector of Police,
NBCID, Nagapattinam,
Nagapattinam District.
Crime No.4 of 2024

... Respondent/Complainant

For Petitioner : Mr. V. Ramamurthy,
Advocate.

For Respondent : Mr.E. Antony Sahaya Prabhakar,
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :-

For Bail in Crime No.04 of 2024 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner, who was arrested and remanded to judicial custody on



24.09.2024 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of the Narcotics Drugs and Psychotropic Substances Act, 1985 in Crime No.4 of 2024 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner was arrested based on the confessional statement of 3rd accused Maniraj recorded on 17.07.2024. In the confession the 3rd accused has stated that he had contacted the petitioner herein and had informed to him about the transportation of 500 kgs of Ganja but he did not respond. Based on the further confessional statement and the petitioner was arrested on 19.07.2024. In the confessional statement it is stated that the petitioner had assisted the other accused to file bail petition.

3. The primary contention of the learned counsel appearing for the petitioner is that the petitioner has been implicated in this case based on the confession of the co-accused. However, the learned Additional Public Prosecutor vehemently opposed this, stating that when the call records were examined, it was found that there were calls made among A4, A5 and A6. Further submitted that A1 to A4 are still in custody.

4. After hearing the rival submissions, this Court had given its consideration. It is seen in the final report, that the call details were not included. Further it is seen



that there is only one call that too a “Conference Call in WhatsApp”. The accused A1 to A4 are still in custody since they were in possession of the contraband.

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5. Now, 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 submitted his objections and



opposed to grant bail. Hence the said condition is satisfied.

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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

8. It is settled proposition that the confession cannot be a sole ground for convicting a person. 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*



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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



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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 arrayed as accused based on the confession the petitioner. Hence, the first test of ‘chance of conviction’ is favouring 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 that one previous case was registered against the petitioner that too it is under the Customs Act, wherein the petitioner had paid one crore as fine. But there is no similar case under NDPS 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.

11. Further it is the specific contention of the petitioner that A6 was absconding and in order to arrest him, the petitioner has been implicated.

12. Taking into consideration of the facts and circumstances of the case and also considering the period of incarceration suffered by the petitioner and for the reasons stated supra, 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 Court for EC and NDPS Act cases, Thanjavur, 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.



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[b] the petitioner shall appear before the trial Court on all hearing dates without fail and co-operate with the trial.

[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.

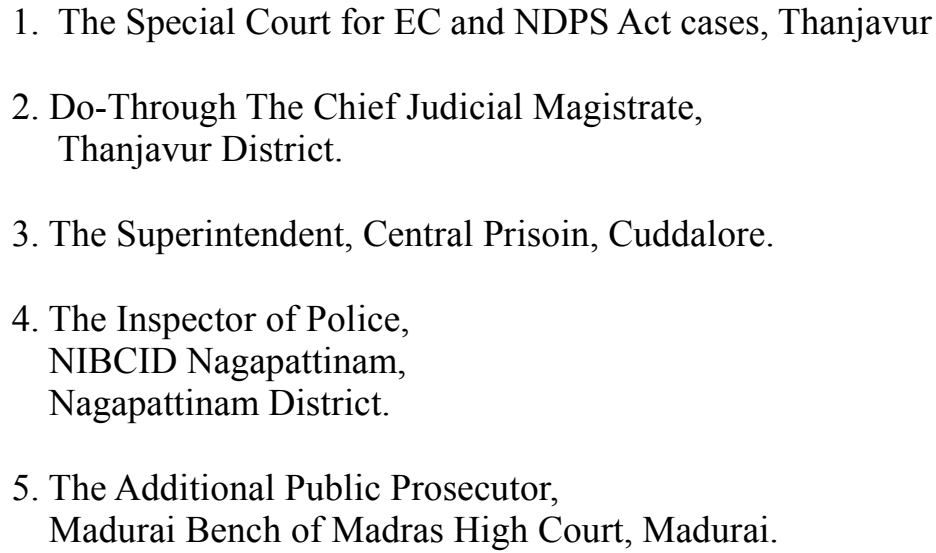
(e) The petitioner shall not intimidate the victim girl.

[f] 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 BNS.

(S S Y J)
27.11.2025

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S.SRIMATHY,J

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ORDER
IN
CRL OP(MD) No.13860 of 2025

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