



CRL.OP (MD) No.21035 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2025

COROM

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.OP (MD) No.21035 of 2024

M.Eswaran,
S/o.Muthaiya

... Petitioner / Accused No.6

Vs.

The State of Tamil Nadu
Rep. by The Inspector of Police,
NIB CID, Thoothukkudi.
(Crime No.14 of 2022)

... Respondent / Complainant

PRAYER :- The Criminal Original Petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to enlarge petitioner on bail in connection with the case in C.C.No.41 of 2023 pending on the file of the II Additional District Judge for NDPS Act cases, Madurai, in Crime No.14 of 2022 on the file of the respondent-police.

For Petitioner : Mr.NA.Manimaran,
Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner on 28.11.2024 under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, praying to



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grant bail.

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2. The petitioner/ Accused No.6 was arrested and remanded to judicial custody on 05.09.2022 for the alleged offences punishable under Sections 8(c) read with 20(b) (ii)(C), 25 and 29(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.14 of 2022 on the file of the respondent-police. After completion of investigation, the charge sheet has been filed before the learned II Additional District Judge for NDPS Act cases, Madurai and the same was taken on file in C.C.No.41 of 2023.

3. The case of the prosecution is that on 15.07.2022, at about 08:30 p.m., based on secret information, the respondent-police conducted a raid behind Bharath Petroleum near Pudhur Pandiyapuram Toll Plaza, where the accused persons had parked their vehicles bearing Registration Nos.TN-84-M-4213 (Eicher) and TN-19-F-5555 (red-coloured Volkswagen). Upon seeing the police party, they attempted to escape. However, the respondent-police apprehended A1 on the spot and interrogated him. Upon inquiry, it was found that the petitioner and the other accused were in joint possession of contraband (ganja) weighing 437 kg. Hence the case.

4. Mr.NA.Manimaran, the learned counsel for the petitioner, submits that the petitioner is an innocent person and that he has not committed any offence as alleged by the prosecution. He further submits that the petitioner has been arrayed as A6. He



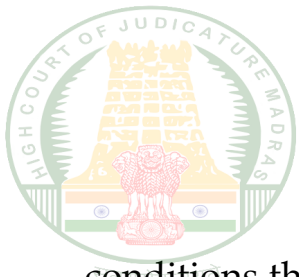
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further submits that only based on the confession statement of A5, the petitioner was implicated in this case. He further submits that the other accused persons were arrested and remanded to judicial custody on 16.07.2022, whereas the petitioner was arrested only on 05.09.2022. He further submits that the petitioner has been in incarceration for more than 2 years. Additionally, he submits that there is no imminent possibility of the trial being conducted and that the petitioner's continued detention, despite the lack of material evidence, violates his right to a speedy trial under Article 21 of the Constitution of India. In this regard, the learned counsel places reliance on the Judgment of the Hon'ble Supreme Court in Rabi Prakash -vs- State of Odisha reported in 2023 LiveLaw(SC) 533 (Special Leave to Appeal (Crl.) No.4169/2023), wherein it has been held thus:

“ The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

4.1. He further submits that A2 and A5 were already enlarged on bail by this Court in Crl.O.P.(MD) No.11341 of 2023 and Crl.O.P.(MD) No.2821 of 2024 respectively. He further submits that the petitioner is ready to abide any stringent



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conditions that may be imposed by this Court. He therefore prays to grant bail to the
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petitioner.

5. Per contra, Mr.R.Meenakshi Sundaram, the learned Additional Public Prosecutor appearing for the respondent-police, submits that this is the fourth bail application filed by the petitioner before this Court. The first bail application filed by the petitioner in Crl.O.P.(MD).No.6350 of 2023 was dismissed on 17.04.2023. The relevant portion is extracted hereunder:-

“ 5. In view of the above, all the accused persons were conscious and constructive possession of contraband weighing 437kgs and it is the commercial quantity. That apart, the petitioner also failed to make out prima facie case in order to satisfy the twin conditions as contemplated under Section 37 of the NDPS Act before this Court. Therefore, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.”

The second bail application filed by the petitioner in Crl.O.P.(MD).No.3264 of 2024 was dismissed on 01.03.2024. The relevant portion is extracted hereunder:-

“ 4.It appears that this is the second application for bail and the earlier bail application filed by the petitioner in Crl.OP(MD)No.6350 of 2023 was dismissed by this Court on 17.04.2023 on the ground that the



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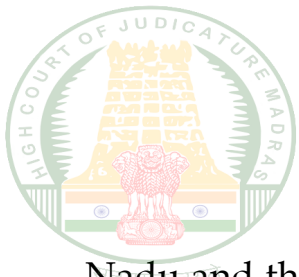
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petitioner has not satisfied the twin conditions as required under Section 37 of the NDPS Act. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

5.Considering the above facts and circumstances of the case and also considering the fact that there is no change in circumstances, since the dismissal of the earlier petition, this Court is not inclined to grant bail to the petitioner.

6.In the result, this Criminal Original Petition is dismissed.”

The third bail petition filed by the petitioner in CrI.O.P.(MD) No.4778 of 2024 was dismissed as withdrawn on 04.04.2024. He further submits that the contraband seized in this case by the respondent-police is of a commercial quantity. There is sufficient material available on record to show the involvement of the petitioner. He further submits that all accused persons, including the petitioner, conspired together and planned to illegally transport ganja to Sri Lanka. He further submits that the investigating agency has collected toll gate receipts and documents which, prima facie, establish the involvement of the petitioner in the crime and that, in the Trial Court, the case is posted on 24.04.2025 for trial. He further submits that at this stage, if the petitioner is released on bail, he will tamper with the witnesses, flee from Tamil

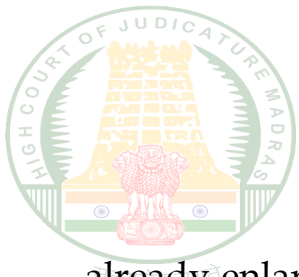


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Nadu and thereby delay the trial. In support of his argument, the learned Additional Public Prosecutor relies upon the judgment in Narcotics Control Bureau -vs- Mohit Aggarwal, reported in (2022) 18 SCC 374. Accordingly, he prays for dismissal of this petition.

6. Heard on both sides. This Court has perused all the materials available on record.

7. A perusal of the records reveals that after the completion of the investigation, the respondent-police filed a charge sheet against the petitioner and five other accused persons, which was taken on file by the learned II Additional District Judge for NDPS Act cases, Madurai, in C.C.No.41 of 2023. It is the fact that there are 57 prosecution witnesses who have yet to be examined. Hence, there is no possibility of concluding the trial within a short span of time. The petitioner has been in judicial custody since 05.09.2022 i.e. for the past two and a half years. In Rabi Prakash's case [cited supra], the Hon'ble Supreme Court has held that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and that in such a situation, conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Therefore, in light of the above decision and the period of incarceration, this Court is of the opinion that bail should be granted to the petitioner. Moreover, this Court has



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already enlarged A2 and A5 on bail in Crl.O.P. (MD) No. 11341 of 2023 and Crl.O.P. (MD) No. 2821 of 2024, respectively.

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8. Considering the above, and also taking into account the facts that the case is posted for trial before the Trial Court on 24.04.2025 and that there are no previous cases against the petitioner and with a view to give an opportunity to the petitioner to reform himself, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) along with two sureties each for a like sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the satisfaction of the learned II Additional District Judge for NDPS Act cases, Madurai.

(ii) The sureties shall affix their photographs and left thumb impression in the Application for Suretyship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned II Additional District Judge for NDPS Act cases, Madurai shall obtain a copy of any one of identity proofs to ensure their identity.

(iii) The petitioner shall appear and sign before the learned II Additional District Judge for NDPS Act cases, Madurai, on all working days at 10.00 a.m. and 05.00 p.m., until further orders.

(iv) The petitioner shall furnish his residential address and mobile number to the learned II Additional District Judge for NDPS Act cases, Madurai, and shall keep



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his mobile phone switched on and reachable.

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(v) The petitioner shall attend in accordance with the conditions of the bond to be executed under Chapter XXXV of BNS, 2023.

(vi) The petitioner shall not commit an offence similar to the offence of he is accused, or suspected, of the commission of which he is suspected.

(vii) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(viii) The petitioner shall also not directly or indirectly, cause any threat to the defacto complainant, victims, and witnesses.

(ix) The petitioner shall not leave the State of Tamil Nadu without prior permission of the Trial Court.

(x) On breach of any of the aforementioned conditions, the learned II Additional District Judge for NDPS Act cases, Madurai or Trial Court is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by him as laid down by the Hon'ble Supreme Court in P.K. Shaji vs. State of Kerala [(2005) 13 SCC 283].



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9. Accordingly, this Criminal Original Petition is allowed subject to the conditions stated supra.

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02/04/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE II ADDITIONAL DISTRICT JUDGE FOR NDPS ACT CASES,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL JAIL, TIRUNELVELI.

3 THE INSPECTOR OF POLICE,
NIB CID, THOOTHUKKUDI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.NA.MANIMARAN, Advocate (SR-3740[I] dated 01/04/2025)

ORDER
IN
CRL OP(MD) No.21035 of 2024
Date :01/04/2025

SA/SAR. /02.04.2025/9P/6C

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