

(MD) No.20775 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.01.2025
Delivered on	05.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) Nos.20775 and 21246 of 2024

- 1.Nanthakumar ... Petitioner/ Accused No.5
in Crl.O.P(MD) No.20775 of 2024
- 2.Manojkumar ... Petitioner/ Accused No.6
in Crl.O.P(MD) No.21246 of 2024

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Thoothukudi NIB CID Police Station,
Thoothukudi District.
Crime No.2 of 2024

... Respondent/
Complainant (in both petitions)

COMMON PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to enlarge the petitioners/ Accused No.5 and 6 on bail in Crime No.2 of 2024 pending on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, on the file of the respondent police.

For Petitioners : Mr.A.V.Arun, Advocate
for M/s.J.Jeya Aron Raja, Advocate
for Crl.O.P(MD) No.20775 of 2024



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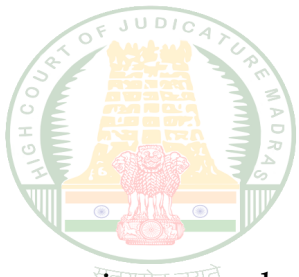
Mr.S.Muniyandi, Advocate
for M/s.J.Jeya Aron Raja, Advocate
for CrI.O.P(MD) No.21246 of 2024

For Respondent : Mr.S.Ravi
Additional Public Prosecutor
(in both petitions)

COMMON ORDER

The petitioners/accused Nos.5 and 6, who were arrested and remanded to judicial custody for the offences under Sections 8(C) r/w 20(b)(ii)(C), 25 and 29(1) of the 'Narcotic Drugs and Psychotropic Substances Act, 1985' (hereinafter referred to as 'NDPS Act' for brevity), on the file of the respondent, seek bail.

2. The case of the prosecution is that the Inspector of Police of Soorankudi Police Station received a tip-off that there is possession and transportation of ganja at Muthiapuram seashore area. The same was recorded in general diary and forwarded to the superior officer and after getting permission, the police team proceeded to the spot and found a innova car. The front door was open and they found many bags kept in the trunk of the car. Upon search, 529 kilograms of ganja was seized. Two accused persons, who were present were also arrested on the spot. There are totally



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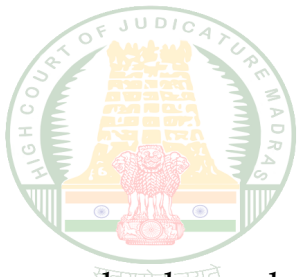
six accused persons in this case and the petitioners have been arrayed as A5 and A6.

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3. The learned counsel appearing on behalf of A5 submitted that as per the statement of LW-25, the car belongs to him and the said car was taken from him by A5 along with A3 and A4 and thereafter, the accused persons had changed the engine number and chassis number and the car was used for transportation of ganja to smuggle it to Sri Lanka. The learned counsel submitted that there was no recovery of contraband from the petitioner and this petitioner (A5) is made as an accused only based on the confession of A3 and A4 and the statement recorded from LW-25.

4. The learned counsel appearing on behalf of A6 submitted that this accused person is roped in on the ground that the ganja was seized from the property belonging to A6 where the car was parked. It was submitted that the confession of A1 and A2 merely states that the property belongs to this petitioner (A6). There is no recovery from this accused person and what is relied upon is only the confession statement and nothing else.

5. The learned Additional Public Prosecutor based on the counter-affidavit filed by the respondent submitted that insofar as A5 is concerned, LW-25

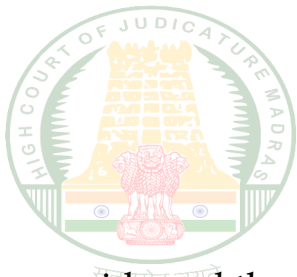


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clearly explains as to how the car went into the hands of A5 and from there how it want into the hands of A3 and A4. The learned Additional Public Prosecutor submitted that A5 was inside the jail for committing an IPC offence and at that point of time, he got acquainted with A2 and A5. Hence, he was aware of the fact that the car is going to be used for transporting ganja.

6. Insofar as A6 is concerned, it was submitted that the ownership of the property has been clearly spoken by the Sub-Registrar and that apart, A6 studied in Hindustan College, Coimbatore, along with A2 and at that point of time, they got acquaintance and A6 allowed his property to be used as a transit point to smuggle the contraband to Sri Lanka since this property is hardly 200 mtrs from the seashore. The learned Additional Public Prosecutor submitted that even though there are no previous cases against A6, he acted alon with the other accused persons and he had culpable mental state regarding the commission of the offence. Thus, the learned Additional Public Prosecutor submitted that both A5 and A6 are roped in by relying upon Section 35 of the NDPS Act which talks about the culpable mental state of the accused persons about the commission of the offence.

7. This Court has carefully considered the submissions made on either



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side and the materials available on record.

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8. There is no dispute with regard to the effect that there was no recovery from A5 and A6 in this case. The contraband was available in a innova car. This innova car stood in the name of LW-25. He states that A5 is his relative and he got in touch with LW-25 and requested for the car on the ground that a patient must be taken to Chennai for treatment. Thereafter, A5 came to the house of LW-25 and both of them went in the same car and near a petrol bunk, A3 and A4 were present and they said that they will be taking the car for taking the patient for treatment to Chennai. They dropped LW-25 and A5 at Melur and took away the car. Subsequently, this car was used for the commission of crime and it is stated that the engine and chassis numbers were tampered with.

9. The only question that arises is as to whether A5 was aware of the fact that the other accused persons are going to use the car for the commission of crime. For this, the only material available is the confession of A3 and A4 and the confession of A5. The prosecution is developing the case as if A5 got acquainted with A2 to A4 in the jail and it was planned in the jail and pursuant to the same, A5 managed to get the car from LW-25 which was used for the transportation of ganja.



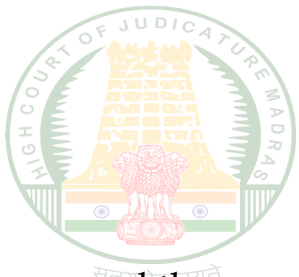
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10. In the considered view of this Court, since the material evidence against A5 hinges upon the confession of the co-accused, this petitioner has an arguable case before the trial Court. That apart, it is seen that A5 is suffering incarceration from 24.08.2024 and one previous case pertains to an IPC offence. Thus, this Court finds that twin conditions has been satisfied insofar as A5 is concerned.

11. The next issue is regarding the involvement of A6 in this case. The car was parked in a property which stood in the name of A6. On a careful reading of the confession of A1 and A2, it is seen that the property was actually under the control of A2 even though the property stood in the name of A6. The prosecution strongly relies upon the fact that A2 and A6 studied in the same college and they are known to each other and hence, A6 was aware about the fact that his property is going to be utilized for the commission of the offence.

12. On the materials placed before this Court, it is quite clear that the material evidence against A6 is the confession of the co-accused and the confession of A6. Hence, this Court finds that there is a strong arguable case for A6. This Court also finds that the investigation has been completed and the police report has been filed



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and the case is now pending in C.C.No.262 of 2024 before the Special Court, Madurai.

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Apart from that, this Court also takes into consideration the fact that A6 is suffering incarceration in this case from 30.08.2024 and there are no previous cases against A6. Thus, the twin conditions under Section 37 of the NDPS Act is satisfied.

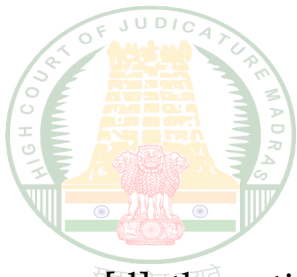
13. In the light of the above, this Court is inclined to grant bail to the petitioners subject to the following conditions:

14. Accordingly, the petitioners are ordered to be released on bail on his 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 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 petitioners shall report before the Trial Court during every date of hearing without fail;

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.



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[d] the petitioners shall not abscond either during investigation or trial.

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[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 petitioners 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 B.N.S.2023.

sd/-
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12/02/2025
Sub-Assistant Registrar (WRITS)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

To

- 1.The Judge, Principal Special Court for EC and NDPS Act Cases, Madurai,
- 2.The Inspector of Police,
Thoothukudi NIB CID Police Station,
Thoothukudi District.
- 3.The Superintendent,
Central Prison, Palayamkottai.



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

+2 CC to M/s.J.JEYA ARON RAJA, Advocate (SR-1391, 1392[I] dated 05/02/2025)

ORDER

IN

CrI.O.P.(MD) Nos.20775 and 21246 of 2024

Date :05/02/2025

RK (12/02/2025) 9P /7C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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