



CRL.O.P.(MD).No.21253 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 02.01.2025

Pronounced on : 06.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD).No.21253 of 2024

D.Naveenkumar

... Petitioner / Accused No.2

Vs.

The State of Tamil Nadu
represented by the Inspector of Police,
NIB CID,
Dindigul District.
(Crime No.15 of 2023)

... Respondent / Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Sakthivel, Advocate.

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS,2023.

PRAYER :-

For Bail in Crime No.15 of 2023 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner / Accused No.2, who was arrested and remanded to judicial custody on 25.11.2023 for the alleged offences under Sections 8(c) r/w. Sections



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20(b)(ii)(C), 25 and 29(1) of the NDPS Act, in Crime No.15 of 2023, on the file of the respondent police, seeks bail.

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2. The case of the prosecution is that on 24.11.2023 at about 6.00 hours, a secret information was received by the Inspector of Police and the same was informed to the Deputy Superintendent of Police and it was also recorded in the general diary. After obtaining prior permission, a team of police went to Dindigul-Batlagundu Road. A white car bearing registration no.TN07BX745 was intercepted and 3 persons were occupying the car. After ascertaining their names, they were informed about their rights under Section 50 of the NDPS Act to be checked in the presence of the Gazetted Officer or Judicial Magistrate but they waived their rights and permitted the police to search them. Upon search, 2 kgs of ganja was seized. A1 upon enquiry confessed that he went to Andhra Pradesh and purchased 100 kgs of ganja from A10 and it was transported through train and 98 kgs were handed over to A6, for which, he received a sum of Rs.5,48,500/-. A1 to A3 were arrested on the spot. Based on the confession of A1, A6 was nabbed around 13.30 hours and 21.600 kgs of ganja was seized. It is alleged that the remaining contraband was smuggled to Sri Lanka with the help of A7 to A10. There are totally 13 accused persons in this case and the petitioner has been arrayed as A2.

3. The learned senior counsel appearing on behalf of the petitioner submitted



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that no contraband was recovered from the petitioner and if at all the petitioner is to be roped in for conscious possession of ganja, it is only 2 kgs which was recovered from A1 and A2 was also travelling in the same car. The learned senior counsel further submitted that even insofar as the recovery made from A6, it was only based on the confession of A1 and therefore, the petitioner has no role to play insofar as the dealing between A1 and A6. The learned senior counsel submitted that the investigation has been completed and police report has been filed and the case is now pending in C.C. No.161 of 2024. The learned senior counsel also brought to the notice of this Court that the petitioner is suffering incarceration from 24.11.2023 onwards.

4. Per contra, the learned Additional Public Prosecutor submitted that the confession of A1 prima facie established that all the accused persons were acting in unison and each of them were aware of the entire transaction. It was therefore contended that Section 35 of the NDPS Act will come into play since there was a culpable mental state attributable to the petitioner also and hence, the recovery from A1 and A6 will equally apply against the petitioner also. The learned Additional Public Prosecutor submitted that out of the 13 accused persons, A12 and A13 were absconding and the case was split up and the other accused persons were undergoing trial in C.C.No.161 of 2024. Subsequently, A12 was arrested and he has



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also been brought in to face the trial. Hence, the case is split up only insofar as A13 is concerned. The learned Additional Public Prosecutor further submitted that 4 witnesses have been examined on the side of the prosecution, out of which, 2 witnesses have also been cross examined on the side of the accused persons. The learned Additional Public Prosecutor submitted that even though there is no previous case against the petitioner, since it involves a commercial quantity, the twin requirements under Section 37 of the NDPS Act has not been satisfied and therefore, the petitioner is not entitled to be enlarged on bail. Accordingly, the learned Additional Public Prosecutor sought for the dismissal of this petition.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The specific case of the prosecution is that the petitioner (A2) was travelling along with A1 and A3 in the car. Admittedly, 2 kgs of ganja was seized from A1. It is further alleged that a sum of Rs.5,48,500/- was also seized from A1. This amount is said to have been received by A1 from A6 for selling 98 kgs of ganja which was brought by A1 from Andhra Pradesh. This Court had the advantage of going through the confession of A1 which is alleged to have been recorded in the scene of occurrence between 08.10 a.m. and 09.00 a.m. On carefully going through the same it is seen that A1 specifically makes a confession that he went to Andhra Pradesh and



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purchased the contraband from A10. Thereafter, it was transported in the train and he handed over 98 kgs of ganja to A6 and he received the amount of Rs.5,48,500/- from A6. The remaining 2 kgs of ganja and cash was also seized only from A1. The same is evident from the information report dated 24.10.2023, search memo dated 24.11.2023 and seizure memo that was prepared at the time of seizure of 2 kgs of ganja and cash of a sum of Rs.5,48,500/- from A1.

7. The only issue that arises for consideration is as to whether all these acts attributed against A1 can be applied to the petitioner also in the light of Section 35 of the NDPS Act.

8. A1 in his confession nowhere talks about the involvement of the petitioner (A2) at any stage. He only speaks about his individual involvement with A10 and A6. The cash which was seized was also in possession of A1. In view of the same, the petitioner having travelled with A1 in the same car by itself cannot be construed as conscious possession of 21.600 kgs of ganja from A6. At the best, what can be attributed against A2 is only 2 kgs of ganja which was seized from the car in which A2 was also travelling. Therefore, insofar as the petitioner (A2) is concerned, commercial quantity may not be involved. If that is so, the rigor of Section 37 of the NDPS Act will not apply to the petitioner. It goes without saying that this is only a prima facie finding and it will not bind the Trial Court which is expected to deal



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with the case on its own merits and in accordance with law upon appreciation of evidence. This Court also takes into consideration the fact that there are no previous cases against the petitioner and the petitioner has suffered incarceration in this case from 24.11.2023 onwards.

9. In the light of the discussion, this Court is inclined to grant bail to the petitioner subject to the following conditions:

10. Accordingly, the petitioner is 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 learned Principal Special 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 report before the Trial Court during every date of hearing without fail.

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

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

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial



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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 of BNS, 2023.

sd/-
06/01/2025

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06/01/2025
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL

To

1.The Judge,
Principal Special Court for EC and NDPS Act Cases,
Madurai.

2.The Inspector of Police,
NIB CID,
Dindigul District.

3.The Officer Incharge,
District Prison, Dindigul.

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



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+1 CC to M/s.K.SAKTHIVEL, Advocate (SR-112[I] dated 06/01/2025)

ORDER
IN
CRL OP(MD) No.21253 of 2024
Date :06/01/2025

ED/ /SAR- (06/01/2025) 8P / 6C

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