BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17-11-2025

CORAM

THE HONOURABLE MRS JUSTICE S.SRIMATHY

CRL OP(MD) NO. 17179 of 2025

Vasanthi

Petitioner

Vs

Union of India
Rep. by The Intelligence Officer
Directorate of Revenue Intelligence
Tuticorin Regional Unit
F.No.DRI/CZU/TTN/VIII/48/03/INT-01/2025

Respondent

For Petitioner(s): Mr.N.Ananthapadmanabhan,
Senior Counsel for J. Senthil Kumaraiah

For Respondent(s):
Mr.O.R.Gokul Abimanyu
For Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for DRI Cases

Prayer: To enlarge the petitioner on bail in connection with the case in C.C. No. 310 of 2025 pending on the file of the learned Principal District EC and NDPS Court, Madurai.

ORDER

This Petition is filed to enlarge the petitioner on bail in connection with the case in C.C.No.310 of 2025 pending on the file of the learned Principal District EC and NDPS Court, Madurai for the alleged offences under sections 8(c) read with 20(b)(ii)(C), 21(c), 23(c), 27A, 25, 28 and 29 of NDPS Act.

2. The case of the prosecution is that the petitioner is arrayed as A-4. On 05.03.2025, the respondent prosecution found that A-1 to A-3 were in illegal possession of 29.954 kilograms of Hashish Oil and were involved in smuggling the prohibited narcotic drugs (Hashish Oil) from India to the Maldives. It is alleged that the petitioner financially assisted the said smuggling and was arrested and remanded on 20.08.2025. Hence, the complaint.

3. This Court issued notice to the respondent for their objections, and the respondent has filed a detailed counter. The learned Special Public Prosecutor for DRI Cases, appearing for the respondent, vehemently opposed for granting bail to the petitioner, since there are money transactions in the petitioner account. The respondent submitted that A-1 to A-3 was in possession of contraband and they were already arrested and are still in custody. The petitioner was also arrested on 20.08.2025, but no recovery was made from A-4. At the time of enquiry, the petitioner had admitted the money transaction. The offence alleged against the petitioner would fall under Section 29 of the NDPS Act, as she is said to have abetted the criminal conspiracy. The Learned Counsel further stated that in the counter the prosecution had clearly established that two transactions to the tune of Rs.60,000/- and Rs.94,660/- were made in connection with the present crime. The petitioner facilitated the transfer of this amount from her account. Therefore, she is covered under Section 35 of the NDPS Act, which contains the presumption

clause.

4. The learned Senior Counsel appearing for the petitioner submitted that the explanation under Section 35 would come to the aid of the petitioner, as the culpable mental state includes intention, motive, knowledge of the act and belief or reason to believe. None of the above ingredients are present in the present case. The petitioner was only involved in the money transaction, aspiring to earn Rs.1000/- for transferring one lakh rupees through the petitioner account. Hence there is no direct involvement by the petitioner in the narcotics transaction.

5. In order to consider the aforesaid contention, the said provision is extracted hereunder:

> *35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
>
> *Explanation.—In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.*
>
> *(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.*

6. The aforesaid section states that there is presumption of culpable mental state and it is for the accused to disprove there is no culpable mental state. However, the same provision states in explanation that the "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. In the present case the prosecution states that there are several money transactions in the petitioner's account. Only two transactions i.e. Rs.60,000/- and Rs.94,660/- are for the present crime. It is the case of the petitioner that in order to earn Rs.1000/- for each Rs.1,00,000/- the petitioner had allowed several transactions. When the petitioner is involved in several money transaction and only two is involved in the present crime, it cannot be stated that the petitioner is having "culpable mental state" as stated in the "explanation". Therefore, this Court is of the considered opinion that the contention of the prosecution of presumption clause is unacceptable.

7. However, under section 37 of NDPS Act it is stated that no person is entitled to bail provided the twin test prescribed under the section ought to be satisfied. 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.]

8. 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.

9. 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 money transaction through the petitioner's account. But it is seen there are several money transactions in the petitioner's account. Only two transactions i.e. Rs.60,000/- and Rs.94,660/- are for the present crime. And the other money transactions are made by the petitioner in order in order to earn Rs.1000/- for each Rs.1,00,000/-. In such circumstances, it cannot be stated that the petitioner is involved in the crime. Therefore, there are reasonable grounds to believe that the petitioner may not be involved in the crime, hence, this Court is of the considered opinion that the petitioner deserves to be considered for bail.

10. Further it is seen that 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.

11. For the reasons stated supra, this Court is of the considered opinion that the petitioner is entitled to bail.

12. 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 Principal District EC and NDPS Court, 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 is directed to close the bank account if it is not seized by the prosecution.

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

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

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

[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.

17-11-2025

KSA

<u>Note : Issue a copy of order on 19.11.2025</u>

To

1. The Principal District EC and NDPS Court, Madurai.

2. The Union of India,
   Rep. by The Intelligence Officer
   Directorate of Revenue Intelligence
   Tuticorin Regional Unit.

3. The Additional Public Prosecutor,
   Additional Public Prosecutor,
   Madurai.