



CRL OP(MD). No.22372 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 21/01/2025

PRESENT

The HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL OP(MD). No.22372 of 2024

Rasu @ Selvaraj,
S/o.Selladurai,
No.3/24 North Street,
A Maruthappapuram,
Nettur,
Tirunelveli 627854..

... Petitioner/ Accused No.6

Vs

The State of Tamil Nadu,
Rep by the Inspector of Police,
Tenkasi Police Station,
Tenkasi District.
In Crime No.582/2023..

... Respondent/Complainant

For Petitioner : Mr.Siva Suria Narayanan.S,
Advocate.

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



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PETITION FOR BAIL Under Sec.483 of B.N.S.S. U/s 439 of Cr.P.C.

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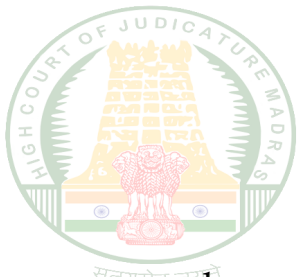
PRAYER :-

For Bail in Crime No.582/2023 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner / A6, who was arrested and remanded to judicial custody on 21.08.2024 and was facing trial for the offences under Sections 8(c) r/w 20(b)(ii) (C) of NDPS Act in C.C.No.170 of 2024 on the file of the learned Principal Special Judge for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai in connection with Crime No.582 of 2023 on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 29.12.2023, the Sub Inspector of Police, Tenkasi Police Station, received a secret information to the effect that a white colour Bolero car was carrying huge quantity of ganja and it is being transported. Based on this information, it was recorded in the general diary and the superior officer was informed and the Police team went to the spot. Near Ayyapuram Junction at about 05.30 hours, the car was identified and 22 kgs of ganja was seized from the vehicle. Accused Nos.1 to 5 travelled in that vehicle and they were arrested and ganja was seized. There are totally 11 accused persons in this case and the petitioner has been



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arrayed as Accused No.6. The main allegation that has been put against the petitioner is that he along with Accused Nos.8, 9, 10 and 11 had abated the commission of crime and hence, the petitioner has been charged for the offence under Section 8 (c) r/w 20(b)(i)(c) and Section 29(1) of the NDPS Act.

3. The respondent has filed a counter affidavit and has taken a stand that this petitioner was arrayed as an accused based on the confession statement recorded from the other accused persons. That apart, the petitioner is said to have been in regular contact with Accused No.1 and had called Accused No.1 nearly 135 times. It is further mentioned in the counter that the bail application filed by Accused Nos.7, 9 and 10 was already dismissed by this Court and time frame was fixed for the completion of the case and the petitioner is also similarly placed and therefore, the petitioner is not entitled for grant of bail. A stand has been taken to the effect that the twin conditions under Section 37 of the NDPS Act has not been satisfied.

4. The learned Additional Public Prosecutor appearing for the respondent Police submitted that there are eighteen previous cases against the petitioner, out of which, one case is for offence under the NDPS Act. He further submitted that there are sufficient materials available in terms of the confession of the co-accused and the

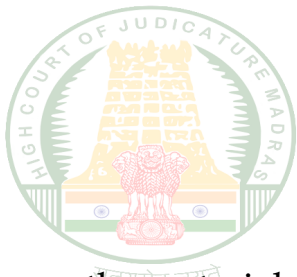


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CDR details collected by the Investigation Officer would show that the petitioner was in regular contact with Accused No.1 and the petitioner along with other accused persons have abated the commission of crime. He further submitted that due to oversight, the CDR details and the statements recorded from the witnesses was not filed along with the Police report and hence, steps are being taken to file these materials before the trial Court. Accordingly, the learned Additional Public Prosecutor sought for dismissal of the bail application.

5. The learned counsel appearing for the petitioner submitted that the only charge against the petitioner is that the petitioner along with other accused persons has abated the commission of crime. He further submitted that the Police report along with the materials that were filed by the respondent Police does not have even an iota of evidence against the petitioner in order to substantiate the charge of abatement. He further submitted that the petitioner has been falsely implicated in this case and that the petitioner has suffered incarceration in this case from 21.08.2024. It was further brought to the notice of this Court that the petitioner has filed a discharge petition before the trial Court and the same is pending.

6. This Court has carefully considered the submissions made on either side and



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the materials available on record.

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7. The main charge against the petitioner is that he has abated the commission of crime and this petitioner along with Accused Nos.8, 9, 10 and 11 are said to have joined with the other accused persons in the commission of crime and had helped Accused Nos.1 to 5 in procuring the ganja.

8. In the counter affidavit, it has been stated that the confession statement recorded from the accused persons implicated this petitioner. That apart, this petitioner was in continuous contact with the prime accused / A1 and he contacted over phone for nearly 135 times.

9. On carefully reading the final report and also 161 statements recorded from the witnesses and the documents that have been filed along with the final report, this Court finds that there is not even an iota of material to show that this petitioner was in continuous contact with the prime accused. If the petitioner has contacted Accused No.1 regularly and CDR particulars are available, it is not known as to why the Investigation Officer has not recorded the statement of the witnesses and has not filed the CDR particulars along with the final report. Only if those materials are available,



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the very charge against the petitioner can be substantiated. In the absence of the same, what is available is only ipse dixit of the Investigation Officer and nothing more.

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10. The learned Additional Public Prosecutor appearing for the respondent Police submitted that there is lapse on the part of the Investigation Officer in not filing the 161 statement that was recorded from the Nodal Officer and in not filing the CDR Particulars. In the considered view of this Court, this is a serious lapse on the part of the Investigation Officer. If the Investigation Officer had really recorded the statement of the Nodal officers and collected the CDR Particulars, nothing prevented the Investigation Officer from filing these materials along with the police report. If those materials are not filed along with the police report, the very charge against the petitioner cannot be established. Therefore, it defies reasoning as to why these materials were not filed along with the police report. Either the Investigation Officer does not know how to investigate a case of this nature and file a proper police report or the Investigation Officer has intentionally not filed the 161 statement recorded from the witnesses and in which case, serious action has to be initiated against the Investigating Officer.



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11. As on today, this Court finds that the petitioner has a strong and arguable case and hence, this Court finds that the twin conditions under Section 37 of the NDPS Act has been satisfied.

12. The learned Additional Public Prosecutor submitted that the case of the petitioner is in line with the case of Accused Nos.7, 9 and 10 whose bail applications were dismissed by this Court. It is quite unfortunate that the materials that were placed before this Court in this bail application was not available when the bail application of the other accused persons were considered. Therefore, without considering these materials, if the bail application of the other accused persons similarly placed has been dismissed, that cannot be cited as a precedent in this case.

13. The observations that have been made in this bail order will not have any bearing while dealing with the case on merits. If really the statements have been recorded from the Nodal Officers and CDR particulars have also been collected, nothing will prevent the prosecution from filing these materials before the Court in order to substantiate the case. This order will not come in the way of the prosecution to place relevant materials before the Court considering the fact that the offence involved is under the NDPS Act.



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14. In the light of the discussion and considering the fact that the petitioner has suffered incarceration from 21.08.2024 and taking note of the previous cases against the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions.

15. Accordingly, the criminal original petition is ordered and 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 learned Principal Special Judge for Trial of Narcotic Drugs and Psychotropic 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 learned I Additional Special Court for NDPS Act Cases, Madurai daily at 10.30 a.m. apart from the hearing dates until further orders.

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



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[d] the petitioner 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 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/-
21/01/2025

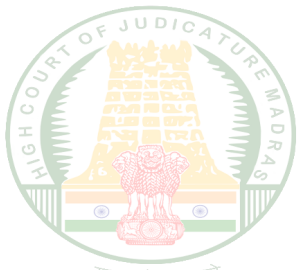
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21/01/2025
Sub-Assistant Registrar (CS-I/II/III/IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TSG

TO

- 1.The Principal Special Judge for Trial
of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai.
- 2.The I Additional Special Judge for
NDPS Act Cases, Madurai.
- 3.The Superintendent, Central Prison, Madurai.
- 4.The Inspector of Police,
Tenkasi Police Station, Tenkasi District.



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

+1 CC to M/s.S.SIVA SURIA NARAYANAN, Advocate (SR-561[I] dated
21/01/2025)

ORDER
IN
CRL OP(MD) No.22372 of 2024
Date :21/01/2025

RK(21/01/2025) 10P / 7C
Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023