



CRL OP(MD). No.22928 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 27.01.2025

PRESENT

The Hon`ble Mr.Justice N.ANAND VENKATESH

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Naina Mohammed

... Petitioner/Sole Accused

Vs

The Inspector of Police,
Manikandam Police Station,
Trichy District.
(Crime No.172 of 2023)

... Respondent / Complainant

For Petitioner : Dr.R.Alagumani, Advocate.

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

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

PRAYER :-

For Bail in C.C.No.88 of 2024 on the file of the learned Principal Special Court for EC and NDPS Act Cases, Pudukkottai in Crime No.172 of 2023 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner / Sole Accused, who was arrested and remanded to judicial custody on 14.10.2023 for the alleged offences under Sections 8(c) r/w. 20(b)(ii)(B) of NDPS Act, 1985 altered into 8(c) r/w. 20(b)(ii)(C) and 25 of NDPS Act, 1985, in



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C.C.No.88 of 2024 on the file of the learned Principal Special Court for EC and NDPS Act Cases, Pudukkottai in Crime No.172 of 2023 on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 14.10.2023 at about 11.00 hrs, a tip-off was received by the Inspector of Police to the effect that the ganja is being carried by the accused person. After recording the same in the General Diary and informing the superior officer, a police team went to the spot and identified the accused person with a two wheeler. He was informed about his right to be searched before any Gazetted Officer or Judicial Magistrate under Section 50 of the NDPS Act. The petitioner is said to have waived his right and consented for a search. Upon search, 28.500 kgs of ganja was seized from the petitioner. That apart, a sum of Rs.5,750/- was also seized by way of cash. The two wheeler was also seized from the spot.

3. The learned counsel for the petitioner submitted that a false case has been foisted against the petitioner. The learned counsel submitted that the FIR was registered on 14.10.2023 for offence under Sections 20(b)(ii)(B) of the NDPS Act which means that the FIR is not for a commercial quantity. That apart, when the petitioner was produced before the Magistrate on 14.10.2023, the contraband that is said to have been seized was not produced before the Court. According to the materials available along with the police report, the earliest point of time, when the contraband was



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made available was only on 05.12.2023 before the Magistrate and on 07.12.2023 before the Special Court. The learned counsel further submitted that the offence itself was altered by means of an alteration report dated 18.12.2023 for offence under Section 20 (b)(ii)(C) of the NDPS Act. The learned counsel therefore submitted that the so-called seizure of 28.500 kgs of ganja is highly doubtful.

4. The learned counsel for the petitioner further submitted that the stand taken in the FIR as if the petitioner waived his right under Section 50 is falsified by the fact that the petitioner has refused to sign in the search memo and therefore, such waiver was not given by the petitioner.

5. The next ground that was urged by the learned counsel for the petitioner is that the request was made for taking 1 kg of ganja in two packets (S1 and S2) for sending it for sample and what was actually received by the FSL was only 492.8 grams. Therefore, there is discrepancy even insofar as the contraband that was sent to the FSL for chemical analysis report.

6. Per contra, the learned Additional Public Prosecutor relying upon the counter affidavit submitted that the trial has already commenced in this case and PW1 and PW2, who are the Inspector of Police and Sub-Inspector of Police, have already been examined in chief and cross examined. The learned Additional Public Prosecutor further submitted that even as per the FIR, it has been clearly mentioned that 28.500



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kgs was seized on the spot from the petitioner. All those grounds which have been raised by the petitioner can be raised as defence before the Trial court and there is no scope for dealing with the same in the bail application. The learned Additional Public Prosecutor submitted that there are 41 previous cases against the petitioner, out of which, 14 cases are under the NDPS Act. Hence, the learned Additional Public Prosecutor vehemently opposed the grant of bail to the petitioner and sought for the dismissal of the bail petition.

7. This Court has carefully considered the submissions made on either side and perused the materials placed on record.

8. The specific case of the prosecution is that the petitioner was found in possession of 28.500 kgs of ganja carried in a two wheeler when he was arrested. The materials that have been placed before this Court shows that the petitioner was produced before the learned Magistrate on 14.10.2023 along with the relevant Form 91. On carefully going through this Form 91, it is seen that the property was not produced before the Magistrate on 14.10.2023. In the same Form 91, there is yet another seal that is dated 05.12.2023 and that is the seal of the learned Judicial Magistrate No.IV, Tiruchirappalli. The other seal is dated 07.12.2023 which is the seal of the Special Court.

9. It is very curious to note that an alteration report came to be filed before the



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Sub Court on 18.12.2023 whereby, the offence was altered under Section 20(B)(ii)(C) of the Act. In the first place, if 28.500 kgs of ganja was seized on the spot, there was no reason as to why the FIR was registered for offence under Section 20(b)(ii)(B) of the Act. Apart from that, there is also no reason as to why the contraband was not produced before the Magistrate when the petitioner was arrested and produced before the Magistrate for remand. The next issue is that there is absolutely no clarity as to why there was such a substantial delay in producing the contraband before the Court. This confusion gets confounded due to the fact that the alteration report was filed after more than two months. Hence, primarily, the quantity of contraband that was seized from the petitioner has become highly contentious.

10. It is true that the trial has already commenced in this case and PW1 and PW2 have been examined in chief and cross examined. Once again it is very curious to note that the important points that were argued before this Court in this bail application was not have put to PW1 and PW2 when they were cross examined. Hence, this Court finds that both the prosecution as well as the counsel appearing for the accused are not handling with this case with sufficient care and there is slipshod attitude on the part of both sides which ultimately results in the valuable right of the accused person getting badly affected. It is made clear that the observation made by this Court are only prima facie finding and it will not have any bearing for the Trial



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Court to deal with the issue on its own merits and in accordance with law.

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11. Even insofar as the samples that were sent to the FSL, the requisition made to send to FSL is 1 kg each (S1 and S2). However, what was received by the FSL was only 492.8 grams. This is yet another ground which has been put forth before this Court.

12. The petitioner has strong and arguable grounds before the Trial Court and hence, the previous cases against the petitioner by itself will not be a ground to deny bail to the petitioner. Considering the fact that the petitioner has suffered incarceration in this case from 14.10.2023 and that apart, there is no material to show that in any of the pending cases, the petitioner was convicted for offence under the NDPS Act, this Court finds that the incarceration need not continue.

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

14. 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 Special Court of EC Act and NDPS Act Cases, Pudukkottai, 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



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Book to ensure their identity.

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[b] the petitioner shall report before the learned Special Court of EC Act and NDPS Act Cases, Pudukkottai, 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.

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

[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/-
27/01/2025

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27/01/2025

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

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1 THE JUDGE, SPECIAL COURT OF EC ACT AND NDPS ACT CASES,
PUDUKKOTTAI.

2 THE INSPECTOR OF POLICE, MANIKANDAM POLICE STATION,
TRICHY.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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

+1 CC to M/s.DR.R.ALAGUMANI, Advocate (SR-903[I] dated 27/01/2025)

ORDER

IN

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Date :27/01/2025

RS/IT/SAR-(27.01.2025) 8P 6C

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