



WEB COPY

CRL OP No. 1693 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2026

CORAM

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CRL OP No. 1693 of 2026

Jafar

S/o.Hasainar, Valayamkunnil,
Mottakunnil, Union Christian College (PO),
Aluva-2, Ernakulamf (Dt),
Kerala - 683102.

..Petitioner(s)

Vs

State Rep. By
Inspector of Police,
NIB CID,
Salem District.
Crime No.18 of 2024

..Respondent(s)

Prayer: To enlarge the petitioner on bail in Crime NO.18 of 2024 on the file of the respondent police and pass such orders as this Honble Court.

For Petitioner(s):

K.Edin Ashwald

For Respondent(s):

Mr.A.Gopinath

Government Advocate(Crl. Side)



ORDER

The petitioner, who was arrested and remanded to judicial custody on 17.02.2024, for the alleged offence punishable under Sections 8(c) r/w. 20(b)(ii) (c), 25 and 29(1) of the NDPS Act, 1985 in Crime No.18 of 2024 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner is ranked as A2 in this case. On prior information received by the respondent on 16.02.2024, they intercepted two vehicles, one is Hyundai Verna car bearing Registration No.KL 07 BV 2029, and the second one is Maruti Swift bearing registration No.KL 41 P 7447. At the time of interception, the driver of the Swift car ran away from there; however, the occupants of both vehicles have been surrounded, and after complying with the mandatory provisions, 55 kgs of ganja was recovered. Hence, all the 4 persons were arrested and they are in custody.

3. The learned counsel appearing for the petitioner submitted that there is no recovery effected from the petitioner herein and the recovery has been effected only from accused number one in this case, and the petitioner is in incarceration for a longer period, nearly two years, and there is no progress in the trial. He further relied on the following judgement of the Apex Court to support his ground:



1. Manish Sisodia Vs. Directorate of Enforcement reported in 2024 INSC 595.

2. Union of India Vs. K.A. Najeeb reported in (2021) 3 SCC 713:2021 SCC Online SC 50.

that continuous incarceration is a valid ground for granting bail and after dispensing with Section 37 of the NDPS Act. Hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent police reiterated the prosecution case and submitted that though there are some judgements of the Apex Court stating that continuous incarceration without trial is a valid ground for grant of bail even under the NDPS Act, the subsequent judgement of the Apex Court further clarifies the issue and submits that continuous incarceration could be taken into consideration for bail, however, the same could not dispense with Section 37 of the NDPS Act, and he relied on the judgement of Supreme Court in Union of India Vs. Vigin K. Varghese reported in 2025 LiveLaw (SC) 1101. Hence, he opposed the grant of bail to the petitioner.

5. I have considered the submissions made on both sides and perused the records. In this case, admittedly, the petitioner herein was traveling in the car in



which 55 cases of ganja were transported. It is settled law that the person who is occupying the car and traveling with a person is also in a conscious possession of the contraband, and it is his burden to prove that he was not having knowledge about the contraband. The material produced before me shows that the petitioner herein was traveling and he was aware about the contraband, and further, there is no explanation offered by him. No grounds are made out to show that he was not aware about the contraband transported in the car.

6. Apart from that, with regard to the other point that the petitioner is in continuous incarceration without trial, this court also called for the report from the trial court, and it revealed that some of the accused are still absconding, hence the trial is not concluded.

7. However, in the recent judgement of the Apex Court in Union of India Vs. Vigin K. Varghese cited supra, it is held that continuous incarceration could not be the reason for dispensing Section 37 of the NDPS Act, and hence, this court is of the view that unless the petitioner satisfies the twin conditions of Section 37 of the NDPS Act, he is not entitled to bail.

8. This Court earlier called for report from the Trial Court and the report reveals that one of the co-accused is still absconding, and considering the above situation for protecting the rights of the petitioner for a speedy trial, the trial



court is directed to consider the possibility of split up case against the absconding accused and proceed with the trial and dispose of the same within a period of four months from the date of receipt of a copy of this order.

06-02-2026

MPA

To

1.State Rep. By

Inspector of Police,

NIB CID,

Salem District.

Crime No.18 of 2024

2.The Public Prosecutor,
High Court, Madras.



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K.RAJASEKAR, J.

MPA

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