IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26-02-2026**

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.1967 of 2026

Stephen @ Moonu Thalai Stephen ... Petitioner/ Accused

Vs

The State rep. by,
The Inspector of Police,
N-4 Fishing Harbour Police Station,
Chennai District.
(Crime No.105 of 2022) ... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in C.C.No.42 of 2023 pending trial on the file of the Principal Special Court Under EC & NDPS Act, Chennai.

For Petitioner(s) : Mr. A. Saranraj

For Respondent(s) : Mr. A. Gopinath
Government Advocate (Crl. Side)

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ORDER

The petitioner, who was arrested and remanded to judicial custody on 11.06.2022 in C.C.No.42 of 2023 pending trial on the file of the Principal Special Court Under EC & NDPS Act, Chennai, for the offences under Sections 8(c), 22(c) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985, seeks bail. This is the sixth successive bail application of the petitioner and the earlier bail application was dismissed by this Court, vide order dated 28.10.2025 in Crl.O.P.No.26098 of 2025 for the following reasons:

> *"6. Admittedly, the petitioner was arrested in the year 2022. The fact remains that the petitioner was not engaged a counsel for a considerable period. Though counsel had earlier been engaged, none appeared on behalf of the petitioner. Thereafter, only recently, on 04.07.2025, counsel was engaged on behalf of the petitioner herein. It is seen that after continuously delaying the trial process, the petitioner and other accused have now engaged counsel, but they themselves have caused the delay in the proceedings. Since it is settled law that no one can be permitted to take advantage of his own fault, and as the delay is not attributable to the prosecution, I am not inclined to reconsider the bail petition."*

2. The case of the prosecution is that on 11.06.2022 at about 13:10 hours, based on a specific information, the respondent team went to the place of occurrence (Nagooran Thottam) and found that the petitioner and other two accused were standing with black color bag and on seeing the police, they tried to escape from that place; that the respondent had caught hold of the petitioner

herein (A1) and other accused (A2) namely Muthu @ Desamuthu and yet another accused (A3) escaped from the spot; that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and from the black colour bag handed over by the petitioner, 21 nos. of MDMA-ecstasy tablets, weighing around 10.15 grams was found and the same were seized under Mahazar; that based on the confession of the petitioner herein and A2, the other accused, who ran away from the spot namely Mathi @ Mathiyazhagan was also arrested. Hence, this case.

3. The learned counsel appearing for the petitioner submitted that, the alleged contraband seized from the petitioner is on 11.06.2022 but the same was produced by the respondent before the Learned Principal Special Court under EC & NDPS Act, Chennai only on 05.07.2022, vide A.No.320 of 2023, till then the respondent had kept the contraband in their custody without any approval from the Trial Court concerned, hence the mandatory procedure prescribed under Subsections (2), (3) and (4) of Section 52A of the NDPS Act was not properly followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate; that though the seizure mahazar and confession of the petitioner was prepared and recorded at the scene of occurrence by the respondent, the crime number was only mentioned in the seizure mahazar, whereas in the confession statement, the

crime number is mentioned as "Not Known", hence it is clear that the seizure mahazar was prepared at the police station and not at the place of occurrence; that the petitioner is in judicial custody since 11.06.2022 and though this Court, vide order dated 07.11.2024 in Crl.O.P.No.20873 of 2024 had directed the Trial Court to complete the trial within a period of six months, the trial is not yet concluded; that the co-accused in this case were already granted bail by this Court, vide orders dated 29.03.2023 and 24.01.2024 in Crl.O.P.Nos.5058 of 2023 and 287 of 2024, respectively; and that the petitioner is ready to abide by any condition that may be imposed by this Court and sought for bail to the petitioner.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent while opposing the bail to the petitioner reiterated the prosecution case and submitted that there are totally three accused involved in this case and the petitioner is arrayed as A1; that 10.15 grams of MDMA-ecstasy tablets – 21 nos. was seized from the petitioner herein, which falls under commercial quantity, hence the petitioner has to satisfy the conditions contemplated under Section 37 of the NDPS Act; that after complying all the mandatory provisions, the seizure was effected, the statement of the petitioner and witnesses were recorded, the seizure mahazar was prepared at the place of occurrence and the petitioner was produced before the learned Magistrate along

with the seized contraband and remanded to judicial custody, hence there is no violation of mandatory procedures prescribed under Subsections (2), (3) and (4) of Section 52A of the NDPS Act; and that the petitioner herein has previous cases under NDPS Act. He also relied on the judgment of this Court in ***Harikumar and Anr. vs. State [2025 Latest Case Law 250 Mad]***.

5. I have considered the submissions made on both sides and perused the materials available on record.

6. The major contention raised by the petitioner in this petition is that, some of the documents, which were executed prior to registration of FIR was containing the Crime Number, hence the case itself is falsely registered against the petitioner. This is the successive sixth bail application of the petitioner herein and this Court had already dismissed the earlier bail applications of the petitioner five times on merits, the petitioner had almost raised all the grounds in his previous petitions and in this petition, the petitioner had raised that some of the documents came into existence prior to registration of FIR containing the Crime Number of this Case.

7. This Court in ***Harikumar and Anr. vs. State [2025 Latest Case Law 250 Mad]*** had an occasion to consider this point and it has observed as

follows:

12. Mentioning of the crime number in recovery mahazar, arrest memo and label of the sample:

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12.2. The learned Additional Public Prosecutor would submit that the most of the recovery was made on the basis of the receipt of the secret information. Therefore, the searching officer had knowledge about the last crime number of the particular police station. Further, on the label it is necessary to mention the crime number so as to make the proper identification of the said materials that they belonged to the said case. Therefore, the criminal rules of practice demands the mentioning of the crime number on the label of the material object. Hence, mentioning of the crime number can not be treated as a circumstance to treat the recovery with suspicions eye. He also relied the judgment of the same learned judge in the different cases with finding that mentioning of the crime number need not necessarily affect the testimony of the recovery witness.

12.3. This court considered the said submission of the both learned counsel for the appellants and learned Additional Public Prosecutor and also the relevant precedent on the said aspect.

12.4. As per the criminal rules of practice framed by the Hon'ble High Court, Madras, it is duty of the Investigating Agency to affix the crime number on the material object in order to keep safe custody of the property in the property room of the trial court and also for proper identification of the material object that it belonged to the corresponding crime number. The labelling of the crime number on the material object might have been written subsequently at the time of the remand of the accused. Further, in most of the cases, the search was made on the basis of prior information received as per section 42 of the NDPS Act. Since, the team had proceeded to the spot on the basis of recording of the information either in the CD file or sending information through telephone to the higher officers or after reducing the said information in writing, they would have the chance of noting the last crime number of the particular station. Even in the case of the recovery under section 43 of the NDPS act or chance recovery, due to the advantage of the telecommunication, the chance of getting the last crime number of the station is possible one. Therefore, without proper cross examination in the above aspect and with the supporting material for the manipulation of the records, the contention of the learned *counsel for the appellant that the presence of crime number created suspicion relating to the recovery of the contraband in the occurrence place is nothing but myth. Further, it is true that the learned judge of this court in the judgment in the case of Thangapandi and others Vs. The Inspector of Police (L&O) reported in AIR OnLine 2018 MAD 1132. has held that the presence of the crime number in the arrest memo, recovery mahazar, label of the material object created doubt considering the other material circumstances of the said case in the process of the recovery of the contraband. But, the learned judge in the subsequent decision based on the earlier decision of the Hon'ble Judge of this court has held that the same cannot be used to suspect the recovery of the contraband.*

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12.5.2. The single bench of this Court in Crl.A.No.210 of 2011 has held as follows: "9. Regarding the presence of crime number on the label, it is not a ground to doubt the recovery. It may only add suspicion if not properly explained or there is no plausible reasons inferable through the evidence. Normally, no Court will accept the property to its custody without proper identification and case details. This precaution is in consonance to the Criminal Rules of Practice so as to avoid difficulty in tracing the property in the property room. Therefore, the presence of crime number in the property cannot be suspected merely because label with crime number was affixed prior to registering the case. The crime number might have written subsequently or obtained in advance from the station immediately after the seizure since, the team had proceeded to the spot based on specific information and the Station House Officer been reported about the information as per Section 42(2) of the NDPS Act, before proceeding to the spot. That is why in Rangan case, the Court has precisely extracted what, Vasudevan (PW.2), has deposed and proceeded further and stated as follows:

"வழக்கு சொத்தில் உள்ள விபர லேபிள் சம்பவ இடத்தில் வைத்து தயார் செய்து ஒட்டப்பட்டது என்றால் சரி. அந்த விபர லேபிளில் குற்ற எண் மற்றும் என்டிபிஎஸ் சட்டப்பிரிவுகள் குறிப்பிடப்படுள்ளன என்றால் சரி. நிலையம் வந்த பிறகு தான் முதல் தகவலறிக்கை பதிவு செய்யப்பட்டது என்றால் சரி. விபர லேபிளில் குற்ற எண் மற்றும் என்டிபிஎஸ் சட்டப்பிரிவுகள் குறிப்பிடப்பட்டதால் காவல் நிலையத்திலிருந்து வந்து பின்னிட்டு தயார் செய்யப்பட்டவை என்றால் சரியல்ல."

Vasudevan [P.W.2] has clearly admitted that the labels were affixed on the contraband at the place of seizure and he has also admitted that he has given the crime number on the labels. He has also *admitted that the FIR [Ex.P.8] was registered only subsequently and he has not given any plausible explanation in his evidence, thereby making the very recovery doubtful, the benefit of which should go to the accused.*

10. To make it more clear, this Court add the plausible explanation need not necessarily be in the testimony but it can be also inferred from the other evidences before the Court. In this case, the accused has affixed her LTI in the recovery mahazar. She has also affixed her LTI in the property labels. The properties were sent to the Magistrate under Form 95 (Ex.P.7) on 22.10.2004, the same day of recovery. Therefore mere presence of crime number on the label affixed prior to registering F.I.R is ipso facto will not render the recovery doubtful."

8. In this case, the reason for recording the Crime Number in one of the document came into existence prior to registration of FIR has to be explained by the Officer, who conducted search and seizure proceedings by recording his evidence during trial. The contention of the petitioner only raises suspicion that there is a possibility of preparing certain documents prior to registration of FIR and there are some manipulations of records, however the same has to be substantiated with some evidence, without providing any material or legally acceptable evidence, the contention of the petitioner cannot be considered as a ground for seeking bail.

9. The next contention raised by the petitioner with regard to the violation of Section 52A of the NDPS Act. It is true that Section 52A of the NDPS Act and the Rules contemplated *interalia* mandates procedures regarding

preparation of inventory of seized contraband, weighing of samples, taking photographs etc., as well as its disposal has to be properly recorded. The Apex Court recently in ***Bharat Aambale vs. The State of Chhatisgarh [2025 8 SCC 452]*** had once again considered the scope of Section 52A of the NDPS Act and observed in paragraph No.50 as follows:

"50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the

Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

10. The above judgment of the Apex Court has reiterated that delayed compliance, or violation of Section 52A and its rules framed/ standing orders issued, will not automatically throw away the case of the prosecution, unless there is a clear evidence to show that the seized contraband is tampered with. Any lapse on the part of the police shall raise adverse inference only depend on the facts and circumstances of the case. The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A. In this case, the final report reveals that the inventories were taken in the presence of Magistrate and the same was sent to FSL, hence mere raising suspicion based on the delay in sending the sample is not a valid ground for seeking bail, unless it contemplates substantial probable causes for believing that the accused is not guilty of the offence. Further there is no tampering of seals recorded in any of the documents or statement of witnesses, under the said circumstances the same is not a valid ground to satisfy "Reasonable grounds" used in clause (b) of the Sub Section(1) of Section 37 of the NDPS Act.

11. The Three Bench judgment of the Apex Court in ***Narcotics Control Bureau vs. Mohit Aggarwal [2022 0 AIR(SC) 3444]***, the Apex Court has considered the grounds to be made out for granting bail and also interpreted the

meaning of word "Reasonable grounds" incorporated in Section 37 of the NDPS Act and categorically observed in paragraph Nos.14 and 15 as follows:

> *"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section(1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.*
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> *15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."*

12. As discussed in the earlier paragraphs, the prosecution side had produced various materials and evidence as against the petitioner herein, therefore it is the burden of the petitioner to establish that there is no substantial probable causes for believing that he is not guilty of the alleged offence, however no such grounds have been made out by the petitioner herein, except raising certain doubts regarding the documents, which were executed before registration of FIR, hence this Court is not inclined to grant bail to the petitioner.

13. Accordingly, this criminal original petition stands dismissed.

26.02.2026

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To

1. The Inspector of Police,
   N-4 Fishing Harbour Police Station,
   Chennai District.
   (Crime No.105 of 2022)

2. The Public Prosecutor,
   High Court of Madras.

K. RAJASEKAR, J.

stn

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