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Crl.O.P.No.8788 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2026

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.8788 of 2025

Sunil @ Jayaprakash

... Petitioner / A1

Vs

State Rep. by,
The Inspector of Police,
R-3, Ashok Nagar Police Station,
Chennai.
(Crime No.449 of 2024)

... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in Crime No.449 of 2024 on the file of the respondent police.

For Petitioner(s) : Mr. R.C. Paul Kanagaraj
For Mr. S. Kasirajan

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



ORDER

The petitioner, who was arrested and remanded to judicial custody on 01.12.2024 for the offences punishable under Section 8(c) r/w Sections 22(c) and 29(1) of Narcotic Drugs & Psychotropic Substances Act, 1985 in Crime No.449 of 2024 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 01.12.2024, based on a specific information, the respondent police team went near 4th Avenue, 100 Feet road junction, Ashok Nagar, Chennai and based on the identification given by the informant, the petitioner herein and two other accused were surrounded by the police party; that after identifying them and complying all the mandatory provisions of the NDPS Act, search and seizure was effected from them; that 11 grams of Methamphetamine, two bottles poppers and one bottle sandal perfume were recovered from the petitioner herein/ A1, 37 grams of Methamphetamine was recovered from one Victor Wade/ A2 and 11 grams of Methamphetamine was recovered from one Pushbendra Singh/ A3, which were used for the purpose of illegal sales; that thereafter their statements were recorded and subsequently remanded to judicial custody. Hence, this case.

3. The learned counsel appearing for the petitioner submitted that the



petitioner has been falsely implicated in this case and he is in judicial custody since 01.12.2024. He further submitted that the seizure mahazars have been prepared separately for each accused and the recoveries have also been effected independently; that therefore, the contraband alleged to have been seized from the petitioner herein is 11 grams of Methamphetamine, which does not come under commercial quantity as specified under the Act, hence there is no bar under Section 37 of the NDPS Act; that the final report is also filed in C.C.No.396 of 2025 and the trial is not yet commenced; and that the petitioner is ready to abide by any conditions that may be imposed by this Court and sought for bail to the petitioner.

4. The learned Government Advocate (Criminal Side) appearing for the respondent while opposing the bail to the petitioner, reiterated the prosecution case; that there are totally three accused involved in this case and the petitioner herein is arrayed as A1. He further submitted that upon investigation, it is revealed that the petitioner and other accused were all working together as a group for illegal trafficking of contraband from various places and also selling the same to general public for monetary gain; that all the accused know about the illegal possession of contraband with each of them; that the contraband seized is of commercial quantity, hence rigours of Section 37 of the NDPS Act is applicable to the present case; and that the investigation of this case has been



completed and final report filed in C.C.No.396 of 2025 on the file of the II

Additional Special Court for Exclusive Trial of Cases under NDPS Act.

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

6. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that word '*possession*' includes conscious possession. Relevant paragraph nos. 9 to 13 are extracted below:

*"9. The expression '**possession**' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in **Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52)**, to work out a completely logical and precise definition of "**possession**" uniformly applicable to all situations in the context of all statutes.*

*10. The word '**conscious**' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

*11. As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.*

*12. The word '**possession**' means the legal right to possession (See **Health v. Drown (1972) (2) All ER 561 (HL)**). In an interesting case it was observed that where a person keeps his fire arm in his*



mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)).

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*13. Once possession is established **the person who claims that it was not a conscious possession has to establish it**, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to **be drawn from possession of illicit articles. This position** was highlighted in *Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483).*”*

7. This Court has also held that in the bail application filed by the co-accused in Crl.O.P.No.4233 of 2025 that the Section 37 of the NDPS Act is applicable to the petitioner therein, who has been arrayed as A3 in this case. Though it is stated that separate seizure mahazars have been prepared for each accused separately, on careful perusal of the prosecution case, it reveals that the petitioner along with other accused acted jointly, came together to the spot with a common object and intention of illegal trafficking and selling of contraband to the general public and also the fact that they were also aware of the possession of contraband with each other, hence segregation of possession of

K. RAJASEKAR, J.

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each person for the purpose of determining applicability of commercial quantity at this stage is not possible, hence I am of the view that Section 37 of the Act as observed by this Court for the co-accused is also applicable to the case of the petitioner herein. Therefore, this Court is not inclined to grant bail to the petitioner herein.

8. Accordingly, this criminal original petition stands dismissed.

28.01.2026
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To

1. The Inspector of Police,
R-3, Ashok Nagar Police Station,
Chennai.
(Crime No.449 of 2024)
2. The Public Prosecutor,
High Court of Madras.

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