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Crl.O.P.Nos.9318 and 33104 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NOS.9318 and 33104 of 2025

Sundar
Siva Ganesh (Ganesh @ Nandhikal Ganesh)

... Petitioner/ A1
... Petitioner/ A2

Vs

State Rep. by,
The Inspector of Police,
NIB CID, Chennai Zonal Unit,
Chennai.
(Crime No.13 of 2024)

... Respondent/ Complainant

Prayer in Crl.O.P.No.9318 of 2025: Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioners/ accused in Crime No.13 of 2024 on the file of the respondent.

Prayer in Crl.O.P.No.33104 of 2025: Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/ accused in C.C.No.772 of 2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner in Crl.O.P.No.9318 of 2025 : Mr. R.C. Paul Kanagaraj
For Mr. S. Kasirajan

For Petitioner in Crl.O.P.No.33104 of 2025 : Mr. T.S. Sasikumar

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



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COMMON ORDER

The petitioners, who were arrested and remanded to judicial custody on 05.04.2024 for the offences under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 05.04.2024 at about 11:00a.m., based on a specific information, the respondent police team went to a residential place at No.36, Ganapathi Nagar, Surapattu main Road, Puthakaram, Kolathur, wherein they intercepted the petitioners herein/ A1 and A2, who were carrying shoulder bags; that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and found that they were in possession of 6 kilograms of ganja and 4 kilograms of Ganja, respectively in their shoulder bags; that thereafter, their statements were recorded, which leads to another seizure of 249.200 kilograms of dry Ganja from A1's house; that subsequently, arrest memo was issued to them and they were remanded to judicial custody. Hence, this case.

3. The learned counsel appearing for the petitioner/ Sundar submitted that the respondent had foisted a false case as against the petitioner herein; that



initially the respondent is alleged to have seized 6 kilograms of Ganja from the petitioner herein and based on the confession statement, further commercial quantity of contraband is alleged to have been seized from the house of the petitioner and the seizure mahazar was prepared in the presence of the witnesses, who were none other than police officers; that the sample of the alleged contraband seized on 05.04.2024 was not produced before the learned Magistrate at the time of remand and the requisition to FSL was sent only on 02.05.2024, therefore there is a delay in producing the contraband before the Court and sending the same for analysis to Forensic Science Laboratory, hence there is a violation of Section 52A of NDPS Act. He also submitted that though the requisition to FSL was given on 02.05.2024, the Director of the FSL received the report on 23.07.2024 and the same was forwarded to the Trial Court only on 05.09.2024, hence there is an inordinate and unexplained delay of nearly four months and also violation of Rule 14 of NDPS Rules, 2022; that the petitioner is in judicial custody since 05.04.2024 and there is no progress in the trial; 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. The learned counsel appearing for the petitioner/ Siva Ganesh - A2 submitted that, the petitioner has been falsely implicated in this case; that the alleged seizure effected from A2 is only 4 kilograms of Ganja, which is only an



intermediate quantity; that there are no materials available to connect this petitioner with the contraband seized from A1's house and he had not taken part in any act together with A1; that this is the second bail application of the petitioner and the earlier bail application of the petitioner in Crl.O.P.No.9606 of 2025 was dismissed by this Court, vide order dated 30.04.2025; that the petitioner is in judicial custody since 05.04.2024 and there is no progress in the trial; 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.

5. The learned Government Advocate (Crl. Side) appearing for the respondent while opposing the bail to the petitioners reiterated the prosecution case and submitted that, the petitioners herein were intercepted jointly with possession of 10 kilograms of Ganja (6 kilograms from A1 and 4 kilograms from A2) and another 249.200 kilograms of Ganja were seized from A1's house; that after complying all the mandatory provisions, their statements under Section 67 of NDPS Act were recorded, the arrest memo was also issued to the petitioner herein, which explains the reasons for their arrest; that the contraband seized in this case is a commercial quantity, hence the petitioners have to satisfy the Section 37 of NDPS Act; that the investigation of this case was completed and final report filed in C.C.No.772 of 2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai, the charges were framed and the trial has



commenced; and that the petitioners herein have previous cases under NDPS Act.

6. I have considered the submissions made on both sides and perused the materials available on record, including the report from the Trial Court, which states that charges were framed on 19.08.2025, the trial has commenced and the first petitioner herein had filed a petition under Section 88 of BNSS on 28.10.2025 calling upon the respondent to produce CDR with tower location in Crl.M.P.No.6825 of 2025 and the same has been posted for counter.

7. The main contention of the petitioners herein is that there was a delay in producing the contraband before the Court and sending the same for analysis to Forensic Science Laboratory, hence there is a violation of Section 52A of 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 early disposal has to be properly recorded.

8. The Apex Court recently in ***Bharat Aambale vs. The State of Chhatisgarh [2025 8 SCC 452]*** had 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*



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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



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proof required would be beyond a reasonable doubt.”

9. 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 depend only 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.

10. In this case, the documents reveal that the contraband seized from the possession of petitioners herein is commercial quantity and the samples were produced before the Trial Court on 02.05.2024 in A.No.552/ 2024 and the samples were sent to Forensic Science Laboratory, Chennai for chemical analysis on 03.05.2024. Though there was a delay in producing the contraband before the Court and sending the same for analysis to Forensic Science



Laboratory, it requires recording the evidence of the seizure officer concerned regarding the delay in sending the samples to FSL and it is the matter of trial. 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 contention raised by the learned counsel for the petitioner/ Siva Ganesh (A2) is that, the contraband alleged to have been seized only from A2 is only 4 kilograms of Ganja, which is an intermediate quantity and he has no nexus with A1 and the contraband alleged to have been seized from A1's house, hence Section 37 of NDPS Act is not applicable to the case of this petitioner. On careful perusal of the prosecution case, it reveals that the respondent had intercepted A1 and A2 jointly, and they 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



each person for the purpose of determining applicability of commercial quantity at this stage is not possible.

12. In this case, though the petitioners raise certain suspicion regarding the seizure of 249.200 kilograms of Ganja from A1's house and there were no independent witnesses other than the official witnesses for the said seizure, it is well settled law (*Refer Surinder Kumar vs. The State of Punjab [AIR 2020 Supreme Court 303]*) that, the evidence recorded from the official witnesses cannot be distrusted and disbelieved, merely on account of their official status, hence when the official witnesses are listed as prosecution witnesses, to depose about the search and seizure of 249.200 kilograms of Ganja from the house of A1, same is *prima facie* evidence to support the seizure. The petitioners have to establish something more than the *prima facie* grounds and it shall contemplate substantial probable causes for believing that the accused is not guilty of the alleged offence. However, no such grounds have been made out by the petitioner in this case.

13. Considering the above and the fact that the contraband involved in this case is of commercial quantity, the fact that the petitioners herein have previous cases under NDPS Act and no grounds were made out by the petitioners herein to satisfy the conditions contemplated under Section 37 of the



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NDPS Act, this Court is not inclined to grant bail to the petitioners.

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14. Accordingly, these criminal original petitions stand dismissed.

26.02.2026

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To

1. The Inspector of Police,
NIB CID, Chennai Zonal Unit,
Chennai. (Crime No.13 of 2024)
2. The Public Prosecutor,
High Court of Madras.

K. RAJASEKAR, J.

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