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Crl.O.P.No.10606 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2026

CORAM

**THE HONOURABLE MR JUSTICE K. RAJASEKAR**

**CRL OP NO.10606 of 2025**

1. Butari Pethrubabu

2. Mathya Konda Babu

... Petitioners/ A5 & A6

Vs

Union of India,  
Through The Intelligence Officer,  
Narcotics Control Bureau,  
Zonal Unit, Chennai.  
(F.No.48/1/14/2022-NCB/MDS)

... Respondent

**PRAYER :** Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioners/accused in Spl.C.C.No.238 of 2023 pending on the file of the Special Court for Exclusive Trial for EC/NDPS Act, Salem.

**For Petitioner(s)** : Mr. S. Mannarsamy

**For Respondent(s)** : Mr. N.P. Kumar  
Special Public Prosecutor

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## **ORDER**

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The petitioners, who were arrested and remanded to judicial custody on 18.11.2022 in Spl.C.C.No.238 of 2023 pending on the file of the Special Court for Exclusive Trial for EC/NDPS Act, Salem, for the offences punishable under Sections 8(c), r/w 20(b)(ii)(C), 28 and 29(1) of NDPS Act, 1985, seek bail.

2. The case of the prosecution is that on 14.11.2022, based on a specific information, the officers of the Narcotics Control Bureau, Chennai Zonal Unit on 18.11.2022, intercepted a vehicle bearing Registration No.AP-31-CW-7686, wherein the petitioners herein and five other accused were travelling; that after complying the mandatory provisions, search and seizure was conducted; that 243 kilograms of Ganja in the form of brownish green colour dry leaves and flower tops were recovered from them; that the Ganja was illegally transported in the car from Andhra Pradesh to Chennai; that thereafter the petitioners and other accused were arrested for their involvement in trafficking of the seized Ganja under provisions of the NDPS Act, 1985; that thereafter, summons were issued to the petitioners and other accused under Section 67 of NDPS Act and after recording their statements, they were remanded to judicial custody; that during further course of



investigation, the respondent also apprehended one B.Suresh/ A8, who is the owner of the seized contraband and the king pin of the case.

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3. The learned counsel appearing for the petitioners submitted that the petitioners have been falsely implicated in this case and the investigation of the case was completed and final report filed in Spl.C.C.No.238 of 2023; that the earlier bail applications filed by the co-accused/ A4 and A3 in this case in Crl.O.P.Nos.5505 and 5508 of 2025, this Court, vide order dated 19.03.2025 had directed the Trial Court to expedite the trial and with a liberty to the petitioners therein to renew the bail application, if the trial is not concluded within a period of six months, however the trial is not progressing and the petitioners herein were in judicial custody since 18.11.2022. He also relied on the judgments of the Apex Court in *Naeem Ahmed Alias Naim Ahmad vs. Government of NCT of Delhi [2024 SCC Online SC 220]*, *Rabi Prakash vs. The State of Odisha [2023 LiveLaw (SC) 533]*, *Santhosh Sahoo @ Santhosh Saho vs. The Union of India [ Special Leave to Appeal (Crl).No.1737 of 2025 dated 17.03.2025]* and *Ankur Chaudhary vs. State of Madhya Pradesh [Special Leave to Appeal (Crl).No.4648 of 2024 dated 28.05.2024]* in support of his contention; and that the petitioners are ready to abide by any conditions that may be imposed by this Court and sought for bail to the petitioners.



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4. The learned Special Public Prosecutor appearing for the respondent while opposing the bail to the petitioners, reiterated the prosecution case and submitted that the petitioners herein are arrayed as A5 and A6 in this case; that the quantity of contraband seized from the petitioners and other accused is of commercial quantity, hence Section 37 of the NDPS Act is applicable to the present case; that the accused in this case are big kingpin operating in South India, who are involved in illegal trafficking of huge quantity of Ganja for several years by adopting various modes; that the investigation of the case was completed and final report filed in Spl.C.C.No.238 of 2023 pending on the file of the Special Court for Exclusive Trial for EC/NDPS Act, Salem; that all the mandatory provisions of the Act were complied and the seizure was effected from the petitioners and other accused; that the petitioners were also involved in other NDPS Act cases; and that if the petitioners are released on bail, they would tamper with the witness and hamper the trial process.

5. Heard the learned counsel appearing for the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.



6. The Apex Court in **Naeem Ahmed's case** cited supra has held in paragraph Nos.8 to 10 as follows:

*“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.*

*9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.*

*10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.”*

7. The Apex Court in **Ankur Chaudhary's case** cited supra has held as follows:

*“Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”*



8. The Apex Court in ***Rabi Prakash's case*** cited supra, has held as

follows:

*“4.....The Prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) of the NDPS Act.”*

9. The Apex Court in the above judgments has held that the continuous incarceration of the accused without any progress in the trial, militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, overriding the statutory embargo under Section 37(1)(b) of the NDPS Act, may in such circumstances to be considered, however apart from that, the Apex Court has also considered the stage of each cases and granted bail.

10. A three-Judge Bench in ***Narcotics Control Bureau vs. Mohit Aggarwal [(2022) 0 Supreme (SC) 619]***, considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held that, long incarceration without trial alone is not a valid ground to grant bail in cases relating to commercial quantity and observed as follows:

*“In our opinion the narrow parameters of bail under section*



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37 of the Act ,have not been satisfied in the facts of the instant case .At this stage,it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him,for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

11. The Apex Court in ***Union of India vs. Vigin K. Varghese [2025 INSC 1316]*** has considered the scope of Section 37 of the NDPS Act and also the continuous incarceration of the petitioners and held as follows:

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution’s assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal



Procedure.

.....

20. *We are of the view that, in the facts of this case, it would not be appropriate for this Court at the threshold stage itself to render findings on whether there are or not reasonable grounds, for believing that the respondent is not guilty, or on whether he is likely to commit any offence while on bail. That factual assessment, which the statute requires to be made and recorded with reasons, is one that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.”*

12. In the case in hand, though it is stated that there is no progress in the trial, the report from the Trial Court reveals that some of the accused were not regularly produced before the Court, which resulted in delay in conclusion of the trial process and now the trial has commenced and the case stands posted for examination of witnesses. Admittedly the petitioners herein are gang members, who had colluded with other accused and continuously involved in trafficking of huge quantity of ganja across South India. Further, they have previous cases under NDPS Act and if they are granted bail, there is likelihood of absconding, stall the trial proceedings and also they will indulge in similar offence.

13. The Constitution Bench of Apex Court in ***High Court Bar Association, Allahabad vs. The State of Uttar Pradesh [(2024) 6 SCC 267]***



*Crl.O.P.No.10606 of 2022*

has held that in the ordinary course, the Constitutional Courts should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. In view of the same, fixing a time limit to the Trial Court for completion of the trial, without knowing the workload of the Trial Court is not permissible.

14. Considering the above facts, nature of offence, the seized contraband from the petitioner herein is a commercial quantity and it is alleged that there are materials available to connect the petitioners with the seized contraband and the petitioners had failed to satisfy the twin conditions required under Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioners. However, considering the fact that the petitioners are in judicial custody for more than three years, the Trial Court shall made every endeavour to dispose the trial of this case, at the earliest.

**K. RAJASEKAR, J.**

stn

15. With the above observations, this criminal original petition stands dismissed.



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**28.01.2026**

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To

1. The Junior Intelligence Officer,  
Narcotics Control Bureau,  
Chennai Zonal Unit,  
Chennai-77.  
(F.No.48/1/14/2022-NCB/MDS)
2. The Public Prosecutor,  
High Court of Madras.

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