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Crl.O.P.No.16864 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25-02-2026**

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.16864 of 2025

Murugesan

... Petitioner/ Accused

Vs

The State rep. by,
The Inspector of Police,
M-4 Red Hills Police Station,
Chennai.
(Crime No.694 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 C.C.No.990 of 2024 pending trial on the file of the Hon'ble Principal Sessions Judge, NDPS Court, Chennai in connection with Crime No.694 of 2024 on the file of the respondent police.

For Petitioner(s) : Mr. R.C. Paul Kanagaraj
For Mr. A. Venkateswara Babu

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 22.08.2024 in C.C.No.990 of 2024 pending trial on the file of the Hon'ble Principal Sessions Judge, NDPS Court, Chennai, for the offences under Sections 8(c) r/w and 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, seeks bail. This is the third successive bail application of the petitioner and the earlier bail applications were dismissed as withdrawn, vide orders dated 22.01.2025 and 12.03.2025 in Crl.O.P.Nos.990 and 5962 of 2025, respectively.

2. The case of the prosecution is that on 30.07.2024 based on a specific information, the respondent team went to Lakshmipuram Salt Godown at Minjur to Vandalur road and saw two persons standing there suspiciously; that on seeing the police, the accused tried to fled away, the respondent caught A2 namely Hemanathan and the other accused fled away from the scene of occurrence; that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and found that A2 was in illegal possession of 2 kilograms of Ganja for the purpose of illegal sale; that thereafter, the contraband was seized from A2 under cover of seizure mahazar in the presence of witnesses and obtained the statement of A2, which reveals that the petitioner



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herein had fled away from the place of occurrence and they were jointly involved in illegal selling of Ganja to general public for their personal gain and subsequently, A2 was arrested and remanded to judicial custody; that thereafter, the respondent formally arrested the petitioner herein, who was in custody in connection with another Crime No.510 of 2024 on the file of the P-5, M.K.P Nagar Police Station; that the confession of the petitioner herein leads to further seizure of 2 kilograms of Ganja and 60 grams of Methamphetamine from a old building at Padianallur, GNT Bypass Road; that subsequently, the petitioner was remanded him to judicial custody on 22.08.2024.

3. The learned counsel appearing for the petitioner submitted that, the petitioner has been falsely implicated in this case, only based on the confession of the co-accused/ A2; that the petitioner was formally arrested in this case, while he was in custody in connection with another Crime No.510 of 2024 on the file of the P-5, M.K.B Nagar Police Station and at the time of arresting the petitioner, there was no recovery made from the petitioner herein. Further, after several days of custody of the petitioner, it is alleged that based on the disclosure statement recorded from the petitioner, the respondent had seized another 60 grams of Methamphetamine from a old building at Padianallur, GNT Bypass Road. The learned counsel for the petitioner further contended that the Methamphetamine will withstand the natural climate only for a short period,



whereas it is alleged that in the year 2023 itself, the petitioner herein had hidden this contraband in the said building, which is highly improbable to seize the same more than a year. Further the sample was taken after a huge delay and requisition was not made immediately for sending the sample for subjecting to forensic examination, which shows that the contraband were implanted by the respondent for the purpose of detaining the petitioner herein, since the petitioner is having cases under IPC offences. There are also discrepancies in the samples taken and sent for forensic examination and also inordinate delay in sending the same to the Forensic Science Laboratory; 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, 60 grams of Methamphetamine and 2 kilograms of Ganja were seized from the petitioner based on the disclosing statement recorded from the petitioner herein; 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 and the petitioner was produced before the learned Magistrate along with the seized contraband and remanded to judicial custody; that the contraband involved in



this case is a commercial quantity, hence the petitioner has to satisfy the twin conditions of Section 37 of NDPS Act; and that the petitioner herein has 15 previous cases.

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

6. Admittedly in this case, the first occurrence of seizure of 2 kilograms of Ganja was made from A1 on 30.07.2024 and thereafter, the petitioner herein was formally arrested in this case, while he was in custody in connection with another case in Crime No.510 of 2024 on the file of the P-5, M.K.B Nagar Police Station and it is alleged that during the custody of the petitioner, the voluntary disclosure statement recorded from the petitioner had lead to another seizure of 60 grams of Methamphetamine (commercial quantity). The confession statement leading to discovery of the fact is admissible to the extent of the fact that there is a seizure of 60 grams of Methamphetamine as alleged in this case and there are witnesses cited in the final report to speak about the recovery of this 60 grams of Methamphetamine. The truth or otherwise seizure of 60 grams of Methamphetamine would be decided only after examining the witnesses during the trial, mere raising a suspicion regarding the impossibility of hiding the contraband more than 1.5 years in an isolated place is



not sufficient to satisfy the Section 37 of the NDPS Act. 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.

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.”

7. In this case, though the petitioner raise certain suspicion regarding the seizure of contraband after 1.5 years from the date of its hiding, it is well settled law 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 60 grams of Methamphetamine from this petitioner, same is *prima facie* evidence to support the seizure. The petitioner has to establish something more than the *prima facie* grounds and it shall contemplate substantial probable causes for believing that the accused not guilty of alleged offence. However, no such grounds have been made out by the petitioner in this case.

8. The next contention raised by the petitioner with regard to the violation of Section 52A of the NDPS Act and the standing order relating to the same. 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,*



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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.”

9. The above judgment of the Apex Court has reiterated that delayed



compliance, or violation of Section 52A or its standing order 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 and any lapse on the part of the police adversely affect the interest of the petitioner and the 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 and there is no material to show that the tampering of seals or samples, that being the case, as stated in the earlier paragraph that mere raising suspicion regarding the discrepancy in sending the sample is not a valid ground for seeking bail and the same is not sufficient to satisfy the Section 37 of the NDPS Act.

10. Considering the above and the fact that the contraband involved in this case is of commercial quantity and no grounds were made out by the petitioner herein to satisfy the conditions contemplated under Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioner.

11. Accordingly, this criminal original petition stands dismissed.



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To

1. The Inspector of Police,
K-7, I.C.F. Police Station.
(Crime No.56 of 2025)
2. The Public Prosecutor,
High Court of Madras.

K. RAJASEKAR, J.

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