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Crl.O.P.No.16251 of 2



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.16251 of 2025

Celestine Anugwa

... Petitioner/ A5

Vs

Union, Rep. by,
The Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai.
(R.R. No.24 of 2023)

... 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.203 of 2023 on the file of the Hon'ble II Additional Special Judge, Special Court for EC & NDPS Act, Chennai.

For Petitioner(s) : Mr. M.G. Martinmanivannan

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

ORDER



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The petitioner, who was arrested and remanded to judicial custody on 06.09.2023 in C.C.No.203 of 2023 on the file of the Hon'ble II Additional Special Judge, Special Court for EC & NDPS Act, Chennai for the offences punishable under Sections 8(c) r/w Section 22(c), 28 and 29(1) of NDPS Act, seeks bail.

2. The case of the prosecution is that on 01.09.2023, based on a specific information, the officers of the Narcotics Control Bureau, Chennai Zonal Unit, intercepted one Matheen Ahmed/ A1 and after complying all the mandatory provisions of the Act, search and seizure was effected and 7.45 grams of cocaine and 7.20 grams of MDMA tablets were recovered from A1; that upon his confession statement, the respondent on 05.09.2023, apprehended three Nigerian nationals at Koyambedu, Chennai and seized 203 grams of Amphetamine and 46 grams of MDMA pills from one Chibuze Chinonso Emmanuel/ A2, 204 grams of Amphetamine and 46 grams of MDMA pills from one Okey Kingsley Bothlome/ A3 and 46 grams of MDMA pills from one Favouv Oke/ A4; that upon enquiry, A4 confessed that the other accused namely Precious Kim is an inmate to her and they were staying in a rental house situated at Bidarahalli Village, Bangalore; that thereafter, the respondent team went to Bangalore and found that the petitioner/A5 and other



accused/ A6 and A7 were staying in the said house; that upon search, vide House search mahazar dated 05.09.2023, the respondent had seized 601 grams of Amphetamine and 172 grams of MDMA pills from the house; that accordingly, summons were served on the petitioner and other accused, after recording their statements under Section 67 of the NDPS Act, 1985 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 06.09.2023. He further submitted that the seizure effected from the said house is alleged to have been kept by A4 in this case and there is no direct recovery made from the petitioner herein; that the investigation was completed and final report also filed, there are number of witnesses cited by the respondent and the trial is not likely to be completed in the near future; that the similarly placed co-accused/ A6 and A7 was granted bail by this Court, vide orders dated 27.03.2025 and 26.02.2025 in Crl.O.P.Nos.1205 and 3351 of 2025, respectively. 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 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 Special Public Prosecutor appearing for the respondent while opposing the bail to the petitioner, reiterated the prosecution case and submitted that the quantity seized from the petitioner and two others during the house search conducted is of commercial quantity, hence Section 37 of the NDPS Act is applicable to the present case; that the petitioner herein is a Foreign national, he colluded with other accused and involved in illegal trafficking of huge quantities of various kinds of psychotropic substances across South India; and that if the petitioner is released on bail, there is possibility of absconding and stall the trial process.

5. Heard the learned counsel appearing for the petitioner 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:



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“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 for granting bail and observed as follows:

“In our opinion the narrow parameters of bail under section 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



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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



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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 the co-accused were already enlarged on bail by this Court, the petitioner herein is in judicial custody for more than two years and there is no progress in the trial. Admittedly the petitioner herein is a Foreign national, who had colluded with other accused and involved in trafficking of huge quantity of various kinds of psychotropic substances Pan India level and if he is granted bail, there is likelihood of absconding, stall the trial proceedings. Further contraband involved herein is different types of scheduled contrabands under NDPS Act and the accused involved in possession, transportation and sale of above contrabands and also having international links. Hence gravity of the petitioner's case is much more serious than the cases of co-accused involved in this case. Hence, this Court is not inclined to dispense with Section 37 of NDPS Act and to consider the bail in favour of the petitioner on the ground of continuous incarceration without trial.

13. The Constitution Bench of Apex Court in ***High Court Bar***



Association, Allahabad vs. The State of Uttar Pradesh [(2024) 6 SCC 267]

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 contraband involved in this case is commercial quantity and it is alleged that there are materials available to connect the petitioner with the seized contraband and the petitioner 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 petitioner. However, considering the fact that the petitioner is in judicial custody for more than two years, the Trial Court shall made every endeavour to dispose the trial of this case, at the earliest.

K. RAJASEKAR, J.

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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.
(R.R. No.24 of 2023)
2. The Public Prosecutor,
High Court of Madras.

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