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CRL OP No. 13108 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-06-2026

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CRL OP No. 13108 of 2026

Pasupathi

..Petitioner

Vs

The State, Rep by,
The Inspector of Police,
E-3, Minjur Police Station,
Ponneri, Minjur,
Tamil Nadu - 601 203.
Crime No.343/2024

..Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the petitioner on bail in connection with C.C.No.979 of 2024 on the file of the Principal Special Judge for EC and NDPS Act cases at Chennai in Crime No.343 of 2024 on the file of the respondent police.

For Petitioner:

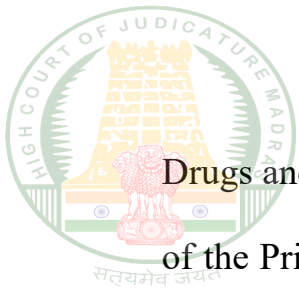
Mr.Vikram Veerasamy B

For Respondent:

Mr.S.Yogaraja Sekar
Counsel for Government of Tamil Nadu
(Criminal Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 07.06.2024 for the alleged offence under 8(c) and 22 (c) of the Narcotic



Drugs and Psychotropic Substances Act, 1985 in C.C.No.979 of 2024 on the file of the Principal Special Judge for EC and NDPS Act cases at Chennai in Crime No.343 of 2024 on the file of the respondent police, seeks bail.

2. The learned counsel for the petitioner submitted that the petitioner was remanded in judicial custody on 07.06.2024 for the possession of 60 grams of Methamphetamine. He vehemently contend that the mandatory requirement of search under section 50 of NDPS Act was not made aware to the accused and that there was a huge delay in getting the report. Therefore, the entire prosecution case is vitiated. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Arif Khan Alias Agha Khan vs State of Uttarakhand** reported in **(2018)18 SCC 380** and the judgment of the learned Single Judge in the case of **Pradeep Rajan vs State of Tamil Nadu and another** in **Crl.OP.(MD).No.22581 of 2025**.

3. The said contention was totally objected by the learned Govt Advocate (Crl.Side) and submitted that according to Section 50 of NDPS Act, what is mandatory is that the accused must be made aware that he may be searched in front of the Gazetted Officer. In this case, even from the documents submitted by the petitioners, there are sufficient evidence to show that the accused was made aware about his right to be searched before the Gazetted Officer. And apart from that, the delay in receipt of the Lab Report cannot be adjudicated at



the bail application and the same could only be taken into defence during the trial. Apart from the above, the learned Government Advocate (Crl.side) would

vehemently contend that the petitioner is not a holy cow and has got 19 previous cases, out of this, three cases are similar in nature. Therefore, notwithstanding the other ground, upon the conduct of the previous bad antecedents, the petitioner's bail application is liable to be dismissed.

4. I have given my anxious consideration to either side submissions and perused the materials available on record.

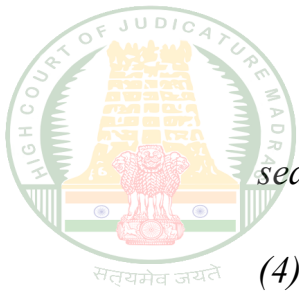
5. The vehement submission of the learned counsel for the petitioner is based upon section 50 of the NDPS Act. For ready reference, section 50 of NDPS Act is extracted hereunder.

50. Conditions under which search of persons shall be conducted.

—(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that



search be made.

(4) *No female shall be searched by anyone excepting a female.*

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[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

6. In furtherance thereof, the learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in **(2018)18 SCC 380**, the relevant portion of the judgment is Para 20, is hereunder extracted for ready reference.

20. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on



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the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate.

7. The learned counsel for the petitioner has also relied upon the judgement in the case of ***Pradeep Rajan vs State of Tamil Nadu and another*** in ***Crl.OP.(MD).No.22581 of 2025***, the relevant portion of the order is Para 11, which is hereunder extracted for ready reference.

11. The prosecution case is not of recovery from a bag, vehicle, premises, or a concealed location independent of the body of the accused. The allegation is explicit. The contraband was found in the shirt pocket of the petitioner. A shirt pocket is inseparable from the clothing worn on the body at the relevant moment. On the prosecution's own showing, the recovery is from the person of the accused. When recovery is from the person, Section 50 NDPS Act is not a ritual. It is a statutory safeguard meant to assure transparency and to instill confidence in the fairness of the search. The constitutional bench line of authority has repeatedly emphasised that the suspect must be made aware of the existence of the right to be searched before a Gazetted Officer



or a Magistrate, and the search must then conform to the option exercised.

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8. From harmonious and holistic reading of the above judgement, what is essential is that the accused must be made aware of his right to be searched before the Gazetted Officer. At this juncture, the learned counsel for the petitioner would rely upon the report wherein there is a reference that the accused was made aware of his right to be searched before the Gazetted Officer. However, it is the contention of the learned counsel for the petitioner that it has been done in a ritualistic manner. Though the learned counsel would raise such a defence, it cannot be adjudicated at the bail application. However, this Court is *prima facie* satisfied that the respondent Police have complied with the requirement as mandated under Section 50 and as ratiocinated by the Courts.

9. The other contention of delay also, as rightly contented by the learned Government Advocate (Criminal Side) it cannot be adjudicated at the bail application. At this juncture, it is also relevant to refer that the petitioner has got 19 previous cases out of which three are similar in nature. Therefore, his previous bad antecedents would also clearly demonstrate that he is a person of repeat offender and as rightly submitted by the learned Government Advocate (Criminal Side), if the person is let out on bail, there is every possibility of subverting justice by misusing his liberty. Therefore, this Court is of the firm



view that apart from the rigour under Section 37 of the NDPS Act, the previous bad antecedents is also staring against the petitioner Hence, this is this petitioner is not entitled to have bail.

9. Accordingly, this Criminal Original Petition stands dismissed.

04-06-2026

SHL

To:

1. The Judicial Magistrate No.II,
Ponneri

2. The Inspector of Police,
E-3, Minjur Police Station,
Ponneri, Minjur,
Tamil Nadu - 601 203.

3. The Public Prosecutor
High Court of Madras



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C.KUMARAPPAN J.

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