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Crl.O.P.No.21772 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.21772 of 2025

Mohamed Masthan

... Petitioner/ A1

Vs

State Rep by,
The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai. (Crime No.233 of 2024)

... Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in
Crime. No.233 of 2024 on the file of the respondent police.

For Petitioner(s) : Mr. T.S. Sasikumar
For Mr. R. Rafi Babu

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



Crl.O.P.No.21772 of 2025

ORDER

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The petitioner, who was arrested and remanded to judicial custody on 30.10.2024 for the offences punishable under Sections 8(c), 22(c), 25 and 29(1) of the NDPS Act, 1985 in Crime No.233 of 2024, registered on the file of the respondent police, seeks bail. The earlier bail application of the petitioner was dismissed by this Court, vide common order dated 13.03.2025 in Crl.O.P.No.2608 of 2025.

2. The case of the prosecution is that on 30.10.2024 at about 7:00 hours, the Sub-Inspector of Police from the respondent station received information regarding the transportation of Narcotic drugs, the same was reduced into writing and after obtaining authorization from his superior officers, he went to the place near Old Jail road, Ayappan Street Junction, intercepted A1/ the petitioner herein and A2, who came in a two wheeler; that thereafter search and seizure was effected and recovered 50 grams of Methamphetamine from them; that based on the statement of A1 and A2, A3's house was searched and 5 grams of Methamphetamine was recovered from A3; that thereafter, FIR was registered and based on the statement recorded from A1 to A3, A4 and A5 were arrested and from A4, 4 grams of Methamphetamine was recovered; that it is further alleged that A4 and A5 were supplying the



contraband to A3 and in turn A3 supplying the same to A1 and A2. Hence, they were all arrested and remanded to judicial custody.

3. The learned counsel appearing for the petitioner submitted that, it is the successive bail application of the petitioner herein and the earlier bail application was dismissed and now new grounds have been raised for seeking bail. He further submitted that the petitioner herein is arrayed as A1 and the contraband alleged to have been seized from the petitioner herein is 50 grams of Methamphetamine, which is not a commercial quantity and falls within the definition of intermediate quantity. He also relied on the definitions of the small and commercial quantity and also the judgments of various High Courts and this Court, prays to grant 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 the total quantity of seizure in this case is 59 grams and even if it is taken that the petitioner is not having the knowledge about the possession of contraband by the other accused, the contraband seized from the petitioner herein alone is 50 grams of Methamphetamine, which falls within the definition of commercial quantity, hence the petitioner has to satisfy the twin conditions under Section 37 of NDPS Act.



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

6. On careful perusal of the statement recorded from the witnesses and the arrested persons, it reveals that A1 and A2 collected the contraband from A3 and they have also stated that they used to purchase the contraband from A4 and A5. The petitioner neither involved in procuring, transporting nor sale of contraband of 5 and 4 grams, which were seized from A3 and A4, respectively; that the further facts reveal that they were not aware about the possession of contraband by A3 and A4, however they say that they used to purchase contraband from other accused. But the admitted fact is that the petitioner herein is alleged to have been in possession of 50 grams of Methamphetamine, hence now the question to be decided is, whether this 50 grams of Methamphetamine falls within the definition of commercial quantity or intermediate quantity.

7. The learned counsel appearing for the petitioner relied on the judgment of this Court in *Sharat Janaki Ramayya vs. The State represented by The Inspector of Police, NIB-CID, Chennai [Crl.O.P.No.2630 of 2023 dated 21.02.2023]*, wherein this Court by relying on the judgment of *Anil*



Kumar Dash vs. State of Orissa [BLAPL No.1947 of 2015, dated 22.09.2015]

held that the contraband seized from the petitioner therein is 1 kilogram of Hasish oil which is not greater than 1 kilogram and the same will not come under commercial quantity.

8. The learned Government Advocate (Crl. Side) appearing for the respondent relied on the judgments of ***Abdul Salam vs. State of Karnataka [2025: KHC: 27494]***, ***Emma Odogwu Emeafu @ Joshua @ Emmanuel vs. Narcotic Control Bureau [Bail Appln.No.4725 of 2024 dated 09.09.2025]***, ***Sanna Laxmappa vs. The State [Crl.A.No.2592 of 2012, dated 31.08.2020]***, ***Fakhir Imamsha Davalsha vs. State of Gujarat [2011 SCC Online Guj 4592]*** and ***Hira Singh and another vs. Union of India and another [(2020) 20 SCC 272]*** in support of his contention.

9. The Karnataka High Court in ***Abdul Salam vs. State of Karnataka [2025: KHC: 27494]***, wherein it states that the Methamphetamine, which weighs 50 grams has to be considered as a commercial quantity, as per the notification issued under the provisions of the NDPS Act. However, the Court has not dealt with specific question, whether this 50 grams of Methamphetamine seized is commercial quantity or not. The High Court of Delhi in ***Emma Odogwu Emeafu @ Joshua @ Emmanuel vs. Narcotic***



Control Bureau [Bail Appln.No.4725 of 2024 dated 09.09.2025], has considered the case of seizure of Amphetamine of 520 grams which is greater than the quantity mentioned in the schedule of the Act.

10. The Karnataka High Court in ***Sanna Laxmappa vs. The State [Crl.A.No.2592 of 2012, dated 31.08.2020]***, wherein there is a reference in para No.22, which refers about the notification issued under the Act, classifying the small quantity and the commercial quantity and observed that anything between the small and commercial quantity is an intermediate quantity. However in this judgment, there was no issue raised regarding the interpretation of schedule in terms of Section 2(viia) of the NDPS Act. The learned Government Advocate (Crl. Side) has also further relied on the judgment of the Apex Court in ***Hira Singh and another vs. Union of India and another [(2020) 20 SCC 272]*** to further substantiate his claim that the quantity mentioned in the schedule alone shall be taken as a small and commercial quantity, anything in between shall be considered as an intermediate quantity.

11. However, this Court is not inclined to accept the said contention of the learned Government Advocate (Crl. Side), in view of the fact that, the point considered by the Apex Court in ***Hira Singh's case*** is totally different question that, whether the neutral substance mixed with any Narcotics Drugs and



Psychotropic substance shall also be taken into consideration for deciding the quantities provided in the schedule of the Act. It has also held that the entire weight of the mixture/ drug by whatever name it is called, is also required to be considered for the purpose of determining whether it could constitute small or commercial quantity and hold that the judgment of the Apex Court in ***E. Micheal Raj vs. Narcotics Control Bureau [(2008) 5 SCC 161]*** is not a good law, hence this judgment is not applicable to the present case in hand.

12. The learned Government Advocate (Crl. Side) has also relied on the judgment of the Gujarat High Court in ***Fakhir Imamsha Davalsha vs. State of Gujarat [2011 SCC Online Guj 4592]***, wherein the Gujarat High Court had made an observation that, 20 kilograms of Ganja and more mentioned in the schedule shall be considered as a commercial quantity and the Court had not considered the point raised in this case in terms of definition under Section 2(viia) of the Act and it had observed in different context, which is also not applicable to this case.

13. In ***Saravanan vs. The State of Tamil Nadu [(2013) 11 MAD CK 0279]***, the Madurai Bench of Madras High Court, while considering the definition clause under Section 2(viia) of the NDPS Act and held that 20 kilograms of Ganja recovered is a commercial quantity and hence it had held



that, anything which falls within the small and commercial is an in-between or intermediate quantity.

14. Section 2(viia) of the NDPS Act deals with the definition of commercial quantity, Section 2(xxiiiia) deals with the definition of small quantity, which reads as follows:

“2.(viia) “Commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

2.(xxiiiia) “Small quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;”

15. The Central Government has issued notification in the Official Gazette in compliance of Section 2(viia) and 2(xxiiiia) and issued a schedule in the NDPS Act. In this case, the contraband alleged to have been seized from the petitioner herein is 50 grams of Methamphetamine, which falls within the schedule of the NDPS Act as follows:

<i>SI No.</i>	<i>Name of NDPS (International Non-proprietary name)</i>	<i>Other Non-propriety name</i>	<i>Chemical Name</i>	<i>Small Quantity</i>	<i>Commercial Quantity</i>
159	METAMFETAMINE	Methamphetamine	(+)-(S)-N, alpha-dimethylphenethylamine, (+) 2 methylamino-1-Phenylpropane	2 grams	50 grams



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16. Admittedly, the legislature has not come forward to define the word intermediate quantity, but in practical sense, if there is a small and commercial quantity, which have been prescribed in the schedule, naturally the quantities which does not fall in the above category shall be considered as an intermediate quantity. The definition unambiguously states that any quantity greater than the quantity specified by the Central Government notification issued in exercise of the powers conferred by Section 2(viia) in the Official Gazette shall be a commercial quantity. Similarly, any quantity lesser than the quantity specified by the Central Government notification issued in exercise of the powers conferred by Section 2(xxiiia) in the Official Gazette shall be considered as a small quantity.

17. In the schedule, the base quantity to determine the commercial quantity of Methamphetamine is 50 grams and this 50 grams is only a quantity to be interpreted as defined under Section 2(viia) of the NDPS Act and accordingly, to make it as a commercial quantity, more than 50 grams is required, otherwise it will not fall within the definition of commercial quantity. Thereby, when the legislature is very unambiguous and clearly provides in the definition clause, the external aid is not necessary to decide the commercial quantity prescribed in the schedule, hence I am of the view that the quantity



alleged to have been seized from the petitioner herein falls within the definition of intermediate quantity, which is less than the commercial quantity, therefore Section 37 of the NDPS Act is not applicable to the case of the petitioner herein. It is also reported that the petitioner herein is having some previous cases, since it is held that Section 37 of the NDPS Act is not applicable to the case of the petitioner herein, considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.

18. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** with **two sureties each**, for a like sum to the satisfaction of the **learned XVI Metropolitan Magistrate at George Town** and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the Application for Surety ship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Magistrate shall obtain a copy of any one of the identity proofs to ensure their identity;

[b] **the petitioner shall report before the respondent police daily at 10:30 a.m., until further orders;**



Crl.O.P.No.21772 of 2025

WEB COPY

[c] On breach of any of the aforementioned conditions, the learned Magistrate/Trial Court is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)13 SCC 283]**;

[d] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of B.N.S.

28.01.2026

stn

K. RAJASEKAR, J.

stn

To

1. The XVI Metropolitan Magistrate at George Town.
2. The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai. (Crime No.233 of 2024)
3. The Superintendent,



Crl.O.P.No.21772 of 2025

Central Prison-II at Puzhal.

4. The Public Prosecutor,
High Court of Madras.

CRL OP NO.21772 of 2025

28.01.2026