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Crl.O.P.No.31131 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2026

CORAM

**THE HONOURABLE Mr. JUSTICE K. RAJASEKAR**

Crl.O.P.No.31131 of 2025

Manimaran

... Petitioner

Vs.

State through  
Inspector of Police,  
T-15 SRMC Police Station,  
Chennai – 600 116.  
(Crime No.465 of 2024)

... Respondent

**PRAYER:** Criminal Miscellaneous Petition filed under Section 483 of BNSS, to enlarge the petitioner on bail in Crime No.465 of 2024, on the file of the respondent police, pending investigation.

For Petitioner : Mr.R.Ganeshkumar  
For Respondent : Mr.A.Gopinath,  
Government Advocate (Crl.Side)

### **ORDER**

The petitioner, who was arrested and remanded to judicial custody on 29.07.2024 for the offences punishable under Sections 8(c), 22(b), 22(c) and 29(1) of NDPS Act, 1985 in Crime No.465 of 2024, registered on the file of the respondent police, seeks bail.



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2. The case of the prosecution is that on 29.07.2024 at about 13:30 hours, based on a secret information regarding illegal transportation and selling of ganja, the police party along with team went to Porur Tollgate Service Road and based on the identification given by the informant, the petitioner and other accused were intercepted by the police party; that after identifying them and after completing Section 50 of the NDPS Act, the petitioner and other accused were searched; that upon search, it is found that the petitioner herein/ A1 was in illegal possession of 12 grams of Ecstasy Tablets (30 numbers) and 8 grams of Methamphetamine and further they have confessed that they purchased the contraband from an unknown person at Tindivanam and sell the same to public thereby, the total quantity of contraband has been seized and the accused has been arrested. Hence, a case has been registered.

3. This is the second bail application filed by the petitioner. Earlier bail application filed by the petitioner has been dismissed by this Court as early as on 28.03.2025 in Crl.O.P.No.9374 of 2025 and after completion of seven months, the present bail petition has been filed by the petitioner. This Court, while dismissing the earlier bail application of the petitioner has held in para No.5 as follows:

*“5.In view of the submissions made by the learned*



*counsels on either side, considering the facts and circumstances of the case, this Court is of the view that the petitioner has not satisfied the twin conditions under Section 37 of the NDPS Act. Therefore, this Court is not inclined to grant bail to the petitioner at this stage. However, the petitioner cannot be indefinitely detained during the trial. Hence, it would be desirable to direct the Trial Court to conclude the trial as expeditiously as possible. If the trial is not concluded within six months, the petitioner is at liberty to renew his bail application before the Trial Court.”*

4. The learned counsel appearing for the petitioner submitted that the petitioner has been arrested as early as on 29.07.2024; that co-accused/A2 in this case already arrested and released on bail by this Court in Crl.O.P.No.32105 of 2024 dated 28.01.2025; that the petitioner is in continuous incarceration without any trial process; and that there are violations of mandatory provisions. He further submitted that in this case, the joint communication for compliance under Section 50 of the NDPS Act has been served on both the accused herein and thereby there is a clear violation of Section 50 of NDPS Act in this case. Hence, he prays to grant bail to the petitioner. He also relied on the Judgement of the Hon'ble Apex Court in ***State of Rajasthan vs. Parmanand and another*** cited supra and the Apex Court in ***Vijaysinh Chandubha Jadeja vs State Of***



**Gujarat [2011 (1) SCC 609]** in support of his contention. He also submitted that the petitioner is ready to abide by any conditions that may be imposed by this Court and sought for bail to the petitioner.

5. The learned Government Advocate (Crl.Side) appearing for the respondent/State reiterated the prosecution case and, upon instructions submitted that totally there are two accused in this case and that the petitioner is ranked as A1; that from the petitioner 30 numbers of ECSTACY Tablets (each containing 12 grams) has been seized which falls under the category of commercial quantity which attracts Section 37 of the NDPS Act and hence the petitioner has to satisfy the twin condition imposed under Section 37 of the NDPS Act; that the investigation of this case was completed and final report was filed in C.C.No.871 of 2024, dated 21.10.2024 on the file of the learned Principal Special Court under NDPS Act, Chennai; that the petitioner has involved in 11 previous cases, out of which, two cases registered under similar in nature; and that the trial is pending for production of other accused in this case. Hence, he vehemently opposed to grant bail to the petitioner.

5a. In support of his contention, he also relied on the Judgment of this Court vide order ***dated 18.09.2018 in Crl.A.(MD)Nos.20 of 2017 and etc.,***



*batch cases in the case of (Thangapandi and three others vs. The State represented by the Inspector of Police (L&O), E1-K, Pudur Police Station, Madurai City) and vide order dated 28.09.2019 in Crl.A.(MD).No.63 of 2009 (Sekar and another vs. The State Rep. By the Sub Inspector of Police, NIBCID, Theni, Theni District).*

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

7. The Hon'ble Apex Court in *Sate of Rajasthan vs. Parmanand and Another* reported in **2014 (5) SCC 345** considered the serving joint notice under Section 50 of the NDPS Act and held in paragraph Nos.16 and 17 has read as follows:

*“16. It is now necessary to examine whether in this case, **Section 50** of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under **Section 50(1)** of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent No.2 – Surajmal is stated to have signed for himself and for respondent No.1 – Parmanand. Respondent No.1 Parmanand*



did not sign.

17. In our opinion, a joint communication of the right available under [Section 50\(1\)](#) of the NDPS Act to the accused would frustrate the very purport of [Section 50](#). Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the [NDPS Act](#) carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under [Section 50\(1\)](#) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in *Paramjit Singh* and the Bombay High Court in *Dharamveer Lekhram Sharma* meets with our approval. “

8. The Hon'ble Apex Court in *Vijaysinh Chandubha Jadeja vs State Of Gujarat [2011 (1) SCC 609]* has held in paragraph No.22 as follows:

“23. In the above background, we shall now advert to the controversy at hand. For this purpose, it would be necessary to recapitulate the conclusions, arrived at by the Constitution Bench in *Baldev Singh's* case (*supra*). We are concerned with the following conclusions:-

“(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it



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*is imperative for him to inform the person concerned of his right under sub-section (1) of [Section 50](#) of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.*

*(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.*

*(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of [Section 50](#) of the Act.*

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*(5) That whether or not the safeguards provided in [Section 50](#) have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of [Section 50](#) and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.*

*(6) That in the context in which the protection has been incorporated in [Section 50](#) for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of [Section 50](#) are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of [Section 50](#), may render the*



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*recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.*

*(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in [Section 50](#) of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search."*

*24. Although the Constitution Bench did not decide in absolute terms the question whether or not [Section 50](#) of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of [Section 50](#) make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of [Section 50](#) of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under [Section 50](#) should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce."*



9. The above judgments relied on by the learned counsel for the petitioner made it clear that the compliance under Section 50 of the NDPS Act is mandatory. A joint communication of their right may not be clear or unequivocal, it may create confusion and it may result in diluting their right. Therefore, accused must be individually informed. However, if both the persons have subscribed their signatures in the joint notice it could not be said that there is no compliance of the Section 50(1) notice. Further, it has been specifically held in ***Vijaysinh Chandubha Jadeja*** case cited supra that whether the compliance of Section 50 of NDPS Act is made substantially or not is a matter deciding for trial and the same could not be considered during hearing of the bail petition. Hence, this Court is of the view that on the basis of failure to substantially comply the mandatory provisions of Section 50 of the NDPS Act is not a ground to seek bail at this stage.

10. The next contention raised by the learned counsel for the petitioner is that the petitioner has been in continuous incarceration since 04.03.2025. The Apex Court in ***Ankur Chaudhary vs. State of Madhya Pradesh*** reported in ***((2024) SCC Online SC 2730)*** 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.”*

11. The Apex Court in ***Rabi Prakash vs. State of Odisha*** reported in ***((2023) SCC Online SC 1109)***'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.”*

12. 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***



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*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



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*that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.”*

13. The Apex Court in ***Union of India vs. Namdeo Ashruba Nakade [(2025) 8 Supreme 633]***, while considering the bail application under Section 37 of the NDPS Act has observed that, when the case falls within the category of commercial quantity, the accused has been charged with offences punishable with 10 to 20 years rigorous imprisonment, hence the incarceration of nearly 1 year 4 months could not be considered as unreasonably long time and it is not the case of continuous incarceration. Similarly, the Apex Court in ***Union of India vs. Gurjugdip Singh Smagh and Anr. [Special Leave to Appeal (Crl.) No.13717 of 2025 dated 16.12.2025]*** has held that 2 years of incarceration is not a ground to consider the bail in a heinous crime.

14. The Three Bench Judgment of the Hon'ble 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 under Section 37 of



the NDPS Act and categorically held in paragraph No.18 that *“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.”*

15. The Apex Court in the above judgments has though held that the continuous incarceration of the accused, without any progress in the trial, violate 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, the Apex Court has also considered the stage of each cases and granted bail, hence facts of each case has to be considered and prolonged incarceration alone could not be considered as valid grounds to grant bail.

16. While dismissing first bail application of the petitioner, this Court has observed that Section 37 of the NDPS Act is applicable to the case of the petitioner, hence he has to satisfy Section 37 of NDPS Act. Further, the learned counsel stated that co-accused/A2 in this case already arrested and released on bail. But the co-accused/A2 was released on bail on the ground that he was found in possession of contraband which falls under the intermediate quantity. But in this case, 30 numbers of ECSTACY Tablets (each containing 12 grams)



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has been seized from the petitioner, which falls under the category of commercial quantity. Hence, the reasons stated for granting bail to the co-accused/A2 is not applicable to the present case of the petitioner herein. Further, this Court has also called for a report from the Trial Court and the report has been received from the Principal Special Court under NDPS Act in Disc.No.7999/2025, dated 29.12.2025, it is stated that due to the involvement of subsequent cases by the co-accused, trial is not progressing and the case is pending for production of the other accused, who were arrested in another case.

17. Considering the above facts and the submissions made on both sides; the quantity of contraband involved in this case which falls under the category of commercial quantity; and that the petitioner has not satisfied the twin condition under Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioner.

18. Accordingly, this criminal original petition stands dismissed.

**25.02.2026**

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To

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1.The Inspector of Police,  
T-15 SRMC Police Station,  
Chennai – 600 116.

2.The Public Prosecutor,  
High Court of Madras.

**K.RAJASEKAR,J.**

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