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Crl.O.P.No.33219 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.33219 of 2025

Vishwanathan @ Makunda Vishwanatha Reddy ... Petitioner/ Accused

Vs

The State Rep. By,
The Inspector of Police,
K8 Arumbakkam Police Station,
Chennai.
(Crime No.441 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 C.C.No.643 of 2025 on the file of the II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

For Petitioner : Mr. T. Gowthaman, Senior Advocate
For Mr. S. Kasirajan

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



ORDER

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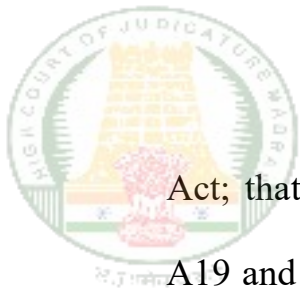
The petitioner, who was arrested and remanded to judicial custody on 23.10.2024 in C.C.No.643 of 2025 on the file of the II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai, for the offences under Sections 8(c), 22(b) and 29(1) of NDPS Act @ Sections 8(c) r/w 22(b), 29(1), 20(b)(ii)(A) of NDPS Act @ Sections 8(c) r/w. 22(c), 29(1), 25 and 20(b)(ii)(A) of NDPS Act, seeks bail. This is the third bail application of the petitioner and the earlier bail applications in Crl.O.P.No.3542 of 2025 was dismissed by this Court, vide order dated 21.03.2025 and Crl.O.P.No.16446 of 2025 was dismissed as withdrawn, vide order dated 05.11.2025.

2. The case of the prosecution is that on 20.10.2024 based on a specific information, the respondent team went near Arumbakkam Naduvankarai Bridge and intercepted one Arunkumar, who is the first accused; that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and he was found in possession of 11.59 grams of Methamphetamine; that thereafter his statement under Section 67 of the NDPS Act was recorded, which revealed that he purchased the contraband from Anthony Ruban (A4) and would sell it to Deepakraj (A3), Siddharth (A2) and Jagadeesh @ Jaga (A9); that after the arrest of the first accused, on his confession a further quantity of 14.33 kilograms of Methamphetamine was



seized from his house; that thereafter, A5 and A6 were arrested and their confession statement revealed that they purchased Methamphetamine from one Sathish (A7) and the petitioner herein; that further, 1 Kg of Methamphetamine was seized from this petitioner; that during further course of investigation, it is revealed that A15 in this case was the main drug dealer, who had purchased the contraband from Delhi in commercial quantity and supplied to the petitioner herein, A13 and A14. Hence, the case.

3. The learned counsel appearing for the petitioner submitted that, the petitioner has been falsely implicated in this case based on the confession of the co-accused; that the the petitioner has no connection with other accused involved in this case and there is no legally acceptable evidence to implicate the petitioner in the aforesaid offence; that the petitioner was not provided with grounds for his arrest during the time of arrest, as mandated under Section 47 of BNSS, which is also a violation of fundamental rights under Article 21 of the Constitution of India; that that the investigation of this case was completed and final report also filed in C.C.No.643 of 2025; that the petitioner is in judicial custody since 23.10.2024; that the contraband alleged to have recovered from the petitioner herein was produced before the NDPS Court after a delay of 34 days and further the respondent had sent the seized material to the Forensic Science Laboratory only on 04.12.2025, after an unexplained delay of 42 days, which is a clear violation of mandatory procedure prescribed under the NDPS



Act; that the co-accused/ A4, A5, A7, A10, A11, A12, A13, A14, A15, A18 , A19 and A20 were all already granted bail by this Court; 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. He also relied on the judgment of the Apex Court in ***Mihir Rajesh Shah vs. State of Maharashtra [2025 LiveLaw (SC) 1066]*** in support of his contention.

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 there are totally 20 accused involved in this case and the petitioner herein is arrayed as A1; that one kilogram of Methamphetamine was recovered from the petitioner herein, hence the petitioner has to satisfy the twin conditions under Section 37 of NDPS Act; that the investigation of this case was completed and charge sheet filed in C.C.No.643 of 2025 on the file of the II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

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

6. The contention raised by the petitioner herein is that he was not properly explained with grounds of arrest as contemplated under ***Mihir Rajesh Shah's case*** cited supra. This is the third successive bail application of the



petitioner herein and the earlier bail applications moved by the petitioner herein were dismissed by this Court on merits, after hearing the contentions of the petitioner. The petitioner herein had not raised the contention regarding non furnishing or informing the grounds of arrest at the earliest point of time while seeking bail. In this case, the materials placed on record shows that the prosecution had supplied Arrest memo, which contains grounds of arrest in compliance with Section 52(1) of the NDPS Act to the petitioner and now the petitioner is facing trial. The petitioner were able to argue the earlier bail application on merits and this Court had considered the same and dismissed those bail applications, hence this Court is of the view that the contention of the petitioner that he was not properly intimated with the grounds of his arrest to object the remand before the learned Judicial Magistrate at the time of his remand and also to file bail petition before appropriate forum is not proper. Though in *Vihaan Kumar vs. State of Haryana and another [2025 INSC 162]*, it is held that after filing of the charge sheet will not bar the accused from claiming non-compliance under Section 52(1) of the NDPS Act (i.e.,) failure to supply the grounds of arrest, however in this case, the petitioner had already argued the matter on merits and further there are documents produced before me to show that compliance of Section 52(1) of NDPS Act and Section 50A of the Code of Criminal Procedure, hence the petitioner is not entitled to seek bail on the ground that there is violation of Article 21 and 22(1) of Constitution of India.



7. The next contention raised by the petitioner herein is with regard to the violation of Section 52A of the NDPS Act. It is true that Section 52A of the NDPS Act and the Rules contemplated *inter alia* 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, 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.”

8. The above judgment of the Apex Court has reiterated that delayed compliance, or violation of Section 52A and its rules framed/ standing orders issued, 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. Any lapse on the part of the police shall raise 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, hence mere raising suspicion based on the delay in sending the sample is not a valid ground for seeking bail, unless it contemplates substantial probable causes for believing that the accused is not guilty of the offence. Further there is no tampering of seals recorded in any of the documents or statement of witnesses, under the said



circumstances the same is not a valid ground to satisfy “Reasonable grounds”
used in clause (b) of the Sub Section (1) of Section 37 of the NDPS Act.

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9. Considering the above and the fact that the contraband seized from the petitioner herein 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.

10. Accordingly, this criminal original petition stands dismissed.

26.02.2026

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K. RAJASEKAR, J.

stn

To

1. The Inspector of Police,
K8 Arumbakkam Police Station,
Chennai.
(Crime No.441 of 2024)
2. The Public Prosecutor,



High Court of Madras.

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