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Crl.O.P.No.34208 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.34208 of 2025

Kaviyarasu @ Kalith

... Petitioner/ Accused

Vs

The State of Tamilnadu,
Rep. By, The Inspector of Police,
K-7, I.C.F. Police Station.
(Crime No.56 of 2025)

... 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.720 of 2025 on the file of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr. S.R. Rajagopal, Senior Advocate
For Mr. S. Praveennath

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



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 04.03.2025 in C.C.No.720 of 2025 on the file of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, for the offences under Sections 8(c) and 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, seeks bail. This is the third successive bail application of the petitioner and the earlier bail application was dismissed by this Court, vide order dated 19.11.2025 in Crl.O.P.No.31615 of 2025 for the following reasons:

“6. Considering the quantity of the contraband seized from the petitioner is a commercial quantity and rigors of Section 37 of NDPS Act is applicable to this case and no grounds were made out for satisfying twin conditions of Section 37 of NDPS Act, this Court is not inclined to grant bail to the petitioner with certain conditions.”

2. The case of the prosecution is that on 04.03.2025 at about 15:00 hours, based on a specific information, the respondent team went near Karpaga Vinayagar Temple at Villivakkam and intercepted the petitioner herein: that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and found that the petitioner was in illegal possession of 64 grams of Methamphetamine for the purpose of illegal sale; that thereafter, the statement of the petitioner was recorded and subsequently, he was arrested and remanded to judicial custody.



3. The learned counsel appearing for the petitioner submitted that, the respondent had took the petitioner from his house at about 06:30 hours on 04.03.2025 and falsely implicated in this case, as if the petitioner was found in possession of contraband near Karpaga Vinayagar Koil Street at about 15:00 hours; that the respondent has not complied the mandatory procedures of seizure, sampling and custody of the alleged contraband, which is clear violation of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022; that further the FSL report dated 30.04.2025 shows a significant difference in the weight of the sample compared to what was drawn before the Special Court on 22.04.2025, which clearly shows that the case has been foisted against the petitioner; that the investigation of this case was completed and charge sheet also filed in C.C.No.720 of 2025; that the petitioner is in judicial custody since 04.03.2025 and his prolonged detention without trial, violates his fundamental right under Article 21 of the Constitution of India; 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 judgments of the Apex Court in **Rajesh Jagdamba Avasthi vs. State of Goa [(2005) 9 SCC 773]** 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, the petitioner herein was intercepted with possession of 64 grams of Methamphetamine; that after complying all the mandatory provisions, the seizure was effected, the statement of the petitioner and witnesses were recorded, the observation mahazar was prepared and the petitioner was produced before the learned Magistrate along with the seized contraband and remanded to judicial custody; that the contraband seized in this case is a commercial quantity, hence the petitioner has to satisfy the Section 37 of NDPS Act; that the investigation of this case was completed and charge sheet filed in C.C.No.720 of 2025 on the file of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai; and that the petitioner herein has two previous cases under IPC offences.

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

6. The main contention of the petitioner herein is that there was discrepancy in the weight of the contraband between the seizure memo and the contraband forwarded to the Forensic examination and further the sampling was done by violation of the NDPS Rules. In ***Rajesh Jagdamba Avasthi vs. State of Goa*** cited supra, the Apex Court has considered the discrepancy in the weight



between the seized contraband and the contraband produced before the Forensic

Science Laboratory and has held in paragraph No.14 as follows:

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“14.The appellant was charged of having been found in possession of charas weighing 180.70 grams. The charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by the Junior Scientific Officer, PW1, he found the quantity to be different. While in one envelope the difference was only minimal, in the other the difference in weight was significant. The High Court itself found that it could not be described as a mere minor discrepancy. Learned counsel rightly submitted before us that the High Court was not justified in upholding the conviction of the appellant on the basis of what was recovered only from envelope A ignoring the quantity of charas found in envelope B. this is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW1 was less than the quantity sealed and sent to him. As he rightly emphasised, the question was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for chemical analysis to PW1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful.”

7. The above observation was made in the appeal petition filed by the appellant therein, after he was convicted and the appeal was allowed. The judgment was delivered after re-appreciating the evidence placed on record. Whereas in this case, the trial of the case is pending and the fact that, after completion of the search and seizure proceedings, 64 grams of Methamphetamine was recovered from the petitioner herein. Subsequently, the entire contraband seized was produced before the learned Magistrate concerned for the purpose of



inventory and in the presence of the Magistrate, a sample of 7 grams was taken from the seized contraband and the same was sent for forensic examination. The documents shows that, it was forwarded through one constable after affixing the appropriate seals of the Court and this sample was handed over to one Annamalai, Grade-II Police Constable for handing over the same to the FSL. In the requisition letter sent by the Principal Sessions Court, Chennai to the Director, Forensic Science Department, the description of the property is mentioned as, “One sealed sample packet with Court seal and marked as 'S1' and weighed about 0.018 kg with cover sent to your lab for Chemical Analysis”, this indicates that the sample packet weighing 18 grams marked as 'S1', which includes the weight of the contraband and packing cover, etc.,

8. The report of the Forensic examiner also reveals that the sample sent to the lab for forensic examination in the sealed cover was untampered and the sealed paper parcel received by him was containing 4.7 grams net weight of the sample and after analysis, it was detected Methamphetamine. Though, it seems that 7 grams were taken in the requisition, the fact remains that the seal of the Court affixed in the letter of sample was intact. This reduction of sample weight has to be appropriately explained by the Officer concerned and it requires recording of evidence regarding discrepancy in the reduction of weight of the sample from 7 grams to 4.7 grams, even when the Court seal was untampered.



However that being the case, mere raising suspicion regarding the discrepancy in the weight of the sample taken and sent to laboratory alone could not be considered as a ground for seeking relief of bail.

9. It is true that Section 52A of the NDPS Act and the Rules contemplated *interalia* 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 in ***Narcotics Control Bureau vs. Kashif [2024 11 SCC 372]***, after considering the scope of Section 52A of NDPS Act has held in paragraph No.39 as follows:

“39. The upshot of the above discussion may be summarized as under:

- (i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.*
- (ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.*
- (iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.*



(iv) *Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.*

(v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.*

(vi) *Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”*

10. Similarly, the Apex Court 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*



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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.”

11. The above judgments of the Apex Court has reiterated that delayed compliance, or violation of Section 52A 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 and any lapse on the part of the police shall adverse inference only depend on the facts and circumstances of the case. The initial burden will lie on the accused to first lay the foundational facts to show 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, the Forensic Expert also received the sample without any tampering of the Court seal, that being the case, as stated in the earlier paragraph that mere raising suspicion regarding the discrepancy in the weight of the sample is not a valid ground for seeking bail and the same is not sufficient to satisfy the Section 37 of the NDPS Act.

12. 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 ***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.



13. Considering the above and the fact that the contraband seized from the petitioner herein in this case 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.

14. Accordingly, this criminal original petition stands dismissed.

19.02.2026

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To

1. The Inspector of Police,
K-7, I.C.F. Police Station.
(Crime No.56 of 2025)
2. The Public Prosecutor,
High Court of Madras.



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