



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23-02-2026

CORAM

THE HONOURABLE MRS JUSTICE S.SRIMATHY

CRL OP(MD) NO. 10167 of 2025

Ashok Kumar

Petitioner(s)

Vs

The Superintendent of Customs
No.66 Beach Road
Customs Division
Tuticorin 628001
O.R No.01/2018-2019-DPU-TTN.

Respondent(s)

For Petitioner(s): Mr.A.Jayaramachandran

For Respondent(s): Mr.S.Gurumoorthy

Prayer:

C-32B To enlarge the Petitioner on Bail in CC No.14/2021 pending trial on the file of the II Additional Special Court for EC and NDPS Act cases, Madurai.

ORDER

The petitioner/1st accused, who was arrested and remanded to judicial custody on 04.04.2024 for the offences punishable under Sections 8(c) read with 20(b)(ii)(c), 23(c), 28 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, in O.R No.01/2018-2019-DPU-TTN on the file of the respondent, seeks bail.

2. The case of the prosecution is that the Accused Nos.3 and 4 illegally transported 104.390 kg of ganja from Tuticorin to Srilanka as per the direction of the



petitioner / 1st accused. Hence, the complaint.

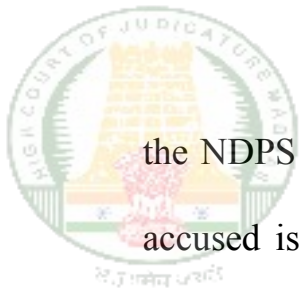
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3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has not committed any offences as alleged by the prosecution. He further submitted that the petitioner is in judicial custody from 04.04.2024. Hence, he seeks bail to the petitioner.

4. The learned Special Public Prosecutor submitted that this petition is third petition for bail. Totally, there are 4 accused and the crime number and charge sheet is of the year 2021. The petitioner did not appear for the trial. Therefore, there was a split up trial. The Accused Nos.3 and 4 in the original case were convicted and they have preferred an appeal which is pending before this Court. The 2nd accused was granted bail by this Court in CRL OP(MD)No.4807 of 2025, vide order dated 21.02.2025. There is one previous case against the petitioner which is under human trafficking and not under NDPS Act.

5. It is seen that trial has not been commenced. However, the contention of the petitioner is that the appeal is pending before this Court and the records have come to this Court. At this stage, trial cannot be commenced.

6. While considering the bail application under NDPS, the Court ought to consider whether the accused is satisfying the twin conditions stated in section 37 of



the NDPS Act, since the provision states that no person is entitled to bail unless the accused is satisfying the twin test prescribed under the section. The said section is extracted hereunder:

"[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

i. the Public Prosecutor has been given an opportunity to oppose the application for such release, and

ii. where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]"

7. The section states to issue notice to the Public Prosecutor. This Court had issued notice to the Public Prosecutor and the learned Special Public Prosecutor appearing for the respondent / prosecution vehemently opposed for granting bail. Hence the said condition is satisfied.



8. The section further states if the Public Prosecutor opposes the bail, then the Court ought to satisfy itself the twin test,

- i. that there are reasonable grounds for believing that he is not guilty of such offence and*
- ii. that he is not likely to commit any offence while on bail.*

9. In the present case, the petitioner is not having any previous case under NDPS Act. Therefore, he is passing the second test. As far as the first test is concerned, the petitioner was arrayed as accused based on the confession.

10. The learned Special Public Prosecutor appearing for the respondent vehemently opposed stating that he is not only an accused based on confession of co-accused but based on the confession of the petitioner's wife who has stated in the 161 statement that the petitioner has hired a Place and he used to keep narcotics materials in the said place.

11. The learned Counsel appearing for the petitioner submitted the same was obtained under threat. Even in the Magazar alsom the witness is the petitioner's sister.

12. Considering the above said facts and circumstances of this case, this Court is of the considered opinion that the petitioner has passed that first test that he may not be guilty.



13. Taking into consideration the facts and circumstances of this case and also considering the period of incarceration suffered by the petitioner, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

14. Accordingly, the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court for E.C and NDPS Act Cases, Madurai, and on further conditions that :-

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b] the petitioner shall report before the Trial Court daily at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been



imposed and the petitioner is 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)AIR SCW 5560].

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[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 BNS.

23-02-2026

Tmg

1.Principal Special Court for E.C and NDPS Act Cases,
Madurai.

2.Central Prison,
Madurai.