



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.01.2026

CORAM

THE HONOURABLE MRS JUSTICE S.SRIMATHY

CRL OP(MD) NO. 838 of 2026

P. Alagu

Petitioner

Vs

State of Tamil Nadu represented by
Inspector of Police,
Natham P.S., Dindigul District.
Crime No.71 of 2022

Respondent

For Petitioner(s): Mr.C.Kannan

For Respondent(s): Mr.T.Senthil Kumar,
Additional Public Prosecutor

Prayer: To release the petitioner/accused No.3 on bail in Crime No.71 of 2022 in C.C.No.601 of 2022 in Communal Clash Cases Court, Southern District, Madurai.

ORDER

This Petition is filed to enlarge the petitioner on bail in connection with the case in C.C.No.601 of 2022 pending on the file of the Communal Clash Cases Court, Southern District, Madurai, for the alleged offences under sections 8(c) read with 20(b)(ii)(C), 25 and 29(i) of NDPS Act.



2. The case of the prosecution is that on 19.02.2022 at about 21.00 hours, the respondent-prosecution found that the petitioner, along with the other accused persons, was in illegal possession of seven gunny bags of contraband, each weighing 20 kilograms . Hence, the complaint.

3. The learned Additional Public Prosecutor appearing for the respondent police vehemently opposed for granting bail to the petitioner, since the petitioner along with other accused persons were in possession of 140 Kilograms of contraband, which is a commercial quantity. The offence alleged against the petitioner would fall under Section 29 of the NDPS Act, as he is said to have abetted the criminal conspiracy. Therefore, he is covered under Section 35 of the NDPS Act, which contains the presumption clause. He further submitted that there is no previous case pending against the petitioner.

4. The learned Counsel appearing for the petitioner submitted that the explanation under Section 35 would come to the aid of the petitioner, as the culpable mental state includes intention, motive, knowledge of the act and belief or reason to believe. None of the above ingredients are present in the present case. He further submitted that based on the confession statement given by the other accused person, this petitioner was arrayed as A-3. Moreover, except confession statement, no other material was seized from the petitioner.



5. In order to consider the aforesaid contention, the said provision is extracted hereunder:

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35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

6. The aforesaid section states that there is presumption of culpable mental state and it is for the accused to disprove there is no culpable mental state. However, the same provision states in explanation that the “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. When no contraband is recovered from the possession of the petitioner in the present crime, it cannot be stated that the petitioner is having “culpable mental state” as stated in the “explanation”. Therefore, this Court is of the considered opinion that the contention of the prosecution of presumption clause is unacceptable.



7. However, under section 37 of NDPS Act it is stated that no person is entitled to bail provided the twin test prescribed under the section ought to be satisfied. 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.]

8. The section states to issue notice to the Public Prosecutor. This Court had issued notice to the Public Prosecutor, who in turn had filed objections and opposed to grant bail. Hence the said condition is satisfied.



9. 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

In the present case based on the confession statement of the other accused person only this petitioner was arrayed as A-3. In such circumstances, it cannot be stated that the petitioner is involved in the crime. Therefore, there are reasonable grounds to believe that the petitioner may not be involved in the crime, hence, this Court is of the considered opinion that the petitioner deserves to be considered for bail.

10. Further it is seen that there is no previous case against the petitioner. Hence the second test of “likely to commit the same offence” is not there. Therefore, petitioner is entitled to be considered for the bail.

11. For the reasons stated supra, this Court is of the considered opinion that the petitioner is entitled to bail.

12. 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 Communal Clash Cases



Court, Southern District, Madurai, and on further conditions that :-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(b) the petitioner shall appear before the trial Court on all hearing dates without fail.

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

[d] the petitioner shall not tamper with evidence or witness 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 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].

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

30.01.2026

KSA



To

1. The Communal Clash Cases Court, Southern District, Madurai.
2. The Inspector of Police,
Natham P.S., Dindigul District.
3. The Superintendent, District Prison, Dindigul.
4. The Additional Public Prosecutor,
Additional Public Prosecutor,
Madurai.