

Crl.O.P.(MD)No.21943 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 12.09.2025

Pronounced on: 25.09.2025

PRESENT

The HONOURABLE MRS.JUSTICE S.SRIMATHY

CRL OP(MD)No.21943 of 2024

Krishnan

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Gudalur North Police Station,
Theni District.
(Crime No.225 of 2024)

... Respondent

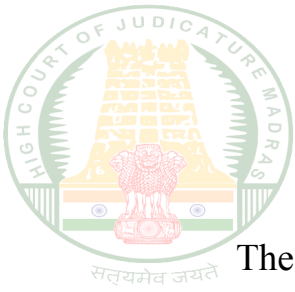
For Petitioner : Mr.G.Karuppasamyandiyan

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS, 2023.

PRAYER :- For Bail in Cr.No.225 of 2024 on the file of the respondent police.

ORDER: The Court made the following order:-

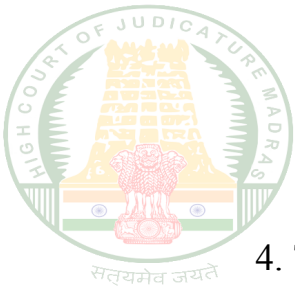


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WEB COPY The petitioner/Accused No.3, who was arrested and remanded to judicial custody on 29.10.2024 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1), 27A and 25 of NDPS Act, in Crime No.225 of 2024, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 28.10.2024 at about 3.00 Hrs., three persons came in a two-wheeler bearing registration No.TN 60 X 4338 attempted to escape on seeing the police, but the said 3 persons were napped by the respondent. On search, it was found that 1.100 Kgs of Hashish Extracts was available in the petrol tank cover of the bike. The respondent police arrested all the 3 accused and recovered the contraband. Hence, this case.

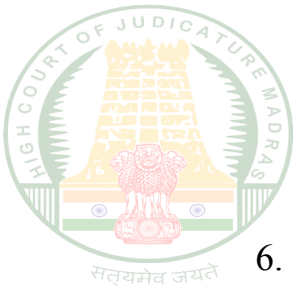
3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. However, he has been arrested and he is languishing in jail from 29.10.2025. Further stated that the 2nd limb of section 37 of NDPS Act is not attracted in the case, since the petitioner has no previous cases of similar in nature. Therefore, he prays for grant of bail.



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4. The learned Additional Public Prosecutor appearing for the respondent police opposed for grant of bail on the ground that the petitioner/ Accused 3 was in possession of 1 kg 100 gm of Hashish oil which is commercial quantity, hence the provisions of sections 35 and 54 would come into play. Further the Additional Public Prosecutor had relied on several judgments rendered by Hon'ble Supreme Court, especially one of the latest judgments rendered in Rakesh Kumar Raghuvanshi Vs. the State of Madhya Pradesh in Criminal Appeal No.1953 of 2014. It is seen in the said judgment the case is against the conviction, wherein the word "possession" was considered elaborately and finally confirmed the conviction. In the present case, the present application is for bail and not against conviction. Therefore, this Court is of the considered opinion that the said judgment is not applicable to the present facts and stage of the case.

5. The next contention is the prolonged incarceration. In the present case, the case was registered on 28.10.2024 and the petitioner was arrested and remanded on 29.10.2024. The charge sheet has been filed on 04.04.2025. It is seen the charge sheet has been filed within the period of 180 days which is the outer limit granted for filing charge sheet. Therefore, this Court is of the considered opinion that there is no delay in filing the charge sheet.



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6. As far as the Trial of the case is concerned, the case was posted for Trial on 15.05.2025, then posted on 25.07.2025, then in the month of September. Hence it is clear that the trial is in initial stage.

7. Now the twin test stated in Section 37(1) of the NDPS Act ought to be applied. The provision is reproduced hereunder:

“37. Offences to be cognizable and non- bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

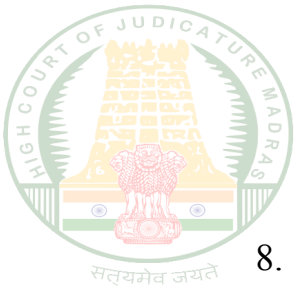
(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[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.”

In the present, the Public Prosecutor was given an opportunity and he had filed detailed counter and had vehemently opposed the bail application and submitted that it is commercial quantity.



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8. The next test is whether the petitioner / accused 3 would be guilty of the offence. It is seen that the bike in which the contraband was seized belongs to the petitioner. Even as per the prosecution case the accused 1 and 2 had given confession statement stating that the accused 1,2,3,4 and 5 have jointly put money to buy the Ganja and sell it for higher prices at Kerala. Hence it is based on the confession of the accused 1 and 2, the accused 3 was arrayed as party, besides the bike belongs to the petitioner. As regards of value of confession, the ratio laid down by the Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1*** is extracted hereunder:

“158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confession statement made to them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict an accused under the NDPS Act.

159.2 That a statement recorded under Section 67 of the NDPS Act cannot be used as a confession statement in the Trial of an offence under the NDPS Act”

9. The grant of bail for an offence involving commercial quantity is subject to the limitation provided under section 37(1)(b) of the NDPS act, the



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prosecution has filed their objections by way of a counter. The limitations for grant of bail or that the Public Prosecutor must be given an opportunity to oppose the bail application and there must exist reasonable grounds to believe that the accused is not guilty for the offence and he's not likely to commit any offence while on bail.

10. In the present case, as held supra based on the confession of the accused 1 and 2, the accused 3 was arrayed as party, besides the bike belongs to the accused 3. The prosecution has not produced any material other than confession which has been held inadmissible in law in Tofan Singh's case. The expression "reasonable grounds" had been interpreted by the Hon'ble Supreme Court in Union of India Vs. Shiv Shankar Desari (2007) 3 SCC Crl. 505 which is held as under:

"7. The expression used in section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances or sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged".



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Hence there are reasonable grounds to believe that there are no material other than confession in the present case. Further as the petitioner is not having previous case, therefore, the petitioner is not likely to commit any offence while on bail.

11. It is seen that the commercial quantity is one kg. In the present case it is 1.100 kg. It is seen that where ever there are one kg is prescribed as commercial quantity, the seizure invariably is one kilogram and 100 grams. The quantity of “one kilogram and 100 grams” same seems to be magic quantity. Of course, this is only an observation, but this fact was not taken as a ground to decide the case.

12. Considering the facts and circumstances and the observations stated supra and considering the duration of the custody, this Court is inclined to grant bail to the petitioner on certain conditions.

13. 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 Principal Special Court for Trial of NDPS Act Cases, Madurai, and on further conditions that,



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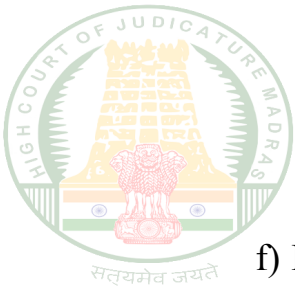
a)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

b)the petitioner shall report before the respondent police daily at 10.30 a.m., for two weeks and thereafter, at 10.30 a.m., once in a week, until further orders;

c)the petitioner shall not tamper with evidence or witness;

d)the petitioner shall not abscond during 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].



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

14. Accordingly, this Criminal Original Petition is allowed.

25.09.2025

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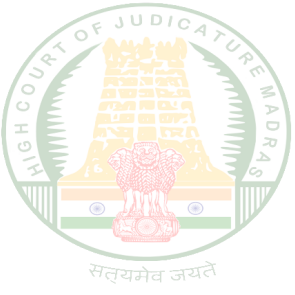
TO

1.The Principal Special Court
for Trial of NDPS Act Cases,
Madurai.

2. The District Jail,
Theni.

3.The Inspector of Police,
Gudalur North Police Station,
Theni District.

4.The Additional Public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.



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S.SRIMATHY,J

TMG

ORDER
IN
CRL OP(MD) No.21943 of 2024

Date : 25.09.2025