



Crl.OP(MD)No.22794 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22794 of 2025

Mukesh Sharma

.... Petitioner /Accused No.6

Vs.

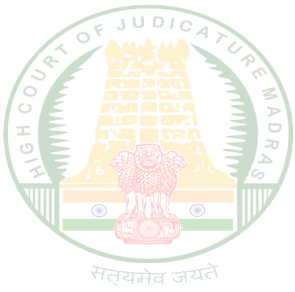
State Tamilnadu rep by
The Inspector of Police,
NIB-CID, Trichy.
(In Crime No.6 of 2024)

... Respondent /Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to direct the learned Trial Court to accept the petitioner's sureties as directed by the docket order dated 20.08.2025 in C.C.No.122 of 2024, passed by the learned Additional District Judge for EC and NDPS Act Cases, Pudukkottai.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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ORDER

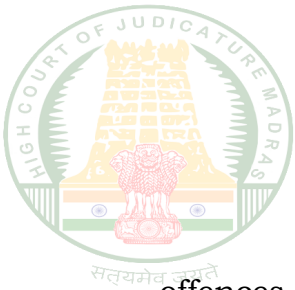
Preface:

Criminal law, particularly when it operates in the field of special statutes such as the Narcotic Drugs and Psychotropic Substances Act, 1985, walks a delicate line between societal interest and individual liberty. While the rigour of Section 37 of the NDPS Act is intended to combat organised drug trafficking with an iron hand, procedural fairness cannot be rendered illusory by mechanical application of law divorced from the nature of the relief sought.

2. The present petition does not seek bail, anticipatory bail, or discharge. It merely seeks a direction to the trial Court to act upon its own docket order relating to acceptance of sureties, and therefore calls for a careful delineation between procedural compliance and substantive bail jurisprudence.

Case of the prosecution:

3. A *suo motu* case came to be registered on 14.02.2024 by the Inspector of Police, NIB CID, Trichy, in Crime No.4 of 2024 for

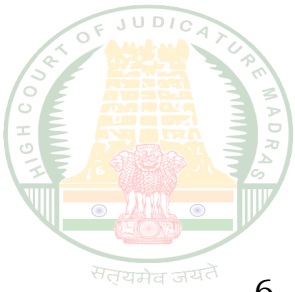


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offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of the NDPS Act, 1985, against four named accused persons.

4. The prosecution case is that on the said date, based on prior intelligence, a police party conducted a vehicle check near Irungalur Kaikatti on the Chennai-Trichy National Highway. At about 06.30 hours, a Yamaha R15 motorcycle and a trailer lorry bearing Registration No.TN 04 AY 8617 were intercepted. Upon inspection, 140 kilograms of ganja was allegedly recovered from the trailer truck. Four persons, namely Pranesh (A-1), Suresh (A-2), Shanmugavel (A-3) and Mohankumar (A-4), were arrested and remanded. A final report was filed and taken cognizance in C.C.No.122 of 2024 on the file of the learned Additional District Judge for EC and NDPS Act Cases, Pudukkottai.

5. During the pendency of trial, a supplementary charge sheet was filed arraying Accused Nos.5 to 7, including the present petitioner as A-6, alleging conspiracy under Section 29 of the NDPS Act, 1985.



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6. Based on the supplementary charge sheet, summons were issued. The docket order dated 20.08.2025 reveals that while A-5 appeared and was directed to execute bond with sureties, A-6 and A-7 were absent and fresh summons were ordered.

7. It is the specific case of the petitioner that he did not receive summons and that similarly placed co-accused (A-5) was permitted to execute bond, pursuant to an order of this Court in Crl.O.P.(MD) No.16146 of 2025.

8. Aggrieved by the inaction in accepting his sureties in terms of the docket order, the petitioner has approached this Court seeking a limited direction to the trial Court.

Grounds urged:

9. The petitioner contends that, (i) he is not seeking bail but only acceptance of sureties pursuant to summons; (ii) similarly placed co-accused has been extended the same benefit; (iii) Section 88 Cr.P.C., 1973, (*pari materia* under BNSS) is discretionary and



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procedural; and (iv) denial of acceptance of sureties without adjudication results in arbitrary discrimination.

Submissions :

10. The learned counsel for the petitioner submitted that the relief sought is confined to a procedural direction, and does not trench upon the rigour of Section 37 of the NDPS Act. Reliance was placed on the docket order and parity with A-5.

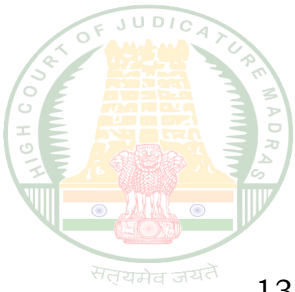
11. Per contra, the learned Additional Public Prosecutor opposed the petition contending that the petitioner is an absconding accused in a commercial quantity NDPS case involving 140 kg of ganja, and that even for exercise of power under Section 88 CrPC, compliance with Section 37 NDPS Act is mandatory.

12. Reliance was placed on, (i) ***Pankaj Jain v. Union of India***¹, (ii) ***Satender Kumar Antil v. CBI***², and (iii) ***State vs. L.Antony Adimai***.³

1 (2018) 5 SCC 743

2 (2022) 10 SCC 51

3 2023 (1) LW (Crl) 277



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13. Heard the learned counsel for the petitioners and carefully perused the materials available on record.

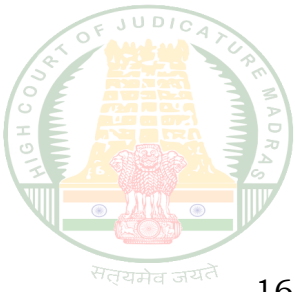
Point for consideration:

14. Whether this Court can issue a direction to the trial Court to consider and accept the petitioner's sureties pursuant to summons and docket order, without adjudicating upon bail or diluting the rigour of Section 37 of the NDPS Act?

Analysis:

15. Section 88 of the Code of Criminal Procedure (now Section 91 BNSS) empowers the Court to take a bond for appearance of any person. The provision is discretionary, intended to secure attendance, and does not confer an enforceable right on the accused. The Supreme Court in the case of ***Pankaj Jain v. Union of India***⁴ has unequivocally held that Section 88 does not mandate acceptance of bond, and discretion must be exercised judiciously.

⁴ (2018) 5 SCC 743



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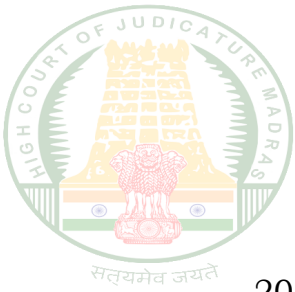
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16. Equally, this Court has held in 2023 (1) LW (Crl) 277 that indiscriminate exercise of Section 88 power in NDPS cases would defeat the object of Section 37.

17. However, it is equally settled that issuance of summons and acceptance of bond for appearance cannot be equated with grant of bail. The embargo under Section 37 comes into play when liberty from custody is sought, not when the accused is merely securing appearance pursuant to summons.

18. In the present case, the petitioner is not seeking bail, nor is he asking this Court to bypass Section 37. The prayer is limited to directing the trial Court to consider acceptance of sureties in accordance with law, especially when a co-accused has already been extended such benefit.

19. The trial Court must, however, independently apply its mind, record reasons, and ensure that acceptance of bond does not result in indirect circumvention of Section 37 NDPS Act.



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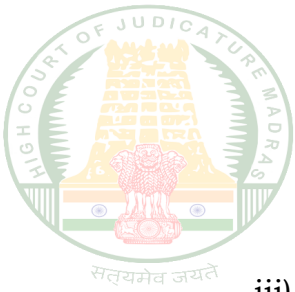
20. Therefore, while this Court cannot issue a mandamus to accept sureties, it can certainly direct the trial Court to consider the petitioner's appearance and request in accordance with law, uninfluenced by parity alone.

21. The war against narcotics must be relentless, but it must also be lawful. Procedural safeguards are not obstacles to justice, they are its handmaidens. Courts must ensure that in enforcing stringent statutes, fairness is not sacrificed at the altar of severity.

22. In the result, this Criminal Original Petition is disposed of with the following directions:

i) The petitioner shall appear before the learned Additional District Judge for EC and NDPS Act Cases, Pudukkottai, within two weeks from the date of receipt of a copy of this order.

ii) Upon such appearance, the trial Court shall consider the petitioner's request for acceptance of bond/sureties, strictly in accordance with law, bearing in mind the discretionary nature of Section 88 CrPC (Section 91 BNSS) and the rigour of Section 37 of the NDPS Act.



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iii) The learned Trial Court shall pass a reasoned order on the same, without being influenced by any earlier orders relating to co-accused.

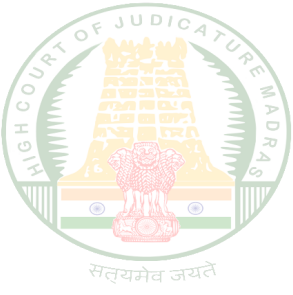
22. It is made clear that this Court has not expressed any opinion on the merits of the case, bail entitlement, or culpability of the petitioner.

19.01.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

1. The Inspector of Police,
NIB-CID, Trichy.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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