



Crl.O.P.No.5321 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**Crl.O.P.No.5321 of 2025**

1. E.Kadhar Basha  
2. R.Senthil Kumar

... Petitioners

Vs

Union represented by  
The Inspector,  
NCB, Chennai Zonal Unit,  
Chennai – 600 017.  
R.R.No.23 of 2023

... Respondent

**PRAYER:** Criminal Original Petition is filed under 528 of the Bharatiya  
Nagarik Suraksha Sanhita, 2023/ Section 482 of Cr.P.C, to set aside the  
order of remand passed as against the petitioner by the Judicial  
Magistrate-II, Ponneri in R.R.No.23 of 2023, dated 27.07.2023 in the  
interest of justice.

For Petitioners : Mr.M.G.Martinmanivannan

For Respondent : Mr.N.P.Kumar  
Special Public Prosecutor for NCB



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## **ORDER**

This petition has been filed challenging the order of remand passed as against the petitioner by the Judicial Magistrate-II, Ponneri in R.R.No.23 of 2023, dated 27.07.2023.

2. Heard the learned counsel on either side and perused the materials placed on record.

3. The petitioners are arrayed as A1 and A2 in R.R.No.23 of 2023 under Sections 8(c) read with 20(b)(ii)(C), 27A, 28 and 29 of NDPS Act, 1985 on the file of the respondent, alleging that the petitioners were in possession and transported Ganja weighing about 432.700 kgs and intercepted a vehicle which was driven by the first accused bearing Registration No.TN 31 BD 6347 at Karanodai Toll Plaza, Chennai on 24/25.07.2023. However, they were remanded to judicial custody on 27.07.2023. In the meanwhile, they were kept in the illegal custody and they were tortured by physically and mentally for almost three days.



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4. After a period of three days, they were produced for remand on 27.07.2023. Immediately, after their arrest, they were not produced before the nearest Magistrate. That apart, their arrest were not intimated to any of the petitioners' friends, relatives or family members. The respondent violated the mandatory procedure as contemplated under Section 167 Cr.P.C. Further, the respondent failed to produce the petitioners within 24 hours from the time of arrest/detention as contemplated under Section 57 of Cr.P.C or not transmitted to the nearest Judicial Magistrate. Therefore, it is a clear violation of Article 22 of Constitution of India.

5. In support of contention, the learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court of India in *SLP (Crl.)No.13320 of 2024*, in the case of *Vihaan Kumar Vs State of Haryana and another* dated 07.02.2025, in which the Hon'ble Supreme Court of India held that as per clause 1 of Article 22 of Constitution of India that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for



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such arrest. Further as per Section 50 of Cr.P.C, a person arrested to be informed of grounds of arrest and of right to bail.

6. Article 22(5) of Constitution of India is regarding communication of the grounds of arrest or detention in writing to the relatives, family members or friends of the accused. Therefore, Article 22(1) and 22(5) of Constitution of India cannot be breached under any situation. Non compliance of the constitutional requirements and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

7. It was further held that the purpose of inserting Section 50A of Cr.P.C, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his



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release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, communicating the grounds of detinue and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons.

8. A perusal of records revealed that on secret information, the respondent intercepted the vehicle which was driven by the first accused along with second accused at about 18.10 hrs, on 24.07.2023 and the accused were questioned about the transportation of ganja. The accused replied that they were carrying 220 ganja packets packed in 11 gunny bags concealed in the truck back side and covered with green colour plastic tarpaulin. Those packets have to be delivered at Ramanathapuram, Tamil Nadu. Thereafter, they were served with summons to conduct search. In the presence of two witnesses, search was made and it was



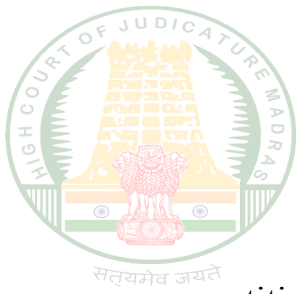
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found that they were in possession of Ganja in 11 gunny bags. Each gunny bag had 20 brown colour taped packets. After taking samples, sealed remaining packets. Thereafter, personal search was also conducted on the petitioners, after following the provisions under Section 50 of NDPS Act. The vehicle was also seized and prepared mahazer.

9. Thereafter, on 25.07.2023, the petitioners were issued with summons under Section 67 of NDPS Act for enquiry and the same were duly received by them. They made statements on 25.07.2023 and 26.07.2023. After recording their statements, on 26.07.2023, they were issued with arrest memo at about 19.00 hrs. Thereafter, they were produced before the learned Magistrate II, Ponneri, Thiruvallur.

10. On 27.07.2023, at about 09.45 pm, the petitioners were served with arrest memo and the reasons for the arrest were also duly explained to them. The learned Judicial Magistrate II, Ponneri, recorded that no external injury found and no complaint against the petitioners. The arrest intimation was also given to the persons nominated by the



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petitioners. Thereafter, the learned Magistrate accepted the remand and remanded them to judicial custody till 04.08.2023.

11. A perusal of the arrest intimation of the petitioners dated 26.07.2023 categorically stated about the grounds of arrest and also intimated to the wife of the first petitioner. In fact, the first petitioner also endorsed in the arrest intimation dated 26.07.2023 that the arrest of the first petitioner was duly informed by him through the phone from the office of the respondent. Likewise, the second petitioner also endorsed that the arrest intimation was informed to his mother through the phone from the office of the respondent.

12. Therefore, the respondent followed the procedures as contemplated under Article 22(1) and 22(5) of the Constitution of India. They also followed the procedure as contemplated under Section 57 of Cr.P.C and Section 50 of NDPS Act, while arresting the petitioners and also while remanding them to the judicial custody. Therefore the above Judgment is not applicable to the case on hand. That apart, the petitioners



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challenged the order of remand dated 27.07.2023 after a period of nearly two years, since they were not granted bail. Therefore, they have challenged the order of remand as if the respondent failed to follow the procedures while arresting them and while remanding them to judicial custody.

13. In view of the above, this Court finds no infirmity or illegality in the order of remand as against the petitioners by the Judicial Magistrate-II, Ponneri in R.R.No.23 of 2023, dated 27.07.2023 to interfere by this Court.

14. Accordingly, this Criminal Original Petition is dismissed.

26.02.2025

Internet: Yes  
Index: Yes/No  
Speaking/Non speaking order

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To

1. The Judicial Magistrate-II, Ponneri.
2. The Inspector,  
NCB, Chennai Zonal Unit,  
Chennai – 600 017.
3. The Public Prosecutor,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN. J.**

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