



Crl.A.Nos.630, 910 & 1249 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2025

CORAM:

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

Crl.A.Nos.630, 910 & 1249 of 2025
and Crl.M.P.No.13745 of 2025

1. Eswaran
2. Jeyachandran
3. Jayaprabhu

... Appellants in Crl.A
No.630/2025

Surulivel

... Appellant in Crl.A.
No.910/2025

Ramesh

... Appellant in Crl.A.
No.1249/2025

Vs.

Union of India,
Rep. by Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai.

... Respondent in all
Crl.As.

PRAYER in Crl.A.Nos.630 & 1249 of 2025: Criminal Appeals filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the conviction and sentence passed on the appellants in C.C.No.116 of 2019 by the Principal Special Court for exclusive trial of Cases under NDPS Act, Chennai, by its judgment dated 29.05.2025.



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PRAYER in Crl.A.No.910 of 2025: Criminal Appeal filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for records relating to judgment in C.C.No.116 of 2019 dated 29.05.2025 on the file of the Principal Special Court for exclusive trial of Cases under NDPS Act, Chennai, and set aside the same and acquit the appellant from all charges framed against him.

For Appellants in

Crl.A.No.630/25 : Mr.D.Padmanabhan

Crl.A.No.910/25 : Mr.S.Kasirajan

Crl.A.No.1249/25 : Mr.S.Angamuthu

For Respondents

in all Crl.As. : Mr.N.P.Kumar,

Special Public Prosecutor for NCB

COMMON JUDGMENT

These Criminal Appeals have been filed as against the judgment dated 29.05.2025, passed by the learned Principal Special Judge, Special Court for exclusive trial of Cases under NDPS Act, Chennai, made in C.C.No.116 of 2019, thereby convicting the appellants/accused for the offences punishable under Sections 8(c) r/w. 20 (b)(ii)(C) & 8(c) r/w. 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”).

2. The case of the prosecution was that, on 07.01.2019 at about 7.45 a.m., the respondent received an information about the ganja trafficking from Andra Pradesh and was traveling to Cumbum in a



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Renault Duster vehicle and it would cross Karnodai Toll plaza, Chennai at about 21.00 hours. This information was recorded and after obtaining permission from the superior officer, the respondent along with a team reached the scene of occurrence at about 21.20 hours. The respondent found the car bearing registration No. TN09-BT-4477 while it was entering into the lane of toll plaza. It was intercepted and the accused A1 to A3 were identified as per the information. They were informed about their right as contemplated under Section 50 of the NDPS Act and a search was conducted. However, on search, no contraband was found either with the accused or in the vehicle. Further, the accused 1 to 3 had stated that the ganja was loaded in another four wheeler bearing registration No.TN11-K-8677 and two persons were traveling in the said car along with the contraband and it would cross Athoor toll plaza, at about 9.30 hours on 08.01.2019. Accordingly, they also confessed to have committed the offence. Thereafter, they were served with summons to appear before the respondent for enquiry.

3. On the next day i.e., on 08.01.2019, the respondent went to Athoor toll plaza at about 10 hours and identified the car which entered into toll plaza with two persons. After informing them about their right



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under Section 50 of the NDPS Act, the respondent conducted search.

They replied that they concealed the 50 packets of ganja inside the boot of the car. The respondent found that A4 & A5 were in possession of 50 packets of ganja weighing about 100 kg. After taking samples, the contraband was seized under seizure mahazar along with the two cars traveled by the accused persons. Thereafter, the respondent prepared a report as contemplated under Section 57 of the NDPS Act and registered the FIR in NCB F.No.48/1/02/2019-NCB/MDS. On 09.01.2019, all the accused persons were remanded to judicial custody. After completion of investigation, the respondent filed final report and the same was taken cognizance by the trial Court in C.C.No.116 of 2019.

4. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.6 and marked documents in Ex.P.1 to Ex.P.101. The prosecution had also produced material objects in M.O.1 to M.O.5. On the side of the accused, no one was examined and no documents were marked before the Trial Court. On perusal of the oral and documentary evidences, the Trial Court found all the accused guilty for the offences under Sections 8(c) r/w. 20(b)(ii)(C) & 8(c) r/w. 29 of the NDPS Act and sentenced them as follows :-



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S.No.	Conviction	Sentence
1	8(c) r/w. 20(b)(ii)(C) of the NDPS Act	to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,00,000/- each, in default, to undergo simple imprisonment for further period of six months.
2	8(c) r/w. 29 of the NDPS Act	to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,00,000/- each, in default, to undergo simple imprisonment for further period of six months.

The above sentences were ordered to run concurrently. Aggrieved by the same, all the accused filed the present appeals.

5. The learned counsel appearing for the appellants/accused 1 to 3 in Crl.A.No.630 of 2025 submitted that the prosecution did not follow any of the procedure as contemplated under the NDPS Act. No contraband was seized from the accused 1 to 3. On their confession statement, they had been implicated as accused. Even according to the prosecution, on the strength of the confession statement of A1 to A3, the next day i.e., on 08.01.2019, A4 & A5 were identified and the contraband was seized from them. But the respondent failed to prove that A1 to A3 had connection with A4 & A5. Though the respondent received information, the same was not reduced in writing as contemplated under Section 42(1) of the NDPS Act. In fact, the seizure mahazar which was prepared on 08.01.2019, was signed by A1 to A3 on 07.01.2019.



Therefore, the entire case of the prosecution is false. Further P.W.1 and A1 to A3 did not know Tamil. However, all the communication was made to them in Tamil and the person who explained the rights to them was not examined by the prosecution. It is fatal to the case of the prosecution. Further, no accused was served with search notice as contemplated under Section 50 of the NDPS Act. Their arrest was also not informed to their relatives.

5.1. He further submitted that the mahazar witness was examined as P.W.5. On perusal of the P.W.5's deposition, it is revealed that the search memo and recovery were not proved. The only independent witness examined by the prosecution was P.W.5 and he did not support the case of the prosecution. Therefore, the respondent has failed to comply with the provision as contemplated under Section 57 of the NDPS Act. Hence, the entire conviction and sentence cannot be sustained and are liable to be set aside.

5.2. He further submitted that though the respondent seized two cars, the respondent failed to identify the actual owners of the vehicles and to investigate as to how those vehicles came to the hands of



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the accused and were used for the alleged occurrence. Further the list of witnesses in L.W.4 and L.W.5 are stock witnesses. In fact, they were examined in the prior case viz., in C.C.No.115 of 2019 on the file of the learned Principal Special Court for exclusive trial of Cases under NDPS Act, Chennai. Therefore, the evidence of L.W.4 & L.W.5 are not trustworthy. In support of his contention, he relied upon the several judgments and prayed to allow these appeals.

6. The learned counsel appearing for the appellant in Crl.A.No.1249 of 2025 submits that the appellant is arrayed as A4. He has been implicated as an accused only on the confession statement given by A1. Even according to the case of the prosecution, A4 was not secured from the car and he has been dragged into the case unnecessarily. In fact, the owner of the cars was not examined to prove how the cars came to the hands of the accused herein. Further, A4 was not served with any search notice as contemplated under Section 50 of the NDPS Act.

7. The learned counsel appearing for the appellant in Crl.A.No.910 of 2025 submitted that the appellant is arrayed as A5. The prosecution failed to prove the charge in the manner known to law. No



independent witness was examined by the prosecution to bring the charges to home. There were contradictions and discrepancies in the prosecution witnesses and as such no worthy materials were placed before the trial Court to prove the recovery of the contraband. In fact, the alleged contraband was seized only from the boot of the car, which was driven by A5. Therefore, the accused is in no way connected to the contraband. Though the respondent received information, the same was not recorded as contemplated under Section 42(1) of the NDPS Act. As per the seizure mahazar, two independent persons had signed it as witnesses. However, the prosecution failed to examine those witnesses and no valid reason was assigned for the non-examination of those witnesses. Therefore, the prosecution failed to prove the seizure of contraband and as such, the Trial Court ought not to have convicted the accused.

8. Per contra, the learned Special Public Prosecutor (NCB) appearing for the respondent submitted that the respondent followed all the procedure as contemplated under the NDPS Act. Only on the confession statement of A1 to A3, the contraband was seized from A4 & A5. Though A1 to A3 were not found in possession of the contraband,



weighing 100 Kg.

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11. One of the main grounds raised by the accused was that the secrets information was not recorded as contemplated under Section 42(1) of the NDPS Act. After receipt of the information, P.W.1 went to the scene of occurrence with two eye witnesses. Though the information and the permission obtained from the superior officer were not marked, P.W.1 categorically deposed that the secrete information was recorded. In this regard, there was no cross examination by the accused. Therefore, the prosecution proved that P.W.1 received secret information and the same was recorded and obtained permission from the superior officer.

12. The next ground raised by the accused was that they were not served with search notice as contemplated under Section 50 of the NDPS Act. After intercepting the accused, P.W.1 had informed them about their rights as contemplated under Section 50 of the NDPS Act, orally and had obtained consent to conduct search by the police officials. It is not mandatory to issue search notice in written. It can be orally obtained. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **2011 (1) SCC 609** in the case



of **Vijaysinh Chandubha Jadeja Vs. State of Gujarat.**, as follows:-

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“18.Although the Constitution Bench did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable



right conferred on the suspect illusory and a farce.”

Thus, it is clear that it is not necessary that the explanation of rights under Section 50 of NDPS Act is made in a prescribed form or in writing. However, it is mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. In the case on hand, all the accused were duly informed about their right as contemplated under Section 50 of the NDPS Act. Therefore, there is no violation of the provisions under Section 50 of the NDPS Act.

13. The next ground raised by the accused is that the cars used by the accused do not belong to them. However, the prosecution failed to prove that ownership of the cars and how the cars came to hands of the accused for the purpose of trafficking the contraband. On perusal of records, it is revealed that as per the number plate, the respondent found the registration certificate of the cars and conducted search, but they were not able to find the actual owners of both the cars. However, non-examination of the owners of the car is not fatal to the case of the prosecution. The question of ownership of vehicle is not at all relevant to the seizure of the contraband. The recovery of material is not disputed



and therefore, the said contention of non-examination of the owners of the vehicles is liable to be disregarded.

14. Further, the accused raised another ground that no independent witnesses were examined to prove the case of the prosecution. When the other witnesses are trustworthy, the independent witnesses are not required to prove the charge. That apart, on perusal of the statement recorded from the accused under Section 313 of Cr.P.C., no plea has been taken by them that they were not in possession of the contraband. They pleaded that they had been falsely implicated in this case and that a false case has been foisted against them. The credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no order of conviction can be passed on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. Therefore, if the Court is convinced that the statement stated by the witness has a ring of truth, conviction can be passed on such evidence.



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15. That apart, non compliance of the provision under Section 52A of the NDPS Act would not be fatal to the case of the prosecution. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **2024 INSC 1045** in the case of **Narcotics Control Bureau Vs. Kashif.**, which held as follows :-

“39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to



implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

Thus, it is clear that the provision under Section 52A of NDPS Act lays down the procedure for disposal of seized narcotic drugs and



psychotropic substances, and the object of the same is to ensure the disposal of the seized drugs and substances. Therefore, the non compliance of the provisions under Section 52A of the NDPS Act by itself would neither vitiate the trial nor would entitle the accused to be acquitted.

16. Though the learned counsel appearing for A1 to A3 raised a ground that they were implicated only on their confession statement; as per the secret information, it was only A1 to A3 who were initially alleged to have been trafficking the contraband in their car. Therefore, they were intercepted and it was found that they had no contraband. They themselves confessed that the contraband was about to be trafficked by A4 & A5 and they entered into Athur toll plaza the next day ie., on 08.01.2019, in another car. They also confessed that all of them together purchased the contraband to sell it. Based on their confession statement, A4 & A5 were intercepted and they were found in possession of the contraband. Therefore, all the accused persons were in conscious possession of ganja weighing about 100 Kg. Further, the A1 to A3 were implicated as accused based on their confession statement and pursuant to the confession statement, the recovery was made. Therefore, the



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prosecution categorically proved the charges and the trial Court rightly convicted all the accused. This Court finds no infirmities or illegality in the order passed by the trial Court and all the appeals fail.

17. Accordingly, all the Criminal Appeals stand dismissed. Consequently, connected miscellaneous petition is closed.

22.08.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
rts

To
1.The Principal Special Judge,
Special Court for exclusive trial
of Cases under NDPS Act,
Chennai,

2.The Intelligence Officer,
Union of India,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts

3.The Public Prosecutor,
High Court, Madras.

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