

Crl. R.C.No.1002 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 07.08.2025

Coram:

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl. R.C.No.1002 of 2025

K.Raguraj

...Petitioner

Vs.

State rep. By
The Inspector of Police,
T-1 Ambattur Police Station,
Chennai
Cr.No.236 of 2024

...Respondent

Prayer:

Criminal Revision filed under Section 438 r/w 442 of BNSS Act, 2023 to set aside the order dated 26.05.2025 made in Crl.M.P.No.857 of 2025 in C.C No.876 of 2024 on the file of learned II Additional Special Judge, Special Court for EC & NDPS Act, Chennai

For Petitioner : Mr.M.G.Martinmanivannan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Revision has been preferred as against the order passed in Crl.M.P.No.857 of 2025 in C.C.No.876 of 2024 on the file of the II Additional Special Judge, Special Court for EC & NDPS Act, Chennai dated 26.05.2025



thereby dismissing the petition to discharge the petitioner.

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2. The case of the prosecution is that on receipt of secret information, the respondent and its team had surveillanced the place of occurrence and found that A.1 to A.3 were in possession of methamphetamine. After completion of formalities, as per procedure contemplated under NDPS Act, the respondent registered FIR in Crime No.236 of 2024 for offence under Sections 8(c), 22(c), 25 & 29(1) of NDPS Act, 1985 as against three accused persons. During the course of investigation, on the confession statement recorded from the 3rd accused, the petitioner herein had been implicated as 4th accused. After completion of investigation, the respondent filed final report as against four accused persons for offence under Section 8(c), 22(c), 25 & 29(1) of NDPS Act, 1985 and it was taken cognizance by the trial court. While the case was pending for framing of charges, the petitioner filed a petition to discharge him from the charges on the ground that he had been falsely implicated only on the strength of the confession statement of the co-accused and there was no recovery from the petitioner, however, the same was dismissed. Aggrieved by the same, the petitioner has come up with the present Revision.

3. The learned counsel for the petitioner would submit that the petitioner has been implicated as 4th accused in pursuant to the confession statement of co-

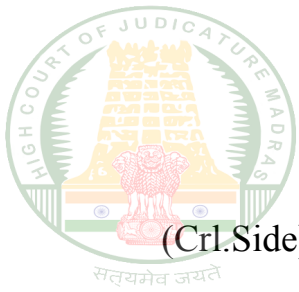


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accused and there was no recovery from the petitioner. Since the confession statement of the co-accused is in-admissible, the petitioner have to be discharged and there is absolutely no allegation as against the petitioner. Even as per the prosecution, in order to attract provisions under Sections 8(c), 22(c), 25 & 29 of NDPS Act, 1985, the petitioner was not indulged in any activities as contemplated under the said Section of NDPS Act. Further, if there is no incriminating materials except the confession statement, there is absolutely no charge to frame as against the petitioner and in support of this contention, he relied upon the **judgment of the Hon'ble Supreme Court in SLP (Crl.)No.10736 of 2022 [Karan Talwar Vs. The State of Tamilnadu] dated 19.12.2024.**

4. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent submitted that, pursuant to the confession statement of the 3rd accused, the petitioner has been implicated as 4th accused. In fact, absconding charge sheet has been filed against the petitioner. That apart, already the petitioner is an accused on the file of NCB on the allegation that he was in possession of 56 Kgs of Methamphetamine, therefore, the petitioner is a habitual offender under NDPS Act, as such, the trial court rightly dismissed the petition to discharge him from the charges. The learned Government Advocate



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(Crl.Side) further submits that even a grave suspicion is enough to frame

charges. In support of his contention he relied upon the judgment of the

Hon'ble Supreme Court reported in (2010) 9 SCC 368 [Sajjan Kumar Vs.

Central Bureau of Investigation] wherein it is held that when the materials

placed before the court disclose grave suspicion against the accused which has

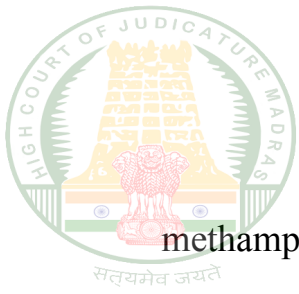
not been properly explained, the court will be fully justified in framing charges

and proceeding with the trial. Therefore, the order passed by the trial court does

not require any interference by this Court.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the documents placed on record.

6. Totally there are four accused, in which the petitioner is arrayed as 4th accused. Admittedly, he has been implicated on the statement of the 3rd accused. A perusal of the confession statement of the 3rd accused reveals that the 3rd accused was working as driver under the petitioner for the past nine years and while being so, in the month of December, the petitioner had handed over one jute bag and directed him to keep it safely. In the month of January, when the 3rd accused was about to clean his house, he found that bag and also found



methamphetamine inside the bag, immediately, he showed the bag to his friend,

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viz., one Babu, who is arrayed as A.2 in this case and he handed over the same to one Ramesh. There was no recovery of any contraband or any other material from the petitioner herein. In fact, the prosecution did not even produce any materials to show that the 3rd accused was working as driver under the petitioner that too for the past nine years. Therefore, the petitioner filed a petition to discharge him from the charges. On perusal of the charge sheet, it is seen that though the petitioner's name is mentioned as 4th accused, no charge was framed as against the petitioner and he was shown as absconding accused in the charge sheet.

7. Now, the only question arises in this Revision is that whether the accused can be discharged, if the charges are framed only on the basis of the confession statement of the co-accused. In this regard, the learned counsel for the petitioner relied upon the Judgment of Hon'ble Supreme Court of India in ***SLP (Crl) 10736 of 2022 dated 19.12.2024*** in which it is held that the sole material available against the appellant is the confession statement of the co-accused, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a *prima facie* case is made out to make the appellant to stand the



trial. There can be no doubt with respect to the position that standing the trial

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is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand trial.

8. Further, it is also relevant to rely upon the judgment of **Hon'ble Supreme court reported in (2019) 16 SCC 547 in Dipakbhai Jagadishchandra Patel v. State of Gujarat and Another** wherein at Paragraph No.24 it is held as follows:-

“Undoubtedly, this Court has in Suresh Budharmal Kalani[Suresh Budharmal Kalani v.State of Maharastra,(1998) 7SCC337], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgement of this Court in Kashira Singh v.State of M.P.[Kashmira Singh v.State of M.P.,(1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani[Suresh Budharmal Kalani v.State of Maharastra,(1998) 7SCC337], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge.”



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9. Thus it is clear that the confession of co-accused containing incriminating materials would not itself suffice to frame charge against him, therefore, in the case on hand also, the respondent filed final report and charge against the petitioner for the offence under Sections 8(c), 22(c), 25 & 29 of NDPS Act, 1985 was framed only on the basis of the confession statement of the 3rd accused, as stated supra. Further, there was absolutely no recovery of contraband or any material relevant to contraband. Though the petitioner was involved in another case, similar to the present case, it is not the basis for framing charges in this case.

10. In the case which is relied upon by the learned Government Advocate (Crl.Side), the Hon'ble Supreme Court in Sajjan Kumar's case, as stated supra, has laid down the principles for discharge and the same is extracted as follows:-

“ 21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

The test to determine prima facie case would depend upon the facts of each case.



(ii) *Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

(iii) *The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

11. Therefore, as per these guiding principles, if two views are possible and one of them gives rise to suspicion only, as distinguished from grave



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suspicion, the trial court can discharge the accused without seeing whether the trial will end in conviction or acquittal. Therefore, when there is absolutely no material as against the petitioner to frame charge for offences under Sections 8(c), 22(c), 25 & 29 of NDPS Act, 1985, the trial court ought not have dismissed the petitioner to discharge.

In view of the above, the order passed by the trial court in Crl.M.P.No.857 of 2025 in C.C.No.876 of 2024 dated 26.05.2025 cannot be sustained and the same is set aside. The petitioner is discharged in respect of all the charges and the present revision is allowed.

07.08.2025

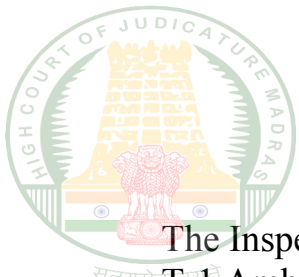
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To

1.The II Additional Special Judge,
(Special Court for EC and NDPS Act, Chennai)

2. State rep. By

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The Inspector of Police,
T-1 Ambattur Police Station,
Chennai

3. The Public Prosecutor,
High court, Madras

G.K.ILANTHIRAIYAN, J.

ssd



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