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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18-02-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) No. 943 of 2025 in

CrI.A(MD) No.107 of 2025

Padaiyappa @ Arunkumar

...Appellant/ Accused No.3

Vs

The State of Tamilnadu
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
(Crime No.397 of 2022)

...Respondent/ Complainant

For Petitioner:

Mr.R.Anand

For Respondent:

Mr.T.Senthil Kumar
Additional Public Prosecutor



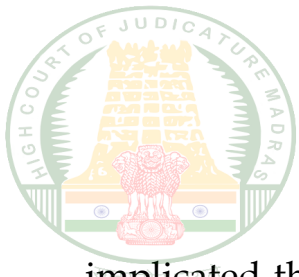
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ORDER

The petitioner is the third accused in CC No.1242 of 2022, on the file of the I Additional Special Court for NDPS Act Cases, Madurai. He was found guilty by the trial Court and was convicted for the offence under Section 8(c) r/w 20(b) (ii) (C) of NDPS Act and sentenced to undergo 10 years Rigorous imprisonment with fine of Rs.1,00,000/-, in default, he has to undergo 1 year simple imprisonment. As against the conviction and sentence imposed by the trial Court, the petitioner has filed a Criminal Appeal in CrI.A(MD) No.107 of 2025 and the same has been admitted by this Court on 28.01.2025. The petitioner has also moved this application to suspend the sentence imposed on him by the trial Court.

2.The learned counsel appearing for the petitioner submits that the petitioner is A3 in CC No.1242 of 2022. He was found guilty along with four other accused. The accused 4 & 5 have filed separate Criminal Appeals in Criminal Appeal (MD) No.79 & 60 of 2024, before this Court, as against the judgment of conviction. They have also filed applications to suspend the sentence imposed as against them. The sentence imposed as against A4 & A5 was suspended by this Court in CrI.MP (MD) Nos. 5442 of 2024 & 5441 of 2024, dated 12.09.2024 respectively.

3.The learned counsel further submits that this petitioner is in jail from the date his arrest 04.06.2022, i.e, for the past 2 years and 8 months; he has been



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implicated through the confession statement of A1; the alleged contraband has been recovered from A1, however, by referring the signature obtained from the petitioner in Mahazar, he has been fixed as one of the accused along with A1 and now convicted that the signature of this petitioner was found in the alleged Mahazar, which was said to have been recorded from A1.

4.The learned Additional Public Prosecutor appearing for the respondent submits that this petitioner was arrested along with A1. This petitioner cannot take advantage of the bail granted to A4 and A5, who were not arrested in the place of occurrence. A4 and A5 were said to have absconded from the place of occurrence and therefore, there was no recovery from them and on that ground, this Court has entertained the applications filed by A4 and A5 for grant of suspension of sentence. The learned Additional Public Prosecutor has relied on the judgment of the trial Court and submits that this petitioner was present in the place of occurrence and also arrested along with A1. Though the contraband was recovered from A1, the petitioner was found along with A1 and he is having conscious possession of the contraband. The learned Additional Public Prosecutor by relying on Section 35 of the NDPS Act,1985 submits that when the petitioner was available with A1, from whom the contraband was recovered, the petitioner cannot take a plea that he is not having any conscious possession of the contraband and the alleged contraband was not



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recovered from him. The learned Additional Public Prosecutor has also insisted that apart from this case, this petitioner has also involved in four other cases. Therefore, the petitioner cannot be granted with suspension of sentence.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner was arrested on 04.06.2022 along with the co-accused. As per the prosecution case, totally five persons were standing at Tuticorin George Road, Indira Nagar, II Street. On information, when the respondent police attempted to arrest them and on seeing the police party, A4 and A5 were said to have escaped from the spot. The police party has surrounded this petitioner, conducted search and has found 5 kg of ganja oil from A1 and recovered the same under Mahazar. They have also obtained the signatures of A1, A2 and this petitioner, who were found in the place of occurrence. Considering the materials placed by the prosecution as against this petitioner, he was not released on bail during the trial. The trial Court has also found him guilty along with the co-accused that they were in conscious possession of the contraband and also they have signed in the Mahazar. It is reported that the the petitioner is in jail for the past 2 years and 8 months. The petitioner has been convicted on the ground that he was arrested along with A1 and has also signed in the recovery Mahazar. However, the investigating agency has not



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collected any other materials, connecting A1 with this petitioner. The respondent police has projected as if that this petitioner is involved in various other offences. It is true that this petitioner is involved in four other cases, out of which, two cases have been registered under Section 75 of the Tamil Nadu City Police Act, one case was a proceedings initiated as against this petitioner under Section 107 of Cr.P.C. Other case registered as against this petitioner is under Section 399 IPC.

7. Considering the materials placed as against this petitioner, the suspension of sentence granted to A4 and A5, considering that the petitioner's counsel is having some arguable points in the appeal and the appeal could not be taken up in the near future and also considering the period of incarceration of this petitioner, this Court is inclined to suspend the sentence imposed on this petitioner with certain conditions.

8. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned I Additional Special Court for NDPS Act Cases, Madurai and on further condition that the petitioner shall stay at Trichy and report before the Inspector of Police, Uppliyapuram Police Station, Trichy, daily at 10.30 a.m., till the disposal of the



appeal. The trial Court shall accept the surety amount only on payment of fine
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amount imposed as against this petitioner.

sd/-
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Sub-Assistant Registrar (CS-I/II/III/IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Vrn
TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
I ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.

2 THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



COPY TO

THE INSPECTOR OF POLICE,
UPPLIYAPURAM POLICE STATION,
TRICHY.

+2 CC to M/s.S.ASHOK, Advocate (SR-1793[I] dated 18/02/2025)

ORDER
IN

CRL MP(MD) No.943 of 2025

Date :18/02/2025

NBF / VR /SAR- (19/02/2025) 7P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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