



Crl.M.P.(MD)No.1677 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.1677 of 2025

in Crl.A.(MD)No.966 of 2024

A.Cruz Roy,
S/o.C.Anton,
218-B/6/1, George Road,
Telephone Colony,
Tuticorin.

Petitioner(s)

Vs

State of Tamilnadu, Rep. by
The Superintendent of Customs,
Special Intelligence and Investigation Branch,
Customs House, New Harbour Estate,
Tuticorin District.

Respondent(s)

For Petitioner(s):

Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate

For Respondent(s):

Mr.K.Gurunathan
Special Public Prosecutor



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ORDER

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The petitioner is the 2nd accused in C.C.No.125 of 2017 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. After the trial, the trial Court, by its Judgment dated 21.10.2024, found the petitioner guilty for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act and convicted and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, with the default sentence of two years simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.966 of 2024 along with the petition in Crl.M.P.(MD)No.1677 of 2025 seeking to suspend the sentence. The Criminal Appeal was admitted by this Court on 12.11.2024.

2. The learned Senior Counsel appearing for the petitioner submits that the petitioner is a shipping agent and he is having a pass to enter into the Port Trust. The first accused is a clearing and forwarding agent. On 14.03.2016, P.W.2-Inspector of Central Industrial Security Force, who was on duty, searched the petitioner's vehicle on certain information and found 2 kgs. of ganja oil concealed in a plastic carry bag in a two-wheeler and recovered the same from the petitioner. Even according to the prosecution, this ganja oil was handed over by the 1st accused to the petitioner along with a two-wheeler. The 1st accused handed over the same to the 2nd accused as it is a medicine and requested him to hand over the same to a person in a vessel inside the



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port. Therefore, the petitioner, without having any knowledge about the contraband,

had taken the contraband in the two-wheeler, which belonged to the 1st accused.

Since the ganja oil has been recovered from the petitioner, the prosecution has been launched as against the petitioner and 1st accused. But, the 1st accused was not arrested immediate to the occurrence and he was arrested only during the trial. However, with the available materials, the prosecution has filed the final report as if the petitioner had a conscious possession of the contraband.

3. The learned Senior Counsel appearing for the petitioner further submits that the trial Court has acquitted the 1st accused as there was no recovery from the 1st accused. However, the trial Court has failed to consider the fact that the two-wheeler, in which the contraband was recovered, belonged to the 1st accused. The learned Senior Counsel further submits that the petitioner, even in his statement recorded under Section 67 of NDPS Act, stated that it was handed over by 1st accused as it is a medicine which needs to be handed over to a person in a vessel. According to the learned Senior Counsel, the petitioner was not having any conscious possession of the contraband and he is not having any antecedents and the two-wheeler, in which the contraband was seized, does not belong to him. The petitioner is a shipping agent and he is having a pass to enter into the port. Therefore, it was handed over by 1st accused to the petitioner and without having any knowledge



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about the same, it was taken by the petitioner. Based on that, the petitioner was fixed as an accused, for which, he was imposed with a punishment.

4. The learned Senior Counsel appearing for the petitioner has also pointed out that the mandatory provisions of Sections 42, 50 and 57 of NDPS Act were not complied with. The entire prosecution has relied on the confession statement recorded under Section 67 of NDPS Act and the recovery made from the petitioner. The learned Senior Counsel further submits that the investigating agency has not collected any materials that the petitioner had knowledge about the contraband and he had nexus with the 1st accused. The learned Senior Counsel has also pointed out that the petitioner is in jail from the date of Judgment, i.e. on 21.10.2024 and even during the trial, he was in jail from 15.03.2016 to 07.10.2016.

5. The learned Senior Counsel further submits that even according to the prosecution, the contraband was that of the 1st accused and the same was handed over by the 1st accused to the petitioner to deliver the same to a person in a vessel inside the port. He further submits that the trial Court has acquitted the 1st accused from the charge. But, the prosecution has not taken any initiative to file an appeal as against the acquittal of the 1st accused.

6. The learned Special Public Prosecutor submits that the contraband has been recovered from the two-wheeler driven by the petitioner on the date of occurrence.



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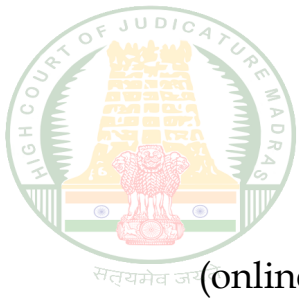
This was also recovered inside the port. The petitioner, a shipping agent, was having a pass to enter into the Port. The petitioner, by taking advantage of the pass, had illegally transported the ganja oil to hand it over to a person in the vessel. In the event, if the petitioner is an innocent, then, he must know to whom the contraband has to be delivered. The statement of the petitioner that he is not having any knowledge about the contraband, cannot be accepted in view of the provisions under Section 35 of NDPS Act.

7. The learned Special Public Prosecutor further submits that the petitioner has to prove his case that he is not having any knowledge about the contraband, which was recovered from his possession. Further, the petitioner has not adduced any evidence to rebut the presumption cast upon him under Section 35 of NDPS Act. He further submits that there is no violation of provisions under 42, 50 and 57 of NDPS Act and all the points raised by the Senior Counsel for the petitioner were considered by the trial Court in detail. He further submits that the petitioner has not paid the fine amount.

8. In support of his arguments, the learned Special Public Prosecutor has also relied on the following Judgments:

(a) State of Kerala vs. Rajesh (AIR 2020 (SC) 721

(b) State of (GNCT of Delhi) Narcotics vs. Lokesh Chadha (AIR



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(online) 2021 (SC) 117)

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(c) State of Himachal Pradesh vs. Pawan Kumar (AIR 2005 SCC 2265)

(d) Ranjan Kumar Chadha vs. State of Himachal Pradesh (Crl.A.Nos.2239-2240 of 2011)

(e) Meenakshi Sundaram @ Sundhar vs. State (Crl.A.(MD) Nos.614, 616 and 629 of 2022)

(f) Mahendran @ Auto Mahendran vs. State (Crl.A.(MD)No.570 of 2022)

(g) State of Punjab vs. Makhan Chand (AIR 2004 (SC) 3061

(h) NCB vs. Kashif

9. This Court considered the rival submissions.

10. The petitioner was found guilty and convicted for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act, by Judgment dated on 21.10.2024. He is in jail from the date of Judgment, i.e. from 21.10.2024 and he was also in jail during the trial from 15.03.2016 to 07.10.2016.

11. Admittedly, the petitioner is a shipping agent having a pass to enter into the port trust. On the date of occurrence, he had entered into the port trust with a pass which was provided to him and near the green gate, he was inspected by the officials



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and the ganja oil which was found in the two-wheeler was seized. This ganja oil, according to the prosecution, was that of the 1st accused, which was handed over to the petitioner to hand it over to a person in a vessel inside the port.

12. The case of the petitioner is that the ganja oil was handed over to him as it is a medicine and he was not having any knowledge about the alleged contraband. This is a statement made by him in the statement recorded under Section 67 of NDPS Act.

13. The 1st accused was acquitted by the trial Court and the respondent agency has not preferred any appeal as against the acquittal of 1st accused. Whether the petitioner had a conscious possession of contraband, is a matter to be decided in the appeal.

14. Considering the period of incarceration and since the petitioner is having arguable points in this appeal and there is no likelihood of listing the criminal appeal for final hearing in the near future, this Court is inclined to suspend the sentence imposed on the petitioner.

15. 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 1st Additional Special



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Court for NDPS Act, Madurai and on further condition that the petitioner shall
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appear before the respondent Police daily at 10.30 a.m. until further orders.

sd/-
26/02/2025

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/02/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY
TO

1 THE I ADDITIONAL SPECIAL JUDGE FOR NDPS ACT,
MADURAI DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

3 THE SUPERINTENDENT OF CUSTOMS,
SPECIAL INTELLIGENCE AND INVESTIGATION BRANCH,
CUSTOMS HOUSE, NEW HARBOUR ESTATE,
TUTICORIN DISTRICT.

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



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+1 CC to M/s.K.PRABHU, Advocate (SR-2199[I] dated 27/02/2025)

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Date :26/02/2025

SA/SAR. /27.02.2025/9P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.