



Crl.M.P.(MD)No.3009 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.3009 of 2025

in Crl.A.(MD)No.291 of 2025

P.Thayenthiran,  
S/o.Palanivelu,  
D.No.61, Block No.141,  
Poovalur Post, Pattukottai Taluk,  
Thanjavur District.

Petitioner(s)

versus

State of Tamil Nadu rep. by  
Inspector of Police,  
NIB CID,  
Theni District.

Respondent(s)

For Petitioner(s):

Mr.NA.Manimaran  
Advocate

For Respondent(s):

Mr.T.Senthil Kumar,  
Additional Public Prosecutor

### ORDER

The petitioner is the 3<sup>rd</sup> accused in C.C.No.402 of 2018 on the file of the II Additional Special Court for NDPS Act cases, Madurai. He was tried along with two other accused for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act. After



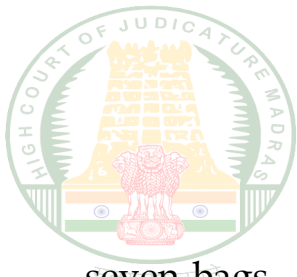
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the trial, the trial Court, by its Judgment dated 30.05.2024, found the petitioner guilty for the said offence and convicted and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, with the default sentence of 12 months simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.291 of 2025 and the same was admitted by this Court on 07.03.2025. The petitioner has also moved this petition to suspend the sentence imposed on him by the trial Court.

2. The learned counsel appearing for the petitioner submits that the petitioner/A3 was a driver of the vehicle and the contraband was recovered from the accused 1 and 2. Therefore, there was no recovery from the petitioner/A3. He further submits that there is a violation of mandatory provisions under Section 42(i) of NDPS Act. According to him, the information, which was received by the Officer, who seized the contraband, has not been recorded as mandated under Section 42(i) of NDPS Act and it has been forwarded only after a period of six days. Since the petitioner is in jail for more than nine months, he seeks to suspend the sentence imposed by the trial Court.

3. The learned Additional Public Prosecutor submits that the petitioner was a driver of a Mahindra Xylo D2 Silver Colour Car, bearing Reg.No.TN 22 CL 0545. The respondent Police, on information, has recovered 210 kgs. of ganja, concealed in



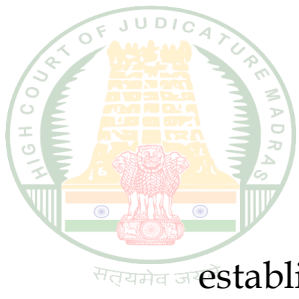
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seven bags. Apart from that, the respondent Police has also recovered two number plates bearing registration number of Andhra Pradesh from the petitioner. Those number plates were marked as M.O.Nos.24 and 25.

4. The learned Additional Public Prosecutor further submits that all the accused went to Andhra Pradesh and procured ganja from Andhra Pradesh and had taken the ganja to the house of A1. On their way, based on the information, the respondent Police recovered the contraband. Further, the vehicle has not been claimed by the petitioner as well as by any other accused. The learned Additional Public Prosecutor has also relied on a Judgment of the Hon'ble Supreme Court in Dehal Singh vs. State of Himachal Pradesh, reported in (2010) 9 SCC 85, wherein, the Hon'ble Supreme Court has held as under:

“24. Both the appellants have been found travelling in the car from which charas was recovered and, therefore, they were in possession thereof. They were knowing each other. They were not travelling in a public transport vehicle. Distinction has to be made between the accused travelling by public transport vehicle and private vehicle. It needs no emphasis that to bring the offence within the mischief of Section 20 of the Act possession has to be conscious possession. Section 35 of the Act recognises that once possession is



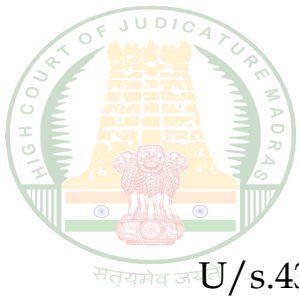
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established the court can presume that the accused had a culpable mental state, meaning thereby conscious possession. Further, the person who claims that he was not in conscious possession has to establish it. Presumption of conscious possession is further available under Section 54 of the Act, which provides that the accused may be presumed to have committed the offence unless he accounts for satisfactorily the possession of contraband.”

5. With regard to the ground taken by the learned counsel appearing for the petitioner that there is a violation of mandatory provision under Section 42(i) of NDPS Act, the learned Additional Public Prosecutor submits that the said point has already been dealt with by the trial Court in paragraph 20 of the Judgment as under:

“ 20. The next aspect that is to be considered here is that the contraband was transported in the vehicle in which the 2<sup>nd</sup> and 3<sup>rd</sup> accused were coming and it is Mahindra Xylo Car bearing Regn.No.TN22-CL-0545. So the entire contraband has been seized from A2 and A3 which they were on transit, transporting the contraband in the said vehicle. Therefore as per Section 43 of the NDPS Act, when the contraband is seized while on transit, then the authorized officer is empowered to arrest and seize them in view of the powers conferred



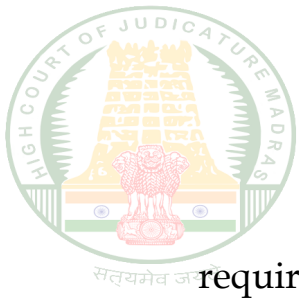
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U/s.43 of the NDPS Act. In such circumstances also, this court holds the provisions of Section 42 does not have any application and it is only Section 43 that will be applicable. On this aspect this Court is also inclined to refer to the following judgments.

(a) The judgment in *Narayanaswamy Ravishankar vs. Assistant Director, Directorate of Revenue Intelligence* reported in (2002) 8 SCC 7 wherein a three judge Bench of the Supreme Court had authoritatively held at Paragraph No.5 of the said judgment as “5. In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant...”

(b) The Constitution Bench of the Hon'ble Supreme Court in *State of Punjab vs. Baldev Singh* reported in (1999) 6 SCC 172, has held in the following words:- “10. .... The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42



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requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful."

(c) In SK Raju @ Abdul Haque @ Jagga Vs. State of West Bengal rendered in the Criminal Appeal No.459 of 2017 reported in 2018 (4) Crimes 147 (SC) it has been held that "In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant."

6. According to the learned Additional Public Prosecutor, the recovery was



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taken place in a public place and therefore, Section 43 of the NDPS Act alone would be applicable and Section 42 of the NDPS would not be applicable. According to him, if any information was recorded, it was forwarded to the higher officials immediately and thereafter, it cannot be a ground for consideration.

7. Considering the quantity of contraband and the grounds raised by the learned Additional Public Prosecutor, this Court is not inclined to suspend the sentence imposed by the trial Court on petitioner. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-  
27/03/2025

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/04/2025  
Sub-Assistant Registrar  
( C.S. I / II / III / IV )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

OGY  
TO  
1 THE II ADDITIONAL SPECIAL JUDGE FOR EC AND NDPS ACT CASES,  
MADURAI.

2 THE INSPECTOR OF POLICE,  
NIB CID,  
THENI DISTRICT.

3 THE SUPERINTENDENT,  
CENTRAL PRISON,  
MADURAI.



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

ORDER  
IN  
Crl.M.P.(MD)No.3009 of 2025  
in Crl.A.(MD)No.291 of 2025  
Date :27/03/2025

SA/SAR. /07.04.2025/8P/5C

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