



Crl.M.P.(MD)No.2289 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.2289 of 2024

in Crl.A.(MD)No.153 of 2024

Karthick,
S/o.Dhandapani,
North Street,
Thethu Patti Village,
Dindigul,
Dindigul District.

Petitioner(s)

versus

State rep. By
The Inspector of Police,
NIB CID Dindigul,
Dindigul District.

Respondent(s)

For Petitioner(s):

M/s.K.Madhu
Advocate

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

ORDER

The petitioner is the sole accused in C.C.No.312 of 2009 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. After the trial, the trial



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Court, by its Judgment dated 31.01.2024, found the petitioner guilty for the offence under Section 8(C) r/w. 20(b)(ii)(B) of NDPS Act and convicted and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.20,000/-, with the default sentence of six months simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.153 of 2024 and the same was admitted by this Court on 26.02.2024. The petitioner has also moved this petition seeking to suspend the sentence imposed by the trial Court.

2. The learned counsel appearing for the petitioner submits that in this case, the mandatory provision of Section 42 of NDPS Act has not been complied with. The learned counsel has also relied upon the Judgment of this Court in Crl.A.(MD)No.320 of 2009 dated 28.02.2020 and submits that on the mandatory violation of Section 42 of NDPS Act, this Court has already passed an order that if the condition under Section 42 of NDPS Act has not been complied with, then, the benefit of doubt ought to have been extended to the accused. He further submits that the petitioner is in jail from the date of Judgment, i.e. from 31.01.2024 and he was also in jail for 37 days during the trial. Therefore, he seeks for suspending the sentence imposed by the trial Court.

3. The learned Additional Public Prosecutor appearing for the respondent Police submits that Section 42 of NDPS Act would not be applicable to this case, since the recovery was made in a public place. In the event, if the recovery was made in a



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public place, the requirements under Section 42 of NDPS Act need not be complied with and Section 43 of NDPS Act would be applicable. Therefore, according to him, the ground riased by the petitioner cannot be considered for suspending the sentence. The learned Additional Public Prosecutor further submits that the petitioner is a habitual offender and he was also involved in the following cases of similar in nature.

(i) Thadicombu Police Station - Cr.No.224/2022 - u/s.8(c) r/w. 20(b)(ii)(C) and 25 of NDPS Act (PT).

(ii) Gummidipundi Police Station - Cr.No.302 of 2023 - u/s. 8(c) r/w. 20(b)(ii)(C), 25 and 29 of NDPS Act.

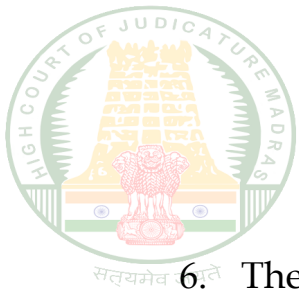
(iii) Palladam Police Station - Cr.No.487 of 2023 - u/s. 8(c) r/w. 20(b)(ii)(C) NDPS Act.

(iv) Austinpatti Police Station - Cr.No.161 of 2018.

By referring those previous cases, the learned Additional Public Prosecutor submits that in the event, if the petitioner is released on bail, he will indulge in similar offence.

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

5. The petitioner was convicted for the offence under Section 8(C) r/w. 20(b)(ii)(B) of NDPS Act. The case of the prosecution is that the respondent Police had conducted a search and arrested the petitioner with the contraband of 7 kgs. of ganja.



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6. The main contention of the learned counsel for the petitioner is that the mandatory provision of Section 42 of NDPS Act has not been complied with. The stand of the learned Additional Public Prosecutor is that the requirement under Section 42 of NDPS Act would not arise in this case, as the contraband has been recovered in a public place and Section 43 of NDPS Act alone would be applicable in this case.

7. For easy reference, Sections 42 and 43 of NDPS Act are extracted as under:

“42. Power of entry, search, seizure and arrest without warrant or authorisation. — (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or

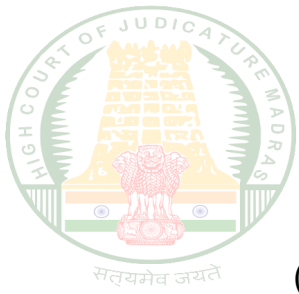


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psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset, —

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and



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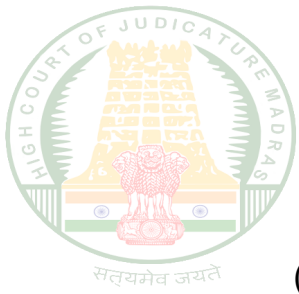
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(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: [Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

43. Power of seizure and arrest in public place.— Any officer of any of the departments mentioned in section 42 may —



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(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]”

8. The said point has been raised before the trial Court, which has been

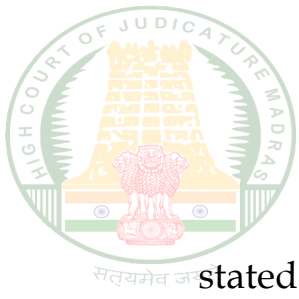


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elaborately discussed by the trial Court as under:

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“12. The first and foremost mandatory procedure that is required to be complied with is the compliance of Section 42 of the NDPS Act. Section 42(1) states that the information received has to be recorded in writing and as per Section 42(2) the copy of the same has to be communicated to the immediate Official Superior within 72 hours. Ex.P1 is the information record, which the Head Constable P.W.1 has prepared and has sent it to the immediate Official Superior. P.W.1 in his chief-examination has deposed that காலை 5.15 மணிக்கு ரகசிய தகவலாளி தொலைபேசி மூலம் தொடர்பு கொண்டு சொன்ன தகவலை எனது சார்பு ஆய்வாளருக்கு தகவல் சொல்லி நிலைய பதிவேட்டில் பதிவு செய்து , P.W.2 the Sub-inspector of Police has also claimed that the Head Constable P.W.1 contacted him and has informed the secret information that he has received from the informant and sought permission to go on raid. He claims that he has gone on raid after obtaining permission from him. Both P.W.1 and P.W.2 have not specifically stated that P.W.1 has recorded the information as a Separate Document and has forwarded the copy of it to the immediate Official Superior. Admittedly both of them have not



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stated so in their chief-examination and the signature or the endorsement of the immediate Official Superior is also not found on the information record. Therefore a serious doubt was raised over the credibility of the information record Ex.P1. A perusal of the said document would show that it was received by the learned Judicial Magistrate No.2, Dindigul on the same day that is on 11.08.2009 along with other records. Therefore it cannot be claimed that this document was prepared at a later stage to suit the prosecution case. Now the point to be considered is whether the endorsement of the Official Superior is mandatory on the said document and whether the provisions of Section 42 would be applicable to the facts of the case.

13. Before going into the above two questions the court is inclined to look at the Section 42 of the NDPS Act. It deals with the Power of entry, Search, Seizure and Arrest without warrant or authorization. If it is with the authorization or by the authorized officer himself then the provisions of Section 41 would be applicable and not 42. The relevant portion of Section 41(2) is “Any such officer of gazetted rank of the departments of or any other department of a State Government as is empowered in this behalf by general or special order of the State



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Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offense punishable under this Act..... may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building or himself arrest such a person or search a building, conveyance or place". So if the person is authorized either through the authorization of the Gazetted Officer or by general or Special Order of the State Government then he can proceed or he can authorize some persons subordinate to him also. Section 42 would state that Any such officer being an Officer Superior in rank to a Peon, Sepoy or Constable can enter into any building, conveyance or place seize the drugs detained and search the accused or the place without Search Warrant or authorization. Here it does not speak about the Gazetted Rank of the Officer but just says that any such Officer being an Officer Superior in rank to the Peon etc., In the case in hand the Head Constable has been duly authorized by the G.O.Ms.No.161 and therefore it cannot be strictly said that he would fall U/s.42 and not U/s.41 of the Act.

14. Further Section 42 deals with Power of entry, search, seizure



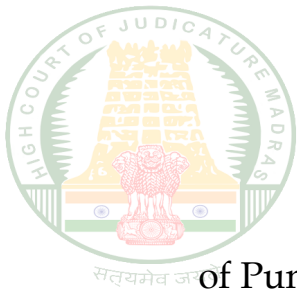
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and arrest without warrant or authorization. In order to invoke Section 42 the requirement entering into any building, conveyance or place is mandatory. If there is no necessity to enter into any building, conveyance or other enclosed place, then the provisions of Section 42 cannot have any application. Further, when the goods are seized in a public place or in any transit then again the provisions of Section 42 cannot have any application and it is only Section 43 that can be said to be applicable. Section 43 deals with Power of seizure and arrest in public place. “Any Officer of any of the departments mentioned in Section 42 may seize in any public place or in transit..... detain and search any person whom he has reason to believe to have committed an offense punishable under this Act.....”. So, if the place is open and public then the provisions of Section 42 cannot have any application.”

9. In support of the same, the trial court has also relied on the following Judgments:

- (i) The judgment in Narayanaswamy Ravishankar reported in (2002) 8 SCC 7;
- (ii) The Constitution Bench of the Hon'ble Supreme Court in State



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of Punjab vs. Baldev Singh reported in (1999) 6 SCC 172;

(iii) The Judgment 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).

10. Considering the nature of offence and also considering the antecedent of the petitioner, this Court is not inclined to suspend the sentence imposed on the petitioner. Accordingly, this Criminal Miscellaneous Petition is dismissed.

11. Since the typed set of papers is made available, the Registry is directed to list this appeal for final disposal in the second week of April 2025.

sd/-
21/03/2025

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

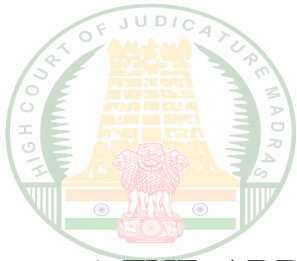
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TO

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

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
NIB CID DINDIGUL,
DINDIGUL DISTRICT.



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

ORDER IN
Crl.M.P.(MD)No.2289 of 2024
in Crl.A.(MD)No.153 of 2024
Date :21/03/2025

SA/SAR. /07.04.2025/13P/5C

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