



Crl.M.P.(MD)No.2659 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 04.04.2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.2659 of 2025

in Crl.A.(MD)No.265 of 2025

Yogaraj,
S/o.Parameshwaran,
Jawahar Nagar,
Valluvar Nagar,
Salem – 636 006.

Petitioner(s)

versus

The State of Tamilnadu rep. by
The Inspector of Police,
Dindigul Town Police Station,
Dindigul District.

Respondent(s)

For Petitioner(s):

Mr.R.Vignesh
Advocate

For Respondent(s):

Mr.A.S.Abul Kalam Azad
Government Advocate (Crl. Side)

ORDER

The petitioner is the 3rd accused in C.C.No.20 of 2024 on the file of the I
Additional Special Court for NDPS Act Cases, Madurai. He was tried along with

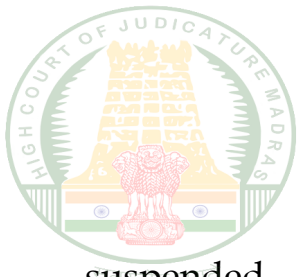


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three other accused for the offence under Section 8(c) r/w. 20(b)(ii)(C), 25, 29(1) of NDPS Act. After the trial, the Trial Court, by its Judgment dated 14.11.2024, found the petitioner guilty for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act and convicted and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo two years simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.265 of 2025 and the same has been admitted by this Court on 28.02.2025. The petitioner has also moved this petition to suspend the sentence imposed by the trial Court.

2. The learned counsel appearing for the petitioner submits that the alleged contraband was recovered at about 4 a.m. in the morning. When the contraband is seized on information before sunrise, the same can be made only with a warrant issued by a Magistrate. However, in this case, no warrant was obtained and no reason has been recorded for not complying the required conditions under Section 42(2) of NDPS Act. He also submits that Section 52A of the NDPS Act has not been followed. Therefore, according to him, the mandatory provisions under Sections 42 (2) and 52A of NDPS Act were not followed. He further submits that the petitioner is in jail from the date of arrest, i.e. from 24.07.2023 and he has already completed 1 ½ years in the jail. Therefore, the sentence imposed on the petitioner may be



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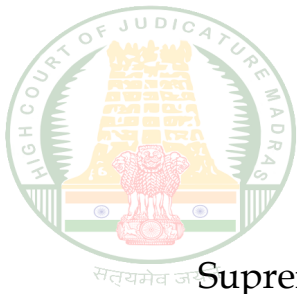
suspended.

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3. The learned Government Advocate (Crl. Side) opposed to grant suspension of sentence that the petitioner was arrested along with other accused in the Car bearing Reg.No.TN57 AM 4462. The 1st accused, who is a dismissed Police Constable, was present in the Car. The Car belongs to P.W.5, who is none other than the 1st accused's wife. According to the learned Government Advocate, the total quantity of 72 kgs. of ganja was recovered from the accused persons and they were in joint possession. The learned Government Advocate has also referred to the provision under Section 35 of the NDPS Act and submits that the presumption is against the petitioner.

4. The learned Government Advocate further submits that the point raised by the petitioner with regard to violation of Section 42 of the NDPS Act has elaborately been considered by the trial Court and held as under:

“35. From the above facts and propositions, this Court holds that the provisions of Section 42 is not applicable to the facts of this case. Therefore, the point raised by the learned counsels for the 1st accused in their written arguments by referring to various Judgments of the Hon'ble High Court and Supreme Court are not applicable to the facts of this case. In spite of the same, both P.W.1, 2 and 4 have vouched for recording the information and sending it to immediate Official Superior. In fact they have also followed the Judgments of the Hon'ble



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Supreme Court in Karnail Singh's case, which states that when information is received on the move it can be recorded after the officer concerned returns to the Police Station. Thus the evidence of P.W.1, 2 and 4 shows that the provisions of Section 42 has been complied with even though it is not applicable to the facts of this case."

5. Considering the nature of offence and also considering the quantity of contraband involved in this case and in view of provision under Section 37 of NDPS Act, this Court is not inclined to grant suspension of sentence.

6. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
04/04/2025

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/05/2025
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 CASES , MADURAI.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
DINDIGUL TOWN POLICE STATION,DINDIGUL DISTRICT.

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



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ORDER

IN

CRL MP(MD) No.2659 of 2025

Date :04/04/2025

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