



Crl.MP(MD) No.2781 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED :15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.MP(MD) No.2781 of 2025

in

Crl.A(MD) No.708 of 2024

Jeeva

... Petitioner

Vs.

State of Tamil Nadu,
Rep by the Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub-Zone,
Madurai.
(NCB.F.No.48/1/03/2020/NCB-MDU)

... Respondent

For Petitioner : Mr.G.Karuppasamypandian
For Respondent : Mr.C.Arulvadivel @ Sekar
Special Public Prosecutor

ORDER

The petitioner/A4 in CC No.577 of 2021 was tried along with four other accused and he was found guilty for the offence under Sections 8(c) r/w Section 20 (b) (ii) (C) and under Section 25 of NDPS Act, convicted and sentenced to undergo twelve years rigorous imprisonment with fine of Rs.1,00,000/-, in default, he has to



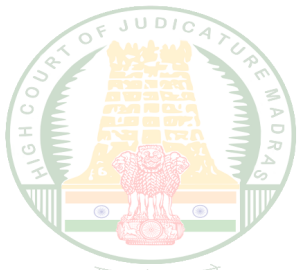
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undergo one year simple imprisonment. He was acquitted for the offence under Sections 28 & 29 of NDPS Act. As against the conviction and sentence imposed by the learned Additional District Judge, II Additional Special Court for NDPS Act Cases, Madurai in CC No.577 of 2021, dated 07.09.2023, the petitioner has filed an appeal before this Court in Criminal Appeal No. 708 of 2024 and also moved an application in Crl.MP(MD) No.8918 of 2024, seeking suspension of sentence, which was dismissed along with an application filed by the co-accused in Crl.MP(MD) No.8720 of 2024 in Crl.A(MD) NO.695 of 2024, by this Court, on 22.10.2024.

2.This present application is filed by the petitioner that the second accused, who is similarly placed has already been enlarged on bail by suspending the sentence imposed on him in Crl.MP(MD) No.1595 of 2024 in Crl.A(MD) No.111 of 2024, dated 20.03.2024. Therefore, on parity, the petitioner has to be considered for suspension of sentence. It is also projected that the petitioner is in jail for the past 4 ½ years and completed 1/3rd of the sentence. It is claimed that by applying the principles laid down under Section 479 of BNSS, the petitioner has to be released on bail.

3.The learned counsel for the petitioner submits that there is no recovery from this petitioner and he has been implicated through the confession statement of A1. Though the petitioner said to have travelled in a Car, from where, the contraband



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was recovered, there is no recovery Mahazar from him. According to the petitioner, except the confession statement of the co-accused, there is no other material as against this petitioner. The learned counsel has also pointed out that the respondent police has recovered 40 parcels from the Car and samples were taken by mixing these parcels as homogeneous mixture and this way of taking samples is in violation of the rules and guidelines issued by the Central Government. He also submits that this petitioner was acquitted under Sections 28 & 29 of NDPS Act. Since the co-accused has been enlarged on bail, his application has to be considered as parity with co-accused.

4.The learned Special Public Prosecutor appearing for the respondent submits that on 31.12.2020, the respondent received specific intelligence that one Prabhu and his friends namely, Kannan, Arivazhagan, Alagar Raja and Jeeva (petitioner) are smuggling ganja from Andhra Pradesh in a Vehicle bearing Reg.No.KL 45B 5904, for selling it at Varusanadu. On the same day, at 11.30 hours, the respondent found the petitioner and other accused coming in a Car (KL 45B 5904) near the junction of Kallimandhayam entrance in Dharapuram – Ottanchatram road. The Car stopped 200 meters away, from where, the respondent officers were standing. The said Prabhu get out of the Car and attempted to run away, however, they were caught by the NCB officials. The petitioner along with Kannan,



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Arivazhagan, Alagar Rraja were arrested on 01.01.2021 and they were remanded to
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judicial custody on 02.01.2021.

4.1. The role of the petitioner, according to the learned Special Public Prosecutor is that recovery of the contraband, which is of commercial quantity, from the Car, in which the petitioner was travelling. The petitioner and the other accused are in possession of the contraband and the recovery is proved in accordance with law. Presumption is required to be drawn from the possession of illicit article, under Section 54 of the NDPS Act, for which, the petitioner failed to account satisfactorily for the possession of the contraband.

4.2. With regard to the principle of parity claimed by the learned counsel for the petitioner, the learned Special Public Prosecutor submits that though the sentence imposed on A2 was suspended by this Court by its order dated, 20.03.2024, in Crl.MP(MD)No.1595 of 2024, there is no discussion about the bar under Section 37 of NDPS Act. Therefore, there is no question of parity insofar as this petitioner is concerned, when this Court has already taken note of the limitation under Section 37 of the NDPS Act, while rejecting the first application filed by this petitioner for suspension of sentence, in Crl.MP(MD) No.8918 of 2024, dated 22.10.2024. The learned Special Public Prosecutor has also referred to the orders of the Honourable Supreme Court in Satpal Singh vs. State of Punjab, reported in (2018) 13 SCC 813, to



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substantiate his contentions.

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

6.The petitioner was arrested along with other accused that they were in possession of 90.3 kg of ganja. The trial Court found the petitioner guilty and convicted as stated supra. The main contention of the petitioner is that the sentence imposed on A2 was suspended and therefore, on parity, his application is also to be considered. It is to be noted that the very same plea of grant of suspension of sentence to A1 was also raised in the earlier application filed by this petitioner in Crl.MP(MD) No.8918 of 2024, wherein, the learned Additional Public Prosecutor has raised objections, by relying on the Judgment of the Honourable Supreme Court in Satpal Singh vs. State of Punjab, reported in (2018) 13 SCC 813. Considering the objections raised by the learned Additional Public Prosecutor, this Court has dismissed the earlier application filed by this petitioner and the relevant paragraphs are as under:-

“8. Per contra, learned Special Public Prosecutor would submit that the place of occurrence is a public place and there is no question of violation of Section 42 of NDPS Act and the petitioner has not complied the twin conditions given under Section 37 of the NDPS Act. Since no personal search was made, the grounds raised by the petitioner are not available



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to them. He relied upon the judgment of the Hon'ble Supreme Court reported in (2018) 13 Supreme Court Cases 813 in the case of Satpal Singh Vs State of Punjab, for the purpose of arguments that unless the twin conditions under Section 37 of NDPS Act has not been satisfied, the petitioners are not entitled for any suspension of sentence.

9. Reading of the evidence of P.W.2 does indicate that in the place of occurrence four persons were arrested along with huge quantity of contraband. The trial Court has recorded a finding of guilt after going through the evidence on record. Since the contraband recovered is a commercial quantity, unless the petitioners are able to convince the Court that the twin conditions under Section 37 of NDPS Act has been satisfied, they are not entitled for any relief. Except stating that there is a statutory violations and the ownership of the vehicle was not established, no other ground worth considering were brought on record by the petitioners.

10. In view of the above submission, I am of the considered view that since the petitioners failed to comply the twin conditions under Section 37 of the NDPS Act, they are not entitled for any relief.

11. Accordingly, these Criminal Miscellaneous petitions are dismissed.”

7. The Honourable Supreme Court in Satpal Singh vs. State of Punjab, reported in (2018) 13 SCC 813 has held as under:

“4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences



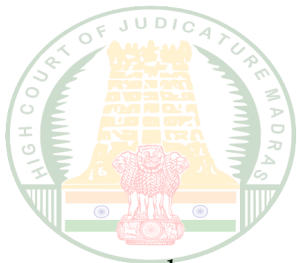
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involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail."

8.As rightly pointed out by the learned Special Public Prosecutor, there is no discussion and reasonings for grant of suspension of sentence to A2 in Crl.MP(MD) No.1595 of 2024, dated 20.03.2024.

9.In view of the above and in the light of the order passed by the Honourable Supreme Court as stated supra, this Court is not inclined to suspend the sentence imposed on the petitioner. Accordingly, this Criminal Miscellaneous Petition is dismissed.

10.Since it is reported that this petitioner is in jail from the date of his arrest on 01.01.2021 and also considering that this petitioner has already undergone



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1/3rd of the sentence imposed on him, Registry is directed to list the main Criminal
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Appeal for final hearing on 23.04.2025.

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

vrn

To

- 1 THE ADDITIONAL DISTRICT JUDGE,
II ADDITIONAL SPECIAL COURT FOR NDPS ACT
CASES, MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3.The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub-Zone,
Madurai.
- 4 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
Crl.MP(MD) No.2781 of 2025

in
Crl.A(MD) No.708 of 2024
Date :15/04/2025

MK/SAR /22.04.2025 8P/5C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023