

*Crl.MP.(MD)No.5456 of 2024
in Crl.A.(MD)No.451 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.09.2025

Pronounced on : 26.09.2025

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) No.5456 of 2024

in

CRL A(MD) No.451 of 2024

Sekar

**Petitioner/
Appellant**

Vs

1.The Inspector of Police,
Keeraithurai Police Station,
Madurai District.
(Crime No.97 of 2021)

2.The Commissioner of Police,
Madurai City,
Madurai.

Respondents

*(R2 is suo-motu impleaded as per order of the Court dated
17.04.2025 in Crl.M.P.(MD)No.5456 of 2024 in Crl.A.(MD)
No.451 of 2024)*



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Prayer in CRL MP(MD).5456 of 2024 : This Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code, praying to suspend the sentence imposed by the learned I Additional Special Court for NDPS Act Cases, Madurai in C.C.No.324 of 2021 vide judgment dated 29.02.2024 and to enlarge the petitioner on bail pending disposal of the above said criminal appeal.

Prayer in CRL A(MD).451 of 2024 : This Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to call for the entire records and set aside the sentence and conviction imposed in C.C.No.324 of 2021 on the file of learned I Additional Special Court for NDPS Act cases, Madurai vide judgment dated 29.02.2024.

For Petitioner: M/s.Mamtha Pandey

For Respondents: Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner / fourth accused by the learned Additional District Judge, I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.324 of 2021 dated 29.02.2024, till the disposal of the criminal appeal.

2. The case of the prosecution is that on 04.02.2021 at about 10.15 a.m., when the Sub Inspector of Police, Keeraithurai Police Station was on duty, received a secret information that the accused 1 and 2 are smuggling ganja to sell



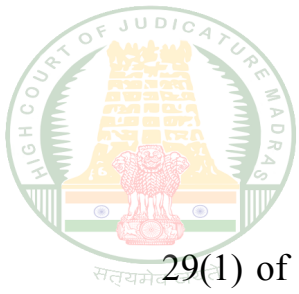
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it to Keeraithurai area and if the police accompanies him, he would identify them.

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The Sub Inspector of Police, after getting permission from the Inspector of Police, proceeded to that place along with Sub Inspector of Police Arun, Head Constable Balamurugan and Grade I Constables Sakthi Kumar and Kannu and at about 11.15 a.m., on seeing the police party, two persons attempted to escape from that place but were caught hold by the police team and on enquiry, the first accused gave a confession statement and on that basis, two white color polythene gunny bags was produced by the first accused and the police party came to know that 15 kgs of ganja were stacked in each of the gunny bags and total weight is 30 kgs and both the accused 1 and 2 were arrested. Hence, FIR came to be registered in Crime No.97 of 2021 for the offences under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of the Narcotic Drugs and Psychotropic Substances (hereinafter referred as 'NDPS') Act and on the basis of the confession of the first accused, the accused 3 and 4 were added.

3. After completing the investigation, final report came to be filed against four accused including the petitioner herein and the case was taken on file in C.C.No.324 of 2021 for the offences under Sections 8(c) r/w 20(b)(ii)(C) and



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29(1) of the NDPS Act and the same was pending on the file of the I Additional Special Court for NDPS Act Cases, Madurai.

4. During trial, the prosecution examined 4 witnesses as P.W.1 to P.W.4, exhibited 11 documents as Ex.P.1 to Ex.P.11 and marked 6 material objects as M.O.1 to M.O.6. The defence adduced no oral evidence but exhibited the copy of the information in C.C.No.17 of 2022 as Ex.D.1.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 29.02.2024 convicting the accused 1 and 2 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and the petitioner / fourth accused for the offence under Sections 29(1) r/w 20(b)(ii)(C) of the NDPS Act and sentenced the accused 1 and 2 to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.1,00,000/-, in default to undergo 2 years simple imprisonment and sentenced the petitioner / fourth accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo 2 years simple imprisonment and acquitted the accused 1 and 2 for the offence

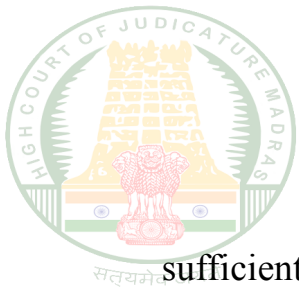


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under Section 29(1) of the NDPS Act and acquitted the third accused from all the charges. Aggrieved by the impugned judgment of conviction and sentence, the fourth accused has preferred the present appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that mandatory provisions under Sections 42(2), 50(1) and 57 of the NDPS Act were not complied with, that the prosecution has not recovered any contraband from the petitioner, that the prosecution has not chosen to examine any independent witnesses, that there are material contradictions between the evidence of the prosecution witnesses, that the trial Court has assigned a main reason that the petitioner did not cross-examine the prosecution side witnesses and as such, the case of the prosecution stood proved, which is legally unsustainable and that the trial Court, without considering the above material aspects, has proceeded to convict the accused, which is liable to be set aside.

7. The learned Government Advocate (Criminal Side) appearing for the respondents would submit that the learned trial Judge had given proper and



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sufficient reasons to hold that Section 42 of the NDPS Act is not applicable to the present case, that the learned trial Judge had given proper findings that Sections 50 and 57 of the NDPS Act were duly complied with, that non-compliance of Section 52(A) of the NDPS Act is not fatal to the case, that the contradictions pointed out by the petitioner were rightly discarded as the same were of trivial and immaterial in nature, that the prosecution has proved its case beyond any reasonable doubt and that the learned trial Judge, considering the evidence available on record and applying the legal position, has rightly convicted the accused 1, 2 and 4 including the petitioner and acquitted the third accused.

8. As rightly pointed out by the learned Government Advocate (Criminal Side), considering the evidence of the prosecution witnesses and taking note of the place of occurrence shown in search consent letter, arrest intimation, seizure mahazar, search memo and other records, the learned trial Judge has held that Section 42 of the NDPS Act does not have any application or relevance to the case on hand. The learned trial Judge, as rightly contended by the learned Government Advocate (Criminal Side), considering the evidence of P.W.1 and P.W.2 and taking note of the fact that portion of the prosecution evidence was not seriously

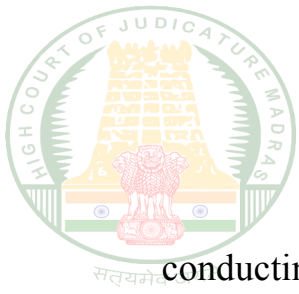


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challenged, has come to a decision that the provision of Section 50(1) of the NDPS Act is duly complied with and taking note of the evidence of P.W.2 and P.W.3, the learned trial Judge has held that there is substantial compliance of Section 57 of the NDPS Act.

9. It is pertinent to note that the prosecution witnesses P.W.1, P.W.3 and P.W.4 were not subjected to cross-examination by the petitioner's side and the learned trial Judge, taking note of the judgments of the Hon'ble Supreme Court, has held that unchallenged evidence of P.W.1, P.W.3 and P.W.4 as against the fourth accused is sufficient to hold that the fourth accused is also guilty of the alleged offence.

10. The learned counsel appearing for the petitioner would mainly comment on the above findings that the trial Court has given much importance to the petitioner's failure to cross-examine the prosecution witnesses and since it was a mistake on the part of the counsel on record, the petitioner cannot be made to suffer. As rightly contended by the learned Government Advocate (Criminal Side), the petitioner alone had engaged counsel of his choice and the said counsel was

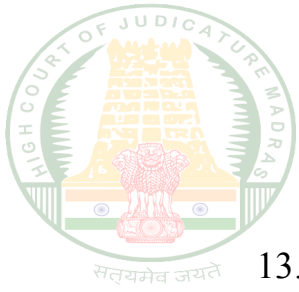


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conducting the defence. It is not the case of the petitioner that he was denied sufficient opportunity to defend the proceedings. Since the petitioner himself had engaged his counsel, after conviction, he cannot put the entire blame on his counsel and escape from the consequences. Since the prosecution witnesses P.W.1, P.W.3 and P.W.4 were not cross-examined by the petitioner's side, their evidence against the petitioner remains unchallenged, as noted by the learned trial Judge.

11. The learned counsel appearing for the petitioner would submit that the petitioner is in jail custody from 06.03.2021 for the past 4½ years and hence, he may be enlarged on bail.

12. The learned Government Advocate (Criminal Side) appearing for the respondents would submit that the petitioner is a notorious criminal and involved in 13 cases including 4 murder cases. In pursuance of the direction of this Court, the Commissioner of Police, who was suo motu impleaded as second respondent, has filed a status report stating that 4 murder cases are still pending, that 5 other sessions cases are also pending for trial and that 1 case for the offence under the Explosives Substances Act is pending in FIR stage.



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13. Considering the above facts, circumstances and gravity of the charges allegedly levelled and proved against the petitioner and also taking note of the bad antecedents and the period of the imprisonment imposed, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

14. In the result, the Criminal Miscellaneous Petition is dismissed. It is clarified that the observation made in this order are solely for the purpose of deciding the petition for suspension of sentence.

26-09-2025

CSM

To

- 1.The Additional District Judge,
I Additional Special Court for NDPS Act cases,
Madurai.
- 2.Do through the Chief Judicial Magistrate,
Madurai District.
- 3.The Inspector of Police,
Keeraithurai Police Station,
Madurai District.



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4.The Commissioner of Police,
Madurai City,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.