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Crl.O.P.(MD) No.9493 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.11.2025
Pronounced on	25.11.2025

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.9493 of 2024

and

Crl.M.P.(MD) Nos.1433 & 1435 of 2025

Rajkumar David

... Petitioner

Vs.

The Deputy Superintendent of Police,
Narcotic Investigation Bureau,
Madurai.

Crime No.93 of 2011

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of the Criminal Procedure, 1973/Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the proceedings in C.C.No.152 of 2024, on the file of the Additional Principal Special Court for EC & NDPS Act cases, Madurai and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.C.Muthu Saravanan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed seeking to quash the final report in C.C.No.152 of 2024 on the file of the Additional Principal Special Court for EC & NDPS Act Cases, Madurai, filed for the offences punishable under Section 8(c) read with Section 21(b) of the NDPS Act, 1985, insofar as the petitioner is concerned.

2. The gist of the allegations in the final report is that on 06.06.2011 at about 15.45 hours, when the respondent police intercepted the first accused on the basis of secret information, he was found in possession of 100 grams of heroin worth about Rs.10,00,000/-; and that the petitioner, arrayed as A2, had supplied the said contraband to the first accused.

3. The learned counsel for the petitioner submitted that the petitioner, now arrayed as A2, is sought to be prosecuted only on the basis of the confession of A1, namely Anikilate alias Ayesh Novar, who is no more; that the first accused had only confessed that he had purchased the contraband from one Raja, who is a Sri Lankan refugee; that the petitioner is an Indian by birth, born in Madurai; that he has never been known as



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Raja and has always been known as Rajkumar David; that he runs a medical shop at Madurai; that the first respondent, for reasons best known to him, has without any basis arrayed the petitioner as an accused 13 years after the alleged occurrence, and the Special Court has issued summons to the petitioner for appearance; that during the investigation in 2024, the petitioner was illegally arrested, and this Court, while considering his bail petition in Crl.O.P.(MD) No.20303 of 2024, had observed that the community certificate of the petitioner's daughter issued by the Headquarters Deputy Tahsildar, Madurai North, was genuine and, therefore, prima facie found that the petitioner was an Indian citizen and granted bail; that the impugned prosecution lacks bona fides and suffers from serious identity issues; and that, in the absence of any legally acceptable material to prosecute the petitioner, the impugned prosecution as against him is an abuse of process of law, and sought for quashing of the impugned prosecution.

4. The learned Additional Public Prosecutor for the respondent, *per contra*, submitted that the question as to whether the petitioner is the person referred to in the confession given by the co-accused cannot be adjudicated in a quash petition; that the statement of one Selvam, recorded



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on 11.04.2024, would show that the first accused, in order to mislead the Investigating Officer, had wrongly referred to the petitioner as Raja, a Sri Lankan National, and therefore, on this ground, the impugned prosecution cannot be quashed; that even though the confession of a co-accused is inadmissible, the question as to whether there is other evidence to prosecute the petitioner can be decided only during trial, especially in view of provisions such as Sections 35 and 54 of the NDPS Act, which provide for presumptions that has to be rebutted only in the trial, and therefore sought for dismissal of the quash petition.

5. It is the case of the prosecution that A1 was found in possession of 100 grams of heroin on 06.06.2011; that the petitioner had purchased the contraband from Indore, Madhya Pradesh, and supplied the same to the first accused; and that the role of the petitioner is revealed from the confession of the first accused.

6. The petitioner was not shown as an accused until October 2024. It is the case of the prosecution that the petitioner fled to Australia and was apprehended at the Airport as there was a look out notice against him and remanded to judicial custody from 29.10.2024. The prosecution in the



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counter affidavit had admitted that the only evidence against the petitioner is the confession of the co-accused. The first accused in his confession has referred to one Raja, who is a Srilankan National. According to the prosecution, the first accused has given a false confession only to mislead the Investigation Officer and it was the petitioner who had supplied the contraband to the first accused. This Court while allowing the bail petition of the petitioner in Crl.O.P.(MD) No.20303 of 2024 had observed on the basis of the community certificate issued by the Tahsildar that the petitioner is an Indian national and the certificate issued by the Tahsildar was genuine.

7. The prosecution had initially filed the final report against the first accused and one Raja (A2). The petitioner is now sought to be implicated in the further report. Admittedly, the only material against the petitioner is the confession of the co-accused/A1, who is no more and died in 2016. A1 had stated in his confession that he had purchased the contraband from one Raja, a Sri Lankan National. It is the case of the prosecution in the further final report that A1 had lied in his confession to mislead the investigation and that he had actually purchased the contraband from the petitioner, who is an Indian National. According to the prosecution, they



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discovered the said fact only in 2024, nearly 13 years after the arrest of A1, when they examined a witness by the name Selvam.

8. The prosecution discovered that the said Selvam knew about the relationship between the petitioner and the first accused after examining one Vetrivel, an auto driver. There is no explanation as to how they discovered the said Vetrivel. Be that as it may, Selvam, in his statement, has stated that he knew both the first accused and the petitioner; that all the three were friends; and that the petitioner and A1 were dealing with drugs. He has further stated that the first accused had given a false confession to the police that Raja, a Sri Lankan National, had supplied the contraband to him, and the first accused only meant the petitioner.

9. Firstly, it is not the version of Selvam that the contraband in question was supplied by the petitioner. All that he says that he knew well that the petitioner was also handling drugs. It is not known why he had not informed the said fact to the police for about 13 years. Secondly, an inadmissible confession of the co-accused is sought to be explained by a witness to suit the prosecution case that Raja referred to in the confession of the first accused is only the petitioner.



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10. From the above discussion, this Court is of the view that the said Selvam has been examined as an afterthought. Even assuming that his statement that Raja referred to in the confession is the petitioner as true, the only material against the petitioner is the confession of the co-accused/A1. This is admitted by the prosecution in their counter affidavit.

The relevant portion reads as follows:

Though the petitioner/accused name is not found in the FIR, he has implicated based on the confession given by co-accused, namely Anigillett alias IceNover A1. Even though confession given by co-accused is not admissible evidence Hon'ble Gujarat High Court held in Firoze Haj bhai Sodha Vs. State of Gujarat on 08.02.2022 I can be taken in to consideration as a clue against the petitioner/accused. Though the petitioner accused filed documents shows that his name is Rajkumar David and he claimed that he is not Raja one disclose in confession given by Co-accused viz., Anigillett Alias IceNover A1 the same could not be decided at this stage. It could be decided only at the time of trial based on the oral and documents evidence.

11. Hence, considering the fact that the only material against the petitioner is the confession of the co-accused and the examination of a witness, after 13 years to explain the inadmissible confession of the co-accused, and the statement of the said witness appears to be artificial,



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improbable and opposed to common sense, this Court is of the view that no useful purpose would be served in continuing the prosecution against the petitioner. Therefore, the impugned prosecution as against the petitioner is quashed.

12. Thus, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

25.11.2025

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

Copy To:

- 1.The Judge,
Additional Principal Special Court for EC & NDPS Act cases,
Madurai.
- 2.The Deputy Superintendent of Police,
Narcotic Investigation Bureau,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

JEN

Pre-Delivery Order made
in
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