

Crl.A.(MD)No.619 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.06.2025

CORAM :

THE HONOURABLE **MS. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.619 of 2025
and Crl.M.P(MD).No.6772 of 2025

Nagamurugan @ Asha

... Appellant/Accused No.1

vs.

The State rep., by
The Inspector of Police,
Keerathurai Police Station,
Madurai District.
Crime No.607 of 2019

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 415(2) of BNSS, to call for the entire records in connection with the judgment in C.C.No.314 of 2019 dated 28.03.2025 on the file of the learned Principal Additional District Judge, Special Court for EC and NDPS Act Cases, Madurai and set aside the conviction and sentence imposed on the appellant.

For Appellant : Mr.J.Vijayaraja
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

This appeal is filed by the first accused challenging the conviction and sentence imposed on him by the learned Additional District Judge, Principal Special Court for EC & NDPS Act Cases, Madurai, in C.C.No.314 of 2019, dated 28.03.2025.



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2. The case of the prosecution in brief is as under :-

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(i) On 27.06.2019, at about 12.00 hours, P.W.2, the Sub Inspector of Police attached to Keerathurai Police Station, received a secret information from an informant. The said information was reduced in writing and was forwarded to the immediate superior officer, P.W.3, the Inspector of Police. Thereafter, the Sub-Inspector of Police proceeded to the spot mentioned by the informant along with his team. The informant identified the person, who was found to be in possession of 5kgs of ganja for the purpose of selling. He attempted to escape on seeing the police and the Sub Inspector of Police apprehended him and enquired. Thereafter, the police explained the right to be searched before the Gazetted Officer or the nearest Magistrate. Then, the search consent letter was prepared. Thereafter, search was conducted in two wheeler bearing Registration No.TN-64-B-8619 FZS and 5 kgs of ganja was seized and thereby, the first accused committed the offence under Section 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act. Thereafter, after preparing the seizure mahazar, the first accused was arrested and FIR was registered. Then, samples of each 50 grams was taken and packed in a cover, affixing SHO seal. The balance 4.900 kgms of ganja was packed in a white colour bag affixing SHO seal and the packets were signed by the witnesses.



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(ii) Then, the first accused gave confession statement and the same was recorded in the presence of witnesses. On the confession of the first accused, the second accused was arrayed as accused in this case. The contraband recovered from the accused was sent for chemical analysis and chemical report was received. Thereafter, on 29.07.2019, the second accused, namely Saba @ Sabarathinam surrendered before the learned Judicial Magistrate No. IV Court, Madurai, in Cr.No.396 of 2018 remanded into Judicial custody in Coimbatore Central Prison.

(iii) After completion of investigation, on 03.08.2019, a charge sheet was filed. Based on the materials, the Special Court for EC and NDPS Act Cases, Madurai, framed the charges against the accused for the offence under Section 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act. The accused pleaded not guilty and claimed to be tried.

(iv) In order to bring home the guilty of both accused, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and marked 13 exhibits as Ex.P.1 to Ex.P.13. Three Material Objects were marked as M.O.1 to M.O.3. On behalf of the accused, no oral and documentary evidence was let-in.



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(v) After considering the oral and documentary evidence, the learned Principal Additional District Judge, Special Court for EC and NDPS Act Cases, Madurai, rendered the judgment acquitting the second accused on all the charges levelled against him. So far as the appellant/first accused is concerned, it is held that the prosecution has proved the guilt against the first accused under Section 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act, beyond all reasonable doubt. After hearing the first accused under Section 248(2) Cr.P.C, sentence was imposed on him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.10,000/-, in default to undergo six months Simple Imprisonment for each of the offence. Aggrieved over the same, the first accused has preferred the present appeal.

4. The learned counsel appearing on behalf of the appellant/first accused mainly argued on the following points:

(i) Two samples of contraband, which were taken for analysis, did not contain the seal of SHO (Station House Officer);

(ii) The report under Section 57 of NDPS Act does not contain the signature of the officer superior to the SHO. Hence, the prosecution violates Section 57 of the NDPS Act.

Hence, he prayed to allow the appeal by setting aside the conviction and sentence passed against the appellant/A1.



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5. The learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

(i) The first ground raised by the learned counsel for the appellant that the two samples of contraband, which were taken for analysis, did not contain the seal of SHO (Station House Officer) is concerned, this point has already been raised by the appellant even before the trial Court as his defence. The trial Court held that the seizure mahazar does not contain the seal of SHO on the two samples. However, it is observed that the seal was placed on the parcel contained remaining portion of ganja weighing 4.900 grams, but it was omitted to place in the seizure mahazar. Such omission was alone considered by the trial Judge as minor deviation. The trial Judge also held that the the sample did contain the seal of SHO and the said fact has been corroborated with the evidence of P.W.1 and P.W.2. Hence, the above point cannot deserve as a ground for this appeal.

(ii) Insofar as the second ground is concerned, the Special Court for EC and NDPS Act Cases, Madurai, observed that the compliance of Section 57 of the NDPS Act is not mandatory and hence, it will not vitiate the proceedings.

6. Apart from that, the learned Additional Public Prosecutor submitted that in this case, the prosecution clearly proved the case through



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evidence and contemporaneous documents beyond reasonable doubt and therefore, no interference is warranted by this Court. He prayed for dismissal of this appeal.

7. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

8. It is a case of seizure of 5kgs of ganja from the appellant/first accused based on the secret information on 27.06.2019 at 12.00 hours received by P.W.2-Sub Inspector of Police. The said information was reduced in writing and forwarding the same to his immediate superior officer, P.W.3 Inspector of Police, P.W.2 along with his team proceeded to the scene of occurrence, where the informant identified the first accused, P.W.2 has secured the first accused, who was found to be in possession of 5kgs of ganja. After informing the first accused with regard to the right to be searched, the recovery was made and two samples were taken for analysis and the sample cover was sealed with SHO seal. The seizure is marked as Ex.P.3. P.W.1-Village Administrative Officer, Tr.G.Suruli Andavar and his Assistant Tr.Velmurugan and Sub Inspector of Police Tr.Arun are the witnesses to the same. Thereafter, the appellant/A1 was arrested and FIR was registered. On the confession of the first accused, the



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second accused was arrayed as accused in this case. After completion of investigation, charge sheet has been filed. The trial Court after framing the charges and explained the accused, who pleaded not guilty and claimed to be tried. The trial Judge concluded that the prosecution has proved the case against the appellant/A1 beyond any reasonable doubt and convicted him for the offences aforesaid and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.10,000/-, in default to undergo six months Simple Imprisonment for each of the offence.

9. Though the learned counsel appearing for the appellant pointed out that two samples of contraband, which were taken for analysis, did not contain the seal of SHO (Station House Officer), the trial Judge observed that the seal was placed on the parcel contained remaining portion of ganja weighing 4.900 grams, but it was omitted to place in the seizure mahazar. Such omission was alone considered by the trial Judge as minor deviation. The trial Judge also held that the the sample did contain the seal of SHO and the said fact has been corroborated with the evidence of P.W.1 and P.W.2. With regard to the violation of provisions under NDPS Act, the trial Judge has observed that the compliance of Section 57 of the NDPS Act is not mandatory and hence, it will not vitiate the proceedings and it is correct. Hence, the points raised by the appellant/A1 are very minor in nature and



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not much significant to reject the prosecution case. Thus, the evidence adduced by the prosecution proves beyond doubt the recovery of ganja from the appellant. Further, no plausible explanation is offered by the accused/A1 for the possession of ganja. Hence, the act of the appellant attracts punishment under Section 8(c) r/w 20(b)(ii)(B), 25, 29(1) of NDPS Act.

10. At this juncture, the learned counsel appearing for the appellant/first accused submitted that the appellant/first accused has been in prison, though the appellant was enlarged on bail, as he was arrested and remanded in some other case. But, the trial Judge has ordered set-off under Section 428 Cr.P.C only between the period from 27.06.2019 to 03.06.2020.

11. Even though the appellant has been in judicial custody with regard to some other case, he had been produced during the trial only on PT warrant. As the accused had been released on bail in this case, there was no necessity to remand him in this case by the trial Judge. Since the appellant/A1 was not in custody in connection with the present case, the period of detention undergone by him in another case cannot be set off against the sentence imposed in this case.



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12. Since the appellant was arrested in connection with some other case, it would have been prudent on the part of the prosecution to file an application seeking for cancellation of bail. But, the prosecution also failed to take such step. Though the appellant obtained the bail order, there is no practical benefit, as he has been arrested and kept under judicial custody in some other case. The learned counsel also submitted that the appellant has served the sentence for a period of thirteen months till now.

13. Considering the above stated facts and also considering the fact that the appellant could not avail the benefit of bail order, as he has been under judicial custody in some other case, I am inclined to give the relief to the appellant by modifying the sentence of imprisonment imposed on him by the trial Judge.

14. Accordingly, the sentence imposed by the learned Principal Additional District Judge, Special Court for EC and NDPS Act Cases, Madurai, as against the appellant/A1 is hereby modified as under:

(i) The period of sentence is reduced to sentence already undergone by the appellant/A1 in prison for this case. The appellant/A1 is directed to be set at liberty unless his presence is required in some other case/proceedings.



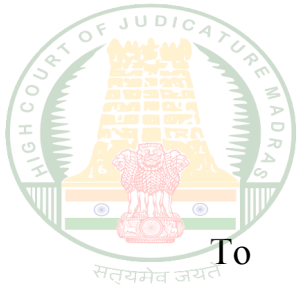
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(ii) The appellant/A1 shall pay the fine amount of Rs.10,000/- (Rupees Ten Thousand only), in default, he shall undergo further six months of Simple Imprisonment for each of the offence.

15. In fine, this Criminal Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed.

05.06.2025

Index : Yes/No
Internet: Yes/No
NCC : Yes/No.
Rmk



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To

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- 1.The Principal Additional District Judge,
Special Court for EC and NDPS Act Cases, Madurai.
- 2.The Inspector of Police,
Keerathurai Police Station,
Madurai District.
3. The learned Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent of Police,
Central Prison, Vellore.



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R.N.MANJULA, J.,

Rmk

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