



CRL RC(MD)No.905 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.905 of 2025

M.A.Fathima Khan

... Petitioner

Vs.

State of Tamil Nadu, Rep. by
The Inspector of Police,
Koodalpudur Police Station,
Madurai City.
(Crime No.471/2024)

... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 438 r/w. 442 of BNSS, 2023, to set aside the order made in CrI.M.P.No.356 of 2025 dated 10.03.2025 on the file of the learned Principal Sessions Court for trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai, in connection with Crime No.471 of 2024 on the file of the respondent police and thereby direct the respondent police to return the vehicle bearing registration No.TN-31-CH-6793 (Yamaha R 15) to the custody of the petitioner pending conclusion of trial.

For Petitioner : Mr.K.Palmurugan

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor



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ORDER

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This Criminal Revision Petition is directed against the order dated 10.03.2025 passed in CrI.M.P.No.356 of 2025 by the learned Principal Sessions Judge for trial of NDPS Act Cases, Madurai, whereby the petition filed by the present petitioner seeking interim custody of her Yamaha R15 motorcycle bearing Registration No.TN-31-CH-6793, seized in connection with Crime No.471 of 2024, came to be dismissed.

2. The case of the petitioner, as projected before the learned Trial Court and reiterated in this revision, may be briefly summarised as follows: The petitioner is the registered owner of the Yamaha R15 motorcycle bearing Registration No.TN-31-CH-6793, which she purchased in the year 2017. Ever since the purchase, the vehicle has been used by her and by her family members for their personal and domestic needs. On 24.08.2024, Crime No.471 of 2024 came to be registered on the file of Koodalpudur Police Station, Madurai City, for alleged offences under Sections 8(c) read with 20(b)(ii)(B), 25, and 29(1) of the NDPS Act, and Section 25(1A) of the Arms Act.

3. In the said crime, one individual has been arrayed as Accused



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No.4 and is alleged to have been involved in the possession and dealing of ganja and also in possession of a weapon covered by the Arms Act.

During the course of the investigation, the said Accused No.4 is stated to have made a confession that he had used the petitioner's Yamaha R15 motorcycle for the purpose of the alleged NDPS offence. Based solely on such statement, the respondent police seized the petitioner's motorcycle, treating it as a conveyance involved in the commission of the said offences. The petitioner asserts that she herself was not present at the time of occurrence, that she was not found in possession of any contraband, and that there is no allegation of knowledge or connivance on her part.

4. She further states that the investigation, as per the prosecution, is almost completed and that the requirement of the vehicle for the purpose of investigation is practically over. The petitioner complains that her motorcycle is presently lying in the open at the police station or at some open yard, directly exposed to rain, sunlight, and other natural elements and, consequently, undergoing continuous deterioration in its mechanical condition and market value. She submits that if the motorcycle continues to be kept idle and exposed for a prolonged period, it will soon become unfit for road use and will



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virtually lose its value, causing serious financial loss and hardship to her.

5. The petitioner undertakes to produce the vehicle before the Court or before the Investigating Officer as and when required, not to alienate, encumber, or modify the vehicle, and not to permit any unlawful use of the same. She relies upon the principles laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat**¹, that vehicles and other valuable properties should not be allowed to rot in police custody and that Courts must ordinarily release such properties on interim custody with appropriate safeguards. On these grounds, she seeks an order directing the return of the motorcycle to her on interim custody pending trial.

Case of the Prosecution:

6. The stand of the prosecution, as seen from the objection filed before the learned Trial Court and the submissions made before this Court, is that the Yamaha R15 motorcycle bearing Registration No.TN-31-CH-6793 was seized on 24.08.2024 in connection with Crime

¹ (2002) 10 SCC 283



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No.471 of 2024, based upon the confession of Accused No.4, who had allegedly stated that he used the said motorcycle for committing the offence of illegal possession and dealing in ganja.

7. It is contended that the investigation in Crime No.471 of 2024 is almost complete, though the final report is yet to be filed. The prosecution states that an inventory under Section 52-A of the NDPS Act has been prepared in respect of the seized vehicle and has been placed before the jurisdictional Court. The respondent submits that, having regard to the nature of the offences under the NDPS Act and the allegation that the vehicle was used in connection with such offences, the motorcycle ought not to be released at this stage.

8. The prosecution apprehends that if the vehicle is returned to the petitioner, there is a possibility that it may not be produced at the time of trial or that it may again be used for unlawful activity. On that basis, the respondent strongly opposes the grant of interim custody in favour of the petitioner and supports the order passed by the learned Trial Court.

Gist of the Impugned Order:



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9. The learned Principal Sessions Judge, by the impugned order dated 10.03.2025 in CrI.M.P.No.356 of 2025, dismissed the petitioner's application for return of the motorcycle. From a reading of the impugned order, it is seen that the learned Trial Court has mainly proceeded on three considerations: that the vehicle in question is alleged to have been used for the commission of the NDPS offence; that an inventory under Section 52-A of the NDPS Act has already been prepared and produced; and that the investigation has not yet been fully concluded.

10. On these grounds, the learned Principal Sessions Judge came to the conclusion that it would not be appropriate to grant interim custody of the vehicle to the petitioner and, therefore, dismissed the petition. However, the impugned order does not disclose any analysis of the scope and effect of Sections 497 and 503 of the BNSS, does not examine the statutory provisions relating to confiscation under Sections 60(3) and 63 of the NDPS Act, does not consider the impact of the binding decisions of the Hon'ble Supreme Court in **Denash v. State of Tamil Nadu**² and **Bishwajit Dey v. State of Assam**³ and does not balance the competing considerations of preservation of property and

² 2025 SCC OnLine 2276

³ 2025 INSC 32



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the needs of investigation and trial.

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Grounds of Revision:

11. Aggrieved by the dismissal of her application, the petitioner has preferred the present Criminal Revision Petition. She contends that the learned Trial Court has proceeded on an erroneous assumption that seizure of the vehicle in an NDPS case, coupled with preparation of an inventory under Section 52-A of the NDPS Act, automatically bars the Court from exercising its jurisdiction to grant interim custody.

12. The petitioner urges that the Court below has failed to appreciate that Section 52-A and the NDPS Disposal Rules, 2022, regulate only the manner of inventory, sampling, certification and disposal of seized articles and conveyances and do not in any manner curtail, override or abrogate the general powers of criminal Courts under Sections 497 and 503 of the BNSS, 2023. She further points out that confiscation of a conveyance is not an automatic consequence of its seizure but is a matter for judicial determination under Section 63 of the NDPS Act, after trial and after giving the owner an opportunity of being heard, as contemplated by Section 60(3) of the NDPS Act.



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13. The petitioner further contends that the vehicle is suffering natural decay and loss of value by lying idle in police custody and that the learned Trial Court has not weighed this hardship against the speculative apprehensions of the prosecution. She asserts that any genuine apprehension of misuse or non-production can be perfectly addressed through stringent conditions such as execution of a substantial bond, production on demand, non-alienation clauses and inspection liberty to the Investigating Officer.

Submissions:

14. The learned counsel for the petitioner, placing reliance on the pattern of submissions considered in ***Denash v. State of Tamil Nadu***⁴, submitted that Sections 36-C and 51 of the NDPS Act expressly import the provisions of the Code of Criminal Procedure, 1973, now the BNSS, 2023, into proceedings under the NDPS Act, in so far as they are not inconsistent with the Act. He submitted that Sections 497 and 503 of the BNSS, corresponding to Sections 451 and 457 of the Code of Criminal Procedure, 1973, are general provisions vesting jurisdiction in criminal Courts to pass orders for proper custody, preservation and delivery of property pending trial and that there is nothing in the NDPS

⁴ 2025 SCC OnLine 2276



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Act which is inconsistent with or which excludes these provisions.

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15. The learned counsel contended that Section 52-A of the NDPS Act and the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, are limited to prescribing the procedure for inventory, sampling, certification and disposal of seized contraband and conveyances and do not, either expressly or by necessary implication, take away the power of the Court to grant interim custody of seized vehicles. He drew attention to the decision in **Denash v. State of Tamil Nadu**⁵, wherein the Hon'ble Supreme Court has categorically held that the 2022 Disposal Rules, being subordinate legislation, cannot override the parent statute or divest the Special Court of its jurisdiction under Sections 451 and 457 of the Code of Criminal Procedure (now Sections 497 and 503 BNSS).

16. The learned counsel submitted that the Yamaha R15 motorcycle has no independent incriminatory value beyond its use as a conveyance and that its identity, make, model, engine number, chassis number and condition can be adequately preserved by way of inventory, photographs and certification in terms of Section 52-A of the NDPS Act.

⁵ 2025 SCC OnLine 2276



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He emphasised that the petitioner was not found in possession of any contraband, that there is neither a specific allegation nor any material to show knowledge or connivance on her part and that her vehicle has been seized solely on the basis of the confession of Accused No.4.

17. The learned counsel argued that whether or not the vehicle is ultimately liable to confiscation under Section 60(3) of the NDPS Act is a matter to be decided only after trial and after an enquiry as required by Section 63 of the NDPS Act and that such a future possibility cannot be used as a ground to deny interim custody at the outset. He reiterated that the principle laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat**⁶ obliges criminal Courts to act in a manner that prevents waste and deterioration of valuable properties and that, therefore, the vehicle ought to be released to the petitioner on stringent conditions.

18. Per contra, the learned Additional Public Prosecutor, adopting the line of resistance typically considered and answered in **Denash v. State of Tamil Nadu**⁷, submitted that, in the present case, the

6 (2002) 10 SCC 283

7 2025 SCC OnLine 2276

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Yamaha R15 motorcycle in question has been specifically named by Accused No.4 as the vehicle used for transporting or otherwise facilitating NDPS activity. He contended that the vehicle is therefore clearly a conveyance used in the commission of an offence under the NDPS Act and is, in that sense, liable to confiscation under Section 60(3) of the NDPS Act.

19. The learned Additional Public Prosecutor further submitted that if the vehicle is returned to the petitioner at this stage, there is a real possibility that it may either be misused for similar purposes or may not be produced at the time of trial or confiscation proceedings. He contended that offences under the NDPS Act are of a grave and serious nature, that Parliament has enacted a stringent framework to curb the menace of narcotic drugs and that, therefore, Courts should exercise extreme caution while considering the question of returning vehicles used in such offences.

20. It was also urged that, since an inventory under Section 52-A of the NDPS Act has already been prepared, it would not be advisable to order interim custody of the vehicle now and that the safer course



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would be to retain the vehicle in custody till the conclusion of the proceedings. On these grounds, the learned Additional Public Prosecutor prayed for dismissal of the revision.

21. Heard the learned counsels on either sides and carefully perused the materials available on record.

Point for Consideration:

22. In the above factual and legal backdrop, the point that arises for consideration is whether the learned Principal Sessions Judge for trial of NDPS Act Cases, Madurai, was justified in refusing interim custody of the Yamaha R15 motorcycle bearing Registration No.TN-31-CH-6793 to the petitioner, on the ground that the vehicle is allegedly used in an NDPS offence and that an inventory under Section 52-A of the NDPS Act has been prepared, or whether, in the light of Sections 497 and 503 of the BNSS, Sections 52-A, 60(3) and 63 of the NDPS Act, the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, and the guiding principles laid down by the Hon'ble Supreme Court in

Denash v. State of Tamil Nadu⁸, Bishwajit Dey v. State of Assam⁹,

8 2025 SCC OnLine 2276

9 2025 INSC 32

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Sunderbhai Ambalal Desai v. State of Gujarat¹⁰ and **Sainaba v.**

State of Kerala¹¹, the petitioner is entitled to interim release of the vehicle subject to suitable conditions.

Analysis:

23. Sections 497 and 503 of the BNSS, 2023, which are the successors to Sections 451 and 457 of the Code of Criminal Procedure, 1973, expressly empower criminal Courts to make such orders as they think fit for the proper custody of any property pending enquiry or trial and to deliver such property to any person claiming to be entitled to its possession, as well as to provide for the situation where property is subject to speedy or natural decay. These provisions are of general application and their object is to ensure that valuable property seized in connection with criminal cases is not allowed to deteriorate or perish while the criminal process takes its course.

24. By virtue of Sections 36-C and 51 of the NDPS Act, the provisions of the Code of Criminal Procedure, 1973, and now the BNSS,

¹⁰ (2002) 10 SCC 283

¹¹ 2022 SCC OnLine SC 1784



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2023, apply to proceedings under the NDPS Act in so far as they are not inconsistent with the provisions of that Act. There is no provision in the NDPS Act which either expressly or impliedly bars the grant of interim custody of vehicles seized in NDPS cases. On the contrary, the Act contemplates, in Sections 60(3) and 63, a structured and judicially controlled process for determining whether or not a particular conveyance is liable to be confiscated.

25. Section 52-A of the NDPS Act, read with the 2022 Disposal Rules, lays down a special procedure for drawing up inventory, taking photographs and samples, and certifying and disposing of narcotic drugs, psychotropic substances and conveyances. These provisions are essentially procedural and are intended to facilitate efficient handling and disposal of seized contraband and connected properties. They do not, however, purport to oust or abridge the general powers of the criminal Courts under Sections 497 and 503 of the BNSS.

26. The Hon'ble Supreme Court in ***Denash v. State of Tamil Nadu***¹² has clearly and categorically held that the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, being subordinate

¹² 2025 SCC OnLine 2276



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legislation framed under the NDPS Act, cannot override the substantive provisions of the Act and cannot operate to divest the Special Courts of their jurisdiction under Sections 451 and 457 of the Code of Criminal Procedure, 1973 (now Sections 497 and 503 BNSS) to order interim custody of vehicles. The Hon'ble Supreme Court has specifically rejected the view that, once a property is brought within the disposal mechanism under the 2022 Rules, the Court becomes *functus officio* in respect of that property.

27. Turning to Sections 60(3) and 63 of the NDPS Act, it is evident that confiscation of a conveyance is not automatic on seizure. Section 60(3) of the NDPS Act lays down that any conveyance used for carrying narcotic drugs or psychotropic substances shall be liable to confiscation, but also provides that no such order shall be made if the owner of the conveyance proves that it was so used without his knowledge or connivance and that he had taken all reasonable precautions to prevent such use. Section 63 of the NDPS Act further mandates that it is the Court which shall decide whether any article or thing seized under the Act is liable to confiscation and that no such order of confiscation can be made without affording an opportunity of being heard to the person claiming a right to the property.



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28. Thus, the scheme of the Act is that confiscation is a judicial act to be performed by the Court after an enquiry, at or after the conclusion of the trial, and not an automatic or administrative consequence of seizure or of preparation of an inventory under Section 52-A of the NDPS Act. At the stage of considering interim custody, the Court is not called upon to prejudge the issue of confiscation, but only to ensure that proper arrangements are made for custody and preservation of the property, while the criminal proceedings are pending.

29. The Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***¹³ has laid down that there is no justification for allowing vehicles and other valuable properties to remain in police custody for long periods and that such a course results in unnecessary deterioration and loss. The Hon'ble Supreme Court has therefore directed that criminal Courts should normally release such properties, including vehicles, on interim custody to the rightful owner or claimant, subject to appropriate conditions such as execution of a bond, production on demand and maintenance of identity.

¹³ (2002) 10 SCC 283



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30. In **Sainaba v. State of Kerala**¹⁴, the Hon'ble Supreme Court has applied the principles of **Sunderbhai Ambalal Desai v. State of Gujarat**¹⁵ in the context of the NDPS Act and has made it clear that the powers of the Court under Sections 451 and 457 Cr.P.C., 1973 (now Sections 497 and 503 BNSS) remain available even in prosecutions under the NDPS Act and that seized vehicles may be released on interim custody, subject to conditions, without in any manner prejudicing the ultimate confiscation proceedings.

31. In **Bishwajit Dey v. State of Assam**¹⁶, the Hon'ble Supreme Court has examined different factual scenarios in which contraband is seized from vehicles and has emphasised that criminal law must be applied in a fact-sensitive manner and not in a vacuum. The Court has recognised that, in scenarios where the registered owner is not alleged to have knowledge or connivance or where his status is that of a third party owner, the vehicle should ordinarily be released to him on interim custody with stringent safeguards. Even in other scenarios, including where the owner is an accused, the Hon'ble Supreme Court has not laid

¹⁴ 2022 SCC OnLine SC 1784

¹⁵ (2002) 10 SCC 283

¹⁶ 2025 INSC 32



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down any absolute bar on interim release but has required that the Courts exercise greater caution and tailor the conditions appropriately.

32. Applying these principles to the facts of the present case, it is seen that the petitioner is the registered owner of the Yamaha R15 motorcycle. She is not arrayed as an accused in Crime No.471 of 2024. The vehicle has been seized based on the confession of Accused No.4, who has allegedly stated that he used the motorcycle for the purpose of the NDPS offence. There is no specific allegation that the petitioner had knowledge of or connived in the alleged use of the vehicle or that she failed to take reasonable precautions.

33. The vehicle is a two-wheeler which, if kept idle in an open yard exposed to weather, will inevitably deteriorate in its mechanical condition and lose its economic value. The trial and any connected confiscation proceedings are likely to take some time. The longer the vehicle remains unused and exposed, the greater will be the damage suffered by the petitioner. On the other hand, the evidentiary requirements of the prosecution can be met by ensuring proper documentation, inventory and photographs of the vehicle and by



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requiring its production whenever needed.

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34. The apprehensions expressed by the prosecution that the vehicle may be misused for similar purposes or may not be available for trial can be adequately addressed by the imposition of stringent conditions, including execution of a bond equivalent to the market value of the motorcycle, furnishing of two solvent sureties, undertaking not to alienate or encumber the vehicle, prohibition of any alteration in the identifying features of the motorcycle, production of the vehicle on demand and granting liberty to the Investigating Officer to inspect the vehicle and record its condition.

35. In the considered view of this Court, the impugned order, in declining to grant interim custody merely because the vehicle is alleged to have been used in an NDPS offence and an inventory under Section 52-A of the NDPS Act, has been prepared, is contrary to the statutory scheme embodied in Sections 60(3) and 63 of the NDPS Act and to the binding law declared by the Hon'ble Supreme Court in ***Denash v. State of Tamil Nadu***¹⁷, ***Bishwajit Dey v. State of Assam***¹⁸, ***Sunderbhai***

¹⁷ 2025 SCC OnLine 2276

¹⁸ 2025 INSC 32



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Ambalal Desai v. State of Gujarat¹⁹ and **Sainaba v. State of**

Kerala²⁰. The refusal is based on speculative apprehensions rather than a principled balancing of interests and fails to give due weight to the fact of natural decay and the petitioner's property rights.

36. In the result, for all the aforesaid reasons, this Court is of the considered opinion that the impugned order dated 10.03.2025 passed in CrI.M.P.No.356 of 2025 by the learned Principal Sessions Judge for trial of NDPS Act Cases, Madurai, cannot be sustained in law and is liable to be set aside. The petitioner, being the registered owner and not being arrayed as an accused, is entitled to interim custody of the Yamaha R15 motorcycle, subject to stringent conditions safeguarding the interests of the prosecution and preserving the possibility of confiscation.

37. Accordingly, this Criminal Revision Petition is allowed. The order dated 10.03.2025 in CrI.M.P.No.356 of 2025 is set aside. The respondent police and the learned Trial Court are directed to release the

¹⁹ (2002) 10 SCC 283

²⁰ 2022 SCC OnLine SC 1784



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Yamaha R15 motorcycle bearing Registration No.TN-31-CH-6793 to the petitioner on interim custody, subject to the following conditions:

- (a) the petitioner is directed to deposit a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** as non-refundable deposit for the said vehicle to the credit of Manolaya, Indian Overseas Bank, Kottaram Branch, Account No. 025302000000284, IFSC Code: IOBA0000253;
- (b) the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)**, with two sureties for a likesum to the satisfaction of the learned Principal Sessions Court for trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai;
- (c) the petitioner shall deposit the original Registration Certificate of the vehicle before the learned Principal Sessions Court for trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai;
- (d) The petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future, failing which the respondent/trial Court is at liberty to confiscate the vehicle;



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(e) the petitioner shall not alienate and shall not make any alteration in the vehicle;

(f) the petitioner shall produce the vehicle before the learned Trial Court on 1st Monday of every calendar month;

38. It is made clear that the present order is confined to the question of interim custody of the vehicle and shall not, in any manner, be construed as an expression of opinion on the merits of the prosecution in Crime No.471 of 2024. The learned Trial Court shall be free, at the appropriate stage, to decide the question of confiscation or otherwise of the motorcycle under Section 63 of the NDPS Act on the basis of the evidence adduced and the contentions raised, uninfluenced by the fact that interim custody has been granted, save to the limited extent of enforcing the bond or directing payment of the value, if confiscation is ultimately ordered.

39. With the above directions, this Criminal Revision Petition stands allowed.

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To
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- 1.The Principal Sessions Judge,
Principal Sessions Court for trial of
Narcotic Drugs and Psychotropic
Substances Act Cases, Madurai.
- 2.The Inspector of Police,
Koodalpudur Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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