

CrI.A(MD)No.714 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.08.2025

CORAM:

THE HON'BLE Dr. JUSTICE R.N.MANJULA

CrI.A(MD)No.714 of 2025
and CrI.M.P(MD) No.8353 of 2025

Ajay

... Appellant

Vs

The State of Tamil Nadu,
Rep by the Inspector of Police,
Koodal Pudur Police Station,
Madurai City.
Crime No. 265/2022.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records in CC No.1165 of 2022, dated 29.05.2025 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Jegadeesh Pandian

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



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JUDGMENT

When the matter was listed on 18.08.2025, this Court passed the following order:

“The present appeal has been filed challenging the Judgment of the learned I Additional Special Court for NDPS Act Cases, Madurai, dated 29.05.2025 made in CC No.1165 of 2022.

2.The appellant is the second accused, who has been charged for the offences under Sections 8(c) r/w 20(b)(ii)(B), 25, 29(1) of NDPS Act. After conclusion of trial, he was found guilty for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act and convicted and sentenced to undergo four months rigorous imprisonment and also to pay a fine of Rs.4,000/-, in default, to undergo one month simple imprisonment.

3.Aggrieved over that, the appellant/A2 has preferred this appeal.

4.As per the case of the prosecution, on 11.07.2022, at about 7.45 hours at Madurai, near Koodal Pudur bus stop, the accused No.1 and 2 were found coming in a two wheeler bearing Registration No.TN-64-V-3366 “Honda DIO” with big shopper bag, in which, they were carrying 1.500 kgs of ganja and they had a sum of Rs.1,000/- being the amount derived from the sale of ganja, without licence and permit.



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5. The learned counsel for the appellant submits that the procedural mandates have not been complied. When a bodily search was done against each of the accused, a joint consent letter cannot be accepted. Photographs of the contraband, which are alleged to have been recovered from the vehicle, have not been taken. As against the vehicle, action taken under Section 25 of the NDPS Act ended in releasing the vehicle. The recovered contraband was not produced before the Court in time, but only after several days. The delay in production of the contraband was also not explained properly.

6. Per contra, the learned Additional Public Prosecutor submitted that based on the information received by PW2, he went to the place of occurrence, where the two wheeler containing contraband was driven by A1 and also recovery of contraband weighing 1.500kgs was seized from him. The appellant/A2 who accompanied A1, as a pillion rider. As per section 35 of NDPS Act culpable mental state of the accused shall be presumed by the Court and it is for the accused to rebut the same. But the appellant has not disproved his guilt by establishing that he did not have the knowledge that the vehicle, in which, he had travelled was used for smuggling the contraband. It is further submitted that as per Section 54 of NDPS Act, unless the contrary is proved, the possession of contraband may be presumed as illicit article, which has been possessed with a criminal intention. For the purpose of rebutting the initial presumption under Sections 35 and 54 of the Act, heavy burden is on the accused to prove the fact that



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he did not have the knowledge that the contraband is being smuggled in the vehicle, beyond reasonable doubt.

7. I have given my anxious consideration to the submissions made on either side and carefully perused the records.

8. On perusal of the evidence of P.W.2, who is the Sub Inspector of Police, it is seen that he is aware of the delay that was being caused in producing the contraband to the Court and he has admitted that the contraband was not produced before the Court till 04.08.2022, though it was recovered on 11.07.2022. No documents have been produced to show how the safety of the contraband was ensured, while it was in the custody of the Police. On perusal of the judgment, it is also seen that the learned Trial Judge has not dealt with the above point including the joint consent obtained from both the accused.

9. On perusal of records, it is seen that no confession has been recorded from the appellant. Not in all cases, the confession can be recorded unless the person, who gives the confession has expressed his willingness to do so. If the accused does not come forward to give the confession, getting confession from the accused is impossible. Having not chosen to give the confession, the accused cannot turn around and argue before the appellate Court that the confession was not recorded from the accused. The search consent letter, Ex.P.1 would show that it was inclusive of both the accused.

10. Unless the accused disprove the initial presumption that the possession of the contraband was conscious, based on



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*the available evidence available on record, the Court has no other option except to conclude that the offence against the accused is proved conclusively. In this regard, it is appropriate to refer the Judgment of Hon'ble Supreme Court in **Rakesh Kumar Vs State of Madhya Pradesh**, reported in **2025 SCC Online SC 122**. In the said case, the Court has held as under:*

*“21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through various of its decisions has repeatedly underscored that possession under the **NDPS Act** should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.*

*22. In **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** reported in 2000 (2) SCC 513, this Court highlighted that once the prosecution proves physical possession, the burden shifts to the accused to explain how he came into possession of the contraband and prove that he was not aware of its presence or nature. The Court ruled that a person who admits that drugs were found in his possession must prove that he had no knowledge of the illicit*



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nature of the substance.

23. In *Madan Lal v. State of Himachal Pradesh* reported in (2003) 7 SCC 465, this Court was dealing with a case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them. The relevant extracts from *the said judgment* are set out below:

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle. 20. *Section 20(b)* makes possession of contraband articles an offence. *Section 20* appears in *Chapter IV of the Act* which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.”

24. In the overall view of the matter, we are convinced that the High Court committed no error in dismissing the appeal and thereby affirming the judgment and order of conviction passed by the Trial Court.

11. Once the possession is proved, the burden would shift up on the accused and he has to explain how the contraband had come to his possession and that he was not aware of the presence of such materials.



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12. Without any direct evidence on the side of the defence and with the strong evidence on the side of the prosecution, no conclusion can be arrived that the prosecution has failed to prove the conscious possession of the contraband by the appellant. As the initial presumption has not been rebutted when the burden was shifted on the appellant, it is correct on the part of the Court below to convict the accused for the offence under Sections 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act.

13. It is learned that the appellant has already served the sentence for a period of 102 days and he has to spend only 18 days to complete the remaining period of punishment imposed on him.

14. The learned counsel for the appellant submitted that if the appellant's incarcerations is continued until the punishment is over, he may not be in a position to write his examination and he will be placed under the list of offenders.

15. As per Section 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as 'the P.O. Act'), if any person under the age of 21 years was found guilty of having committed an offence punishable with imprisonment, the Court shall not by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.



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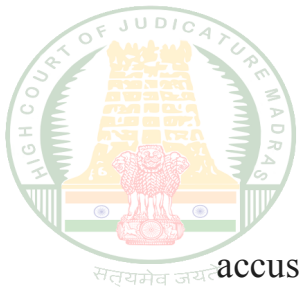
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16. As there is no ground available to reverse the Judgment of the trial Court by considering the age of the accused, I feel that the punishment alone can be modified. The learned Additional Public Prosecutor submitted that for the charges proved under NDPS Act, the P.O.Act has got no application. But there is no provision is seen to be present to that effect either in NDPS Act or in the P.O.Act. In the absence of such a provision in both the NDPS Act and the P.O.Act., I feel the appellant can be given with the benefit of Section 4 of the P.O.Act on proof of good conduct.

17.Hence, a report in this regard is required to be submitted by the Probationary Officer by 26.08.2025.”

2.Today (26.08.2025), when the matter is taken up for hearing, it is seen that on 18.08.2025, this Court passed an order calling for a report from the Probation Officer, without ascertaining the age of the appellant. Now, it is understood that the appellant is 20 years at the time of committing the offence.

3.The learned Additional Public Prosecutor submitted that, as per Section 33 of the NDPS Act, for a person convicted under any offence under the NDPS Act, the application of Section 360 of Cr.P.C. and the provisions of the Probation of Offenders Act are forbidden unless the



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accused is shown to be below 18 years of age.

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4.However, the learned counsel for the appellant submitted that the appellant still has a good case on merits, as the recovery was made against A1 and the knowledge of the appellant has not been proved.

5.This point has already been dealt with in the earlier order of this Court dated 18.08.2025, wherein it was observed that the initial presumption lies against the appellant and he did not choose to rebut the same.

6.The matter has been just posted today to get the report from the Probationary Officer, but now that possibility is not available in view of the age restriction under Section 33 of NDPS Act. As the appellant has already undergone 112 days of incarceration and is said to have examinations, I feel that the period of incarceration already undergone by the appellant can be considered as sufficient punishment, and to that extent alone the appeal can be modified.



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7.In the result, this *Criminal Appeal is partly allowed and the conviction imposed on the appellant by the I Additional Special Court for NDPS Act Cases, Madurai, dated 29.05.2025 in CC No.1165 of 2022 is confirmed, the sentence is reduced to the period of incarceration already undergone by the appellant and the fine amount imposed by the trial Court remains unaltered.* Consequently, connected miscellaneous petition is closed.

26.08.2025

NCC :Yes/No

Index :Yes/No

Internet:Yes/No

Note: Issue order copy today (26.08.2025)

PNM

To

1.The Sessions Judge,

I Additional Special Court for NDPS Act Cases, Madurai

2. The Inspector of Police,

Koodal Pudur Police Station, Madurai City.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,

Criminal Record Section,

Madurai Bench of Madras High Court, Madurai.



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Dr. R.N.MANJULA, J.

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JUDGMENT IN

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