



Crl.M.P.(MD)No.14883 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.14883 of 2023

in

Crl.A.(MD)No.547 of 2021

Gowtham,
S/o.Jayaraj,
4B, Ward-6,
East Car Street,
K.K.Patti,
Uthamapalayam Taluk,
Theni District.

Petitioner(s)

versus

State rep. By
The Inspector of Police,
NIB CID,
Madurai District.

Respondent(s)

For Petitioner(s): Mr.M.Jegadeesh Pandian, Advocate
For Respondent(s): Mr.T.Senthil Kumar, Additional Public Prosecutor

ORDER

The petitioner is the first accused in C.C.No.406 of 2018 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai. After the trial, the trial Court, by its Judgment dated 29.10.2021, found the petitioner guilty for the offence under Sections 8(c) r/w. 20(b)(ii)(C) of NDPS Act and convicted and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo six months simple imprisonment. Challenging



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the same, the petitioner has preferred an appeal in Crl.A.(MD)No.547 of 2021, which was admitted by this Court on 17.02.2022. Pending the appeal, the petitioner has also moved this petiton to suspend the sentence imposed on him by the trial Court.

2. The learned counsel appearing for the petitioner submits that there was no recovery from the petitioner, however, he was found guilty and convicted by the trial Court. According to him, the respondent Police, on secret information on 26.01.2018 at about 6.45 a.m., conducted a surveillance and searched a Innova Car bearing Reg.No.TN 09 BS 2217 on the Usilampatti - Theni National Highways Road and recovered 204 kgs. of ganja. The respondent Police has also registered a case in Crime No.12 of 2018 and recovered the contraband from the Car. Based on the confession statement given by A2, the petitioner has been added as accused No.1, as if he is the owner of the Car and on his instructions, A2 transported the ganja in the Car bearing Reg.No.TN 09 BS 2217.

3. The learned counsel for the petitioner further submits that the petitioner was not arrested in the place of occurrence and he was arrested only on 24.10.2018, i.e. after nine months and final report has also been filed as against the petitioner on 25.10.2018. The petitioner has also filed a bail petition before this Court in Crl.O.P. (MD)No.9324 of 2019, questioning the manner in which he has been arrayed as an accused in this case, by taking a specific plea that he is not the owner of the Car, from



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where, the contraband has been recovered. This Court, while disposing of the bail application, has passed an order, directing the respondent Police to find out the owner of the Car. According to him, the Car bearing Reg.No.TN 09 BS 2217 stands in the name of one Selvakumar. After the order of this Court in Crl.O.P.(MD)No.9324 of 2019, the respondent Police has conducted further investigation, however, without obtaining permission from the concerned Judicial Magistrate and also fixed P.W.4 as the owner of the vehicle.

4. According to the learned counsel for the petitioner, P.W.4 was fixed as the owner of the Car on 03.10.2019, i.e. after one year from the date of filing of the final report and the said Car was transferred in the name of P.W.4 on 22.02.2018, i.e. after the date of occurrence. The learned counsel further submits that the prosecution has not examined the said Selvakumar, in whose name the Car stood, at the time of occurrence. Therefore, according to him, there was no recovery from the petitioner and he was implicated only based on the confession statement of A2. The prosecution has also not collected any materials to prove that the petitioner has nexus with A2. He also submits that the petitioner is in jail from the date of Judgment, i.e. from 29.10.2021. Therefore, he seeks for suspending the sentence imposed on the petitioner by the trial Court.

5. The learned Additional Public Prosecutor submits that this is the 4th petition

filed by the petitioner to suspend the sentence imposed on him by the trial Court. All



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the earlier petitions filed by the petitioner were dismissed by this Court. Therefore, according to him, there is no change in circumstances to consider the case of the petitioner. He further submits that the owner of the Car was examined as P.W.4 and his statement was also recorded under Section 164 Cr.P.C. According to him, P.W.4 is the relative of the petitioner/A1.

6. This Court considered the rival submissions made and perused the materials available on record.

7. Admittedly, the petitioner was arrested only on 24.10.2018, i.e. after nine months from the date of occurrence and he was implicated as an accused only based on the confession statement of A2. As per the confession statement of A2, the petitioner is the owner of the Car, from which, the contraband was recovered. Even according to the Investigating Officer, the Car stands in the name of one Selvakumar and thereafter, the said Car was transferred in the name of P.W.4 on 22.02.2018, i.e. after 25 days from the date of occurrence. Further, the prosecution has not examined the said Selvakumar. Apart from that, the prosecution has not collected any materials to prove that the petitioner has nexus with A2.

8. Though the earlier petitions filed by the petitioner for suspending the sentence were dismissed by this Court, the appeal could not taken up for final disposal. Further, the petitioner is in jail for the past 6 ½ years.

9. Considering the points raised by the petitioner, his period of incarceration



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and for the reason that the appeal could not be taken up immediately, this Court is
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inclined to allow this petition.

10. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on the following conditions:

(i) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two sureties each for a like sum to the satisfaction of the I Additional Special Court for NDPS Act Cases, Madurai. Out of the two sureties, one surety shall be a parent of the petitioner and another surety shall be a Government Servant.

(iii) The petitioner shall appear before the trial Court once in a month, i.e. on the first working day of every English Calender month at 10.30 a.m., till the disposal of the appeal.

sd/-
21/03/2025

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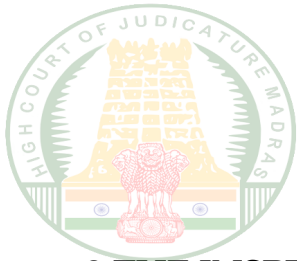
21/03/2025

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE JUDGE, I ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.



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2 THE INSPECTOR OF POLICE, NIB CID, MADURAI DISTRICT.

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3 THE INSPECTOR OF POLICE, TEPPAKULAM POLICE STATION, MADURAI.

4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-3251[I] dated 21/03/2025)
ORDER

IN
CRL MP(MD) No.14883 of 2023
IN

CRL A(MD) No.547 of 2021
Date :21/03/2025

RS/IT/SAR-(21.03.2025) 6P 7C
Madurai Bench of Madras High Court is issuing
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