



Crl.M.P.(MD)No.1580 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.1580 of 2024

in Crl.A.(MD)No.110 of 2024

Rajasekaran,
S/o.Eshwaran,
D.No.49/18-A, Ward-2,
Ulagathevar Street, Cumbum,
Theni District.

Petitioner(s)

versus

The State rep. by
The Inspector of Police,
NIB CID Police Station,
Theni District.

Respondent(s)

For Petitioner(s):

Mr.R.C.Paul Kanagaraj
Advocate

For Respondent(s):

Mr.T.Senthilkumar,
Additional Public Prosecutor

ORDER

The petitioner is the sole accused in C.C.No.131 of 2020 on the file of the I Additional Special Court for NDPS Act cases, Madurai, After the trial, the trial Court, by its Judgment dated 25.09.2023, found the petitioner guilty for the offence

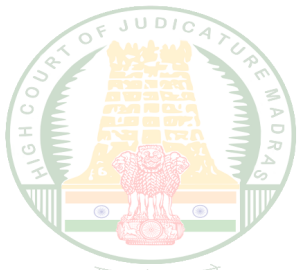


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under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act and convicted and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo 12 months simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.110 of 2024 and the same has been admitted by this Court on 12.02.2024. The petitioner has also moved this petition seeking to suspend the sentence imposed by the trial Court.

2. The learned counsel appearing for the petitioner submits that the prosecution has not substantiated its case before the trial Court. However, the trial Court erroneously found the petitioner guilty and convicted and sentenced him as stated supra. The learned counsel has pointed out that the contraband was seized by P.W.1, Sub Inspector of Police, in the presence of two constables, who accompanied P.W.1. The said two constables have been cited as mahazar witnesses, however, they have not been examined during the trial. The learned counsel further submits that the prosecution has examined only three witnesses, namely, (i) P.W.1, the Sub Inspector of Police, who arrested the accused; (ii) the Inspector of Police, who received the complaint from P.W.1 and registered the case and conducted the preliminary investigation; (iii) P.W.3-Deputy Superintendent of Police, who filed the final report. According to the learned counsel, the contraband was recovered from the place of



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occurrence and samples have also been collected by P.W.1. According to P.W.1, he recovered 24 kgs. of ganja in two gunny bags, from which, samples have been taken as S1, S2, S3 and S4, each consists of 25 grams of ganja. The samples were also sent for chemical analysis. The Chemical Analyst in its report has recorded as 21 grams of ganja received by him. By referring this report, the learned counsel has raised a doubt with regard to the samples which was analyzed by the Chemical Analyst. The learned counsel has also pointed out that the Chemical Analyst, who conducted chemical analysis, was not examined during the trial and therefore, the accused was prevented from raising all these points during the trial. The learned counsel further submits that the petitioner was arrested on 29.01.2020 and he was not released on bail and therefore, he is in jail for the past five years. According to him, the petitioner has already undergone half of the sentence period.

3. The learned Additional Public Prosecutor appearing for the respondent submits that as per the provision under Section 293 Cr.P.C, certain reports from the Government Scientific Experts can be used as evidence in Court, without the presence of the experts. Accordingly, the Chemical Analysis report has been marked through the Investigating Officer in this case. He further submits that the non-examination of the Chemical Analyst is not fatal to the prosecution case. Moreover, P.W.1, who has signed in the Mahazar, was examined and therefore, the examination of P.W.1 is



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sufficient to prove that there was a recovery. The learned Additional Public Prosecutor has relied upon the Judgment in Thana Singh Vs. Central Bureau of Narcotics reported in 2013 (2) SCC 590 to substantiate his contentions.

4. This Court considered the rival submissions made and also perused the materials placed on record.

5. The petitioner has raised certain arguable points, which can be considered only during the final hearing of the appeal. Though the typed set of papers are made available, for want of time, the appeal could not be taken up for final hearing. The appeal is of the year 2024. Since it is reported that the petitioner has undergone half of the sentence period and also considering the points raised by the petitioner, this Court is inclined to allow this petition.

6. 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 at Madurai.

(ii) the persons who are giving sureties should be respectable persons in their locality, either Government Servants or elected people representatives or the persons



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who are having permanent business establishments and the sureties shall file an
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affidavit before the respondent Police, by ensuring that the petitioner will not indulge
in any other offence in future and he will be available for appeal.

(iii) On payment of fine amount only, the learned Judge shall accept the
sureties and release the petitioner on bail.

(iv) The petitioner shall also file an undertaking affidavit before the respondent
Police that he will not indulge in any other offence in future and he will be available
for appeal.

(v) The petitioner shall stay at Madurai and report before the Inspector of
Police, Anna Nagar Police Station, Madurai, daily at 10.30 a.m. until further orders.

sd/-
07/04/2025

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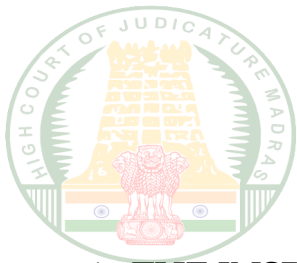
07/04/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY
TO

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

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
NIB CID POLICE STATION, THENI DISTRICT.



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4 THE INSPECTOR OF POLICE,
ANNA NAGAR POLICE STATION, MADURAI.

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

+1 CC to M/s.R.C.PAUL KANAGARAJ, Advocate (SR-3987[I] dated 07/04/2025)

ORDER
IN
Crl.M.P.(MD)No.1580 of 2024
in Crl.A.(MD)No.110 of 2024
Date :07/04/2025

SS/SAR. /07.04.2025/6P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.