



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-06-2026

CORAM

THE HON'BLE MR JUSTICE C. SARAVANAN

CRL.MP.Nos.8560 & 8651 of 2026

in

CRL A Nos. 631 & 638 of 2026

Thamjeed Maqbool /A2 ..Appellant in CRL.A.No.631 of 2026
S/o.Yusuf
Ediyatail House, Vadakkekadu Post
Thrissur, Kerala State.

Muhammed Irfan/A1 ..Appellant in CRL.A.No.638 of 2026
S/o.Ummar
Thandavalapil House
Jainumedu, Vadankanthara Post
Palakkad, Kerala State.

Vs

The Inspector of Police
NIB CID, Coimbatore District.
Crime No. 30/2020. ..Respondents in both the Appeals

PRAYER IN CRL.MP.No.8560 of 2026: To suspend the sentence imposed by the learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore in CC.No.90 of 2020 dated 29.04.2026 and enlarge the petitioner on bail pending disposal of the said Criminal Appeal.

PRAYER IN CRL.MP.No.8561 of 2026: To suspend the sentence imposed by the learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore in CC.No.90 of 2020 dated 29.04.2026 and enlarges the petitioner on bail pending disposal of the said Criminal Appeal.



PRAYER IN CRL A No. 631 of 2026: To Call for the entire records in connection with C.C.No. 90/2020 dt. 29.04.2026 on the file of the Learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore and set aside the conviction and sentence imposed by the Learned Special Court under EC Act/NDPS Act Cases, Coimbatore in C.C.No. 90/2020 dt. 29.04.2026 and pass such further or other orders.

PRAYER IN CRL A No. 638 of 2026: To Call for the entire records in connection with C.C.No. 90/2020 dt. 29.04.2026 on the file of the Learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore and set aside the conviction and sentence imposed by the Learned Special Court under EC Act/NDPS Act Cases, Coimbatore in C.C.No. 90/2020 dt. 29.04.2026 and pass such further or other orders.

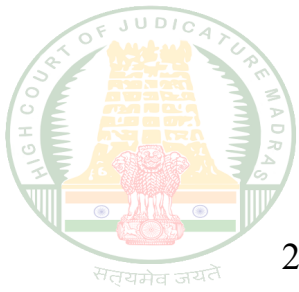
For Appellant(s): Mr.Selvakumar Subramaniam

For Respondent(s): Mr.R.John Sathyan, State P.P

COMMON ORDER

CRL.MP.No.8560 of 2026 has been filed for suspending the sentence imposed in the judgment passed in CC.No.90 of 2020 dated 29.04.2026 by the learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore.

CRL.MP.No.8561 of 2026 has been filed for suspending the sentence imposed in the judgment passed in CC.No.90 of 2020 dated 29.04.2026 by the learned Additional District Judge/Special Court under EC Act/NDPS Act Cases at Coimbatore. (Hereinafter referred to as ‘ Trial Court’)



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2. The brief facts of the case are as follows:-

2.1. On 03.02.2020, the respondent police and his team found the accused in illegal possession of 4.400 grams of 15 numbers MDMA Tablets and 500 grams of Ganja and the second accused in illegal possession of 500 grams of ganja, intended for sale to the public.

2.2. The accused were arrested and the contraband was seized. After returning to the respondent police station, the respondent police registered a case in Crime No.30 of 2020 for the offences under Sections 8(c) r/w 22(b) and 8(c) r/w 20(b) (ii) (A) of NDPS Act, 1985 and Section 8(c) r/w 22(b) of NDPS Act, 1985 against A1 and offences under Section 8(c) r/w 20(b) (ii) (A) of NDPS Act, 1985 against A2.

2.3. After completion of investigation, the investigating officer filed a charge sheet and the same was taken on file as C.C.No.90 of 2020 on the file of the Additional District Judge/Special Court under EC Act/NDPS Act Cases, Coimbatore.

2.4. After hearing the counsel on both sides, charges were framed against the accused.

2.5. On the side of the prosecution, PW1 to PW5 were examined and Ex.P1 to Ex.P10 and M.O.1 to M.O.3 were marked. On the side of the defence, neither any witness was examined nor any document marked.



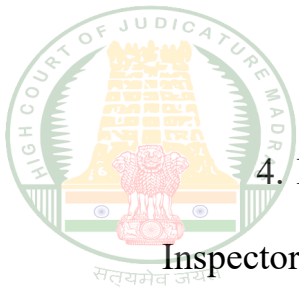
2.6. The trial Court, after hearing the arguments on both sides and upon consideration of the entire materials on record, found the petitioners/appellants-Accused Nos.1 & 2 guilty of the offences charged and convicted and sentenced him vide judgment dated 29.04.2026 as follows:-

3. By the impugned Judgments dated 29.04.2026, the Trial Court convicted the Petitioner/Accused A1 and sentenced as follows:

Sl. No.	Sections	Imprisonment	Fine amount
1	Section 8(c) r/w 22(b) and 8(c) r/w 20(b) (ii) (A) of NDPS Act, 1985	To undergo 3 years Rigorous Imprisonment (in default to undergo 6 months Rigorous imprisonment)	30,000/-
2	Section 8(c) r/w 22(b) of NDPS Act, 1985	To undergo 1 year Rigorous Imprisonment (in default to undergo 3 months Rigorous imprisonment)	10,000/-

3.1. By the impugned Judgment dated 29.04.2026, the Trial Court convicted the Petitioner/Accused A2 and sentenced as follows:

Sl. No.	Sections	Imprisonment	Fine amount
1	Section 8(c) r/w 20(b) (ii) (A) of NDPS Act, 1985	To undergo 1 year Rigorous Imprisonment (in default to undergo 3 months Rigorous imprisonment)	10,000/-



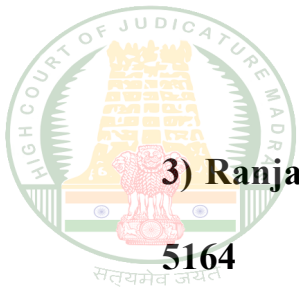
4. It is submitted that in this case, both PW1 and PW2 namely the Sub-Inspector of Police, NIB CID Coimbatore and Head Constable of NIB CID Coimbatore have corroborated each other's statements which had been extracted in the impugned judgment stating that PW1 had explained the requirement of Section 50 to the accused and the accused waived his right to be examined before the Gazetted officer or the Magistrate as is contemplated under Section 50 NDPS, 1985.

5. Learned counsel for the Petitioners/Appellants-Accused Nos.1 & 2, on the other hand would draw attention to the evidence of PW4 namely another Head Constable of NIB CID Coimbatore wherein during cross-examination of PW4, PW4 had stated that the first accused was aware of Tamil, as he was studying in Tamil Nadu. He would also submit that during cross-examination of PW2, PW2 has admitted that he was not aware that the Ex.P2 Mahazar had mentioned that the accused did not know Tamil.

6. Learned counsel for the Respondent on the other hand would draw attention to the decisions of the Honourable Supreme Court in

1) Vijaysingh Chandubha Jadeja Vs. State of Gujarat (2011) 1 SCC 609

2) Arif Khan @ Agha Khan Vs. State of Uttarkhand. AIR 2018 SC 2123



3) **Ranjan Kumar Chadha Vs. State of Himachal Pradesh 2023 AIR SCC**

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7. Specifically, learned counsel for the Respondent would draw attention to the paragraph Nos.24, 29, 31 and 32 of the decision of the Apex Court in **Vijaysingh Chandubha Jadeja Vs. State of Gujarat** referred supra which reads as follows:

24. Although the Constitution Bench in *Baldev Singh case*⁴ did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to “inform” the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to “inform” the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any

other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

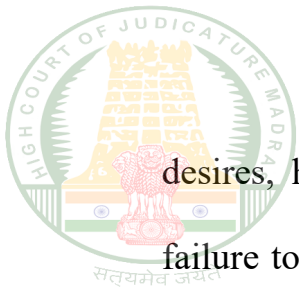


29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

31. We are of the opinion that the concept of “substantial compliance” with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said section in *Joseph Fernandez*¹ and *Prabha Shankar Dubey*² is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in *Baldev Singh case*⁴. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

32. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.

8. From the decisions, it is submitted that in para-18 the Hon'ble Supreme Court has clearly extracted the content of Section 50 (1) of NDPS Act, 1985 which contemplates that the accused shall be informed of his right, if he so

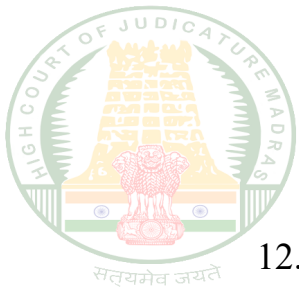


desires, he shall be searched before a Gazetted Officer or a Magistrate and failure to inform the suspect about the existence of the said right would cause prejudice to him.

9. I have considered the arguments advanced by the learned counsel for the Petitioners/Appellants-Accused Nos.1 & 2 and learned Public Prosecutor for the Respondent and I have also considered the decisions of Hon'ble Supreme Court particularly the decisions of the Constitutional Bench of the **Vijaysingh Chandubha Jadeja Vs. State of Gujarat** referred to supra.

10. The Hon'ble Supreme Court in the above case has clearly stated that the object of Section 50 of NDPS Act, was to safeguard interest of accused person against the misuse of power and to avoid harm to innocent person and to minimize the allegations of planting or foisting of false cases by law enforcement agency. It therefore held that it would be imperative on the part of the empowered officer to appraise the person intended to be searched of his right to be searched before the Gazetted Officer or the Magistrate.

11. It was further held that the failure to comply with the provision of the recovery of the illicit articles would render the recovery suspect and vitiate the conviction if the same is recorded only on the basis of recovery of illicit articles from the person of the accused during the search.

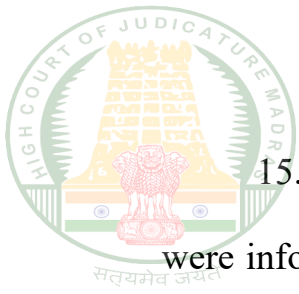


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12. Thus, the Hon'ble Supreme Court has clearly stated that the suspect may or may not choose to exercise the right provided to him under the provision. However, it is the duty of the court to get the real intention of the legislature by carefully attending to the whole scope of the provision to be construed.

13. The court has also observed that the question as to whether the procedure prescribed under Section 50 has been complied with or not is a matter of trial and that Section 50 gives an option to the empowered officer to take a search person (suspect) either before the nearest Gazetted Officer or the Magistrate, but in order to impart authenticity, transparency and credit worthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before any other Officer and that would not only add legitimacy to the search proceedings it may verily strengthen the prosecution as well.

14. The above passage in paragraph No.22 of the Hon'ble Supreme Court was considered by the Hon'ble Supreme Court recently in **Arif Khan @ Agha Khan Vs. State of Uttarkhand. AIR 2018 SC 2123** and **Ranjan Kumar Chadha Vs. State of Himachal Pradesh 2023 AIR SCC 5164.**



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15. In this case according to the prosecution, the petitioners/appellants were informed about their rights and the appellants were stated to have waived their rights to be searched before the Magistrate or Gazetted Officer or as is contemplated under Section 50 of the NDPS Act, 1955.

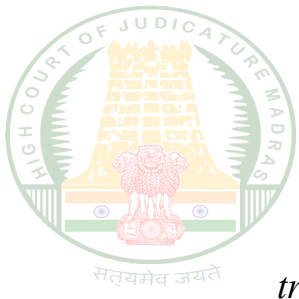
16. It has not been communicated in writing to the petitioners/Appellants-Accused Nos.1 & 2. Thus, *prima facie* the benefit of doubt be given to the petitioners.

17. In view of the above, the sentence of imprisonment is suspended and the Petitioners/Accused are to be enlarged bail on conditions:-

18. Accordingly, pending disposal of the appeal, the sentences are suspended and the Petitioners/Appellants-Accused Nos.1 & 2 are enlarged on bail, subject to the following conditions:-

(i) The petitioners/Appellants-Accused Nos.1 & 2 shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties, each for a like sum to the satisfaction of the learned Additional District Judge/Special Court under EC Act/NDPS Act cases at Coimbatore.

(ii) The Petitioners/Appellants and the sureties shall affix their photographs and Left Thumb Impressions in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity and



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(iii) *The petitioners/Accused shall appear before the trial Court on every Monday at 10.30 a.m., until further orders, without fail;*

19. Accordingly, these Criminal Miscellaneous Petitions stand ordered.

20. List the main cases on 06.07.2026 for further hearing. Meanwhile, the Registry is directed to call for the records from the concerned court.

08-06-2026

Neutral Citation: Yes/No
GV



C.SARAVANAN, J.

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To

1. The Additional District Judge/Special Court under EC Act/NDPS Act cases at Coimbatore.
2. The Inspector of Police,
NIB CID,
Coimbatore District.
Crime No. 30/2020.
3. The Superintendent
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras.

**CRL.MP.Nos.8560 & 8651 of 2026
in
CRL A Nos. 631 & 638 of 2026**

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