



CrIMP(MD)No.16169 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**CrIMP(MD)No.16169 of 2025
in
CrIA(MD)No.78 of 2024**

1.Selvaraj
2.Iyyappan
3.R.Paramanatham

...Petitioners/ A3 to A5

Vs

Union of India through
the Superintendent,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.

... Respondent

PRAYER: Petition filed under Section 430 of BNSS, to suspend the sentence in respect of the conviction sentence passed in CC.No.23 of 2020, dated 28.05.2024 on the file of the Additional District Judge / Presiding Officer, Special Court under Essential Commodities Act, Thanjavur pending disposal of the above appeal.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.C.Arul Vadivel @ Sekar

Special Public Prosecutor



CrIMP(MD)No.16169 of 2025

ORDER

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The petitioners are accused Nos.3 to 5 in CC.No.23 of 2020 on the file of the learned Additional District Judge, Special Court for Essential Commodities Act, Thanjavur. They were arrested on 13.02.2020 along with A1 and A2 with 661.5 kgs of ganja. They have been prosecuted for the offence under Section 8(c) r/w 20 (b)(ii)(C), 28 and 29 of the NDPS Act. By the judgment dated 28.05.2024 the petitioners were found guilty, convicted for the offence under Sections 8(c) r/w 20(b)(ii)(C) r/w 28 and 29 of NDPS Act and sentenced to undergo 20 years rigorous imprisonment with a fine of Rs.1,00,000/- in default to undergo three years rigorous imprisonment. As against the conviction and sentence imposed by the trial Court, these petitioners have filed an appeal before this Court in CrI.A(MD) No.578 of 2024 and the same has been admitted by this Court. The earlier application filed by the petitioners to suspend the sentence has been dismissed as withdrawn. This is the second application filed to suspend the sentence.



CrIMP(MD)No.16169 of 2025

2.The case of the prosecution is that A1 and A2, who were dealing with ganja have transported 661.5kgs of ganja from the State of Andhra Pradesh in a truck bearing registration No.TN 03 Z 1618 to Vedaranyam in order to deliver the same to A6. The petitioners / A3 to A5 have unloaded the substances from the vehicle on the instructions of A6. Since they have been arrested along with contraband and A1 and A2, they have been prosecuted.

3.The learned counsel appearing for the petitioners submits that the petitioners are porters attached to Sumai Thookum Thozhilar Sangam, Vedaranyam. A3 was instructed by A6 to go the place of occurrence and off-load the goods from the truck bearing registration No.TN 03 Z1618. A3 was also instructed by A6 to take two more persons and therefore, A3 has taken his friends/ A4 and A5 along with him for off-loading the goods from the truck. At that time the respondent police surrounded the vehicle, arrested them and has prosecuted the petitioners along with A1 and A2. He further submits that the case of the prosecution is that this contraband has been transported from Andhra Pradesh, in order to deliver the same to A6. However this A6 has not been secured by the respondent



CrIMP(MD)No.16169 of 2025

police till the end of the trial and even now and therefore, the prosecution was laid as against A1 to A5.

4. According to the learned counsel, the petitioners are in jail from the date of their arrest for more than 6 years and 3 months. He further submits that the goods were fully covered, the petitioners were not aware of the contents of the goods and that they were simply unloading them from the truck. They are not having any nexus to the offence, committed by A1, A2 and A6. The learned counsel also claims that the petitioners are in no way connected with A1, A2 and A6.

5. The learned Special Public Prosecutor appearing for the respondent submits that the petitioners were arrested with A1 and A2 and along with contraband of 661.5 kgs of ganja. This ganja was transported from Andhra Pradesh. Admittedly it has been transported by A1 and A2. Further the call details expose that they were present at Andhra Pradesh on 06.02.2020. Apart from that, A3 had also contacted A6 to mobile No. 9677745717 on 12.02.2020, ie., on the date of seizure. He had denied the contention of the learned counsel for the petitioners that the contraband



CrIMP(MD)No.16169 of 2025

was sealed and covered in paper and they were not aware of the contents and it cannot be justified, based on the statement of PW2 that when the door of the vehicle is opened, a pungent smell would emanate. Therefore, according to him, the petitioners cannot contend that they were unaware of the contents of the parcels, which they unloaded.

6.This court has considered the rival submissions made and perused the materials placed on record.

7.The case of the prosecution is that A1 and A2 are said to have procured huge quantity of ganja from Andhra Pradesh on 06.06.2020 and have transported the same to Vedaranyam in order to deliver to A6. Though it is the specific case of the respondent that contraband has been transported from Andhra Pradesh in order to deliver the same to A6, the respondent police have failed to secure A6. However, the petitioners have been arrested along with A1 and A2 that they were also present near the vehicle. The petitioners / porters have been prosecuted based on the call details of A3 with A6 through his mobile No.96777 45717. A3 himself has stated that on the instructions of A6, they have unloaded the parcels



CrIMP(MD)No.16169 of 2025

from the truck. However A6 has not been arrested and the respondent has not established that the above mobile number belongs to A6.

It is shocking that the respondent Narcotics Control Bureau (NCB) being nation's premier agency in the fight against drug trafficking and abuse and having a wide organisation structure, has prosecuted this case without even arresting A6, on whose instruction the petitioners / porters are said to have acted.

8.This Court condemns the manner in which the prosecution has been laid by the NCB, without securing and without even identifying A6, as against these petitioners A3 to A5.

9.Considering the quantity involved in this case the trial court has also gone to the extent of imposing 20 years of rigorous imprisonment to the accused. The maximum punishment for the offence under Section 20(c) of NDPS Act is 10 years of imprisonment. However, as per Section 32(B) of the NDPS Act, there are certain factors to be taken into account for imposing higher than the minimum punishment, which read as under:



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CrIMP(MD)No.16169 of 2025

“32B. Factors to be taken into account for imposing higher than the minimum punishment.—

Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--

(a)the use or threat of use of violence or arms by the offender;

(b)the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c)the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d)the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e)the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f)the fact that the offender is involved in other illegal activities facilitated by commission of the offence.”

However the trial court has not assigned any reason for awarding maximum punishment of 20 years as against these petitioners.



CrIMP(MD)No.16169 of 2025

Admittedly the petitioners are languishing in jail for the past six years.

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10.The petitioners have raised certain arguable points in this petition, which can be considered only during the final hearing of the appeal. However the appeal could not be taken up for final hearing for want of time. Considering the period of sentence imposed, the period of incarceration already undergone by the petitioners and for the reason that the appeal could not be taken up immediately, this Court is inclined to allow this petition.

11.Accordingly this petition is allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended pending disposal of the criminal appeal on the following conditions:

(i) The petitioners are ordered to be enlarged on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand) each with two sureties each for a like sum to the satisfaction of the learned Additional District Judge, Special Court under Essential Commodities Act, Thanjavur.

(ii) The petitioners shall file an affidavit before the respondent police that they will not misuse this liberty and will not indulge in any further offence.



CrIMP(MD)No.16169 of 2025

(iii)The petitioners shall report before the Special Court under Essential Commodities Act, Thanjavur on the first working day of every month.

(iv) If the petitioners violate any of the conditions, the respondent police shall move an application to cancel the order of suspension of sentence of imprisonment.

23.03.2026

Index : Yes / No

DSK

To

- 1.The Superintendent,
Narcotics Control Bureau,
Madurai Sub Zone, Madurai.
- 2.The Additional District Judge /
Presiding Officer, Special Court
under Essential Commodities Act,
Thanjavur.
- 3.The Superintendent,
Central Prison, Trichy.

Copy to

The Special Public Prosecutor for NCB
Madurai Bench of Madras High Court,
Madurai.



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CrIMP(MD)No.16169 of 2025

B.PUGALENDHI.J.,

DSK

CrIMP(MD)No.16169 of 2025

23.03.2026