

# E.Kadhar Basha vs Union Represented By on 14 February, 2025

**Author: P.Velmurugan**

**Bench: P.Velmurugan**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.156 of 2025

1. E.Kadhar Basha

2. R.Senthil Kumar

Vs

Union represented by,  
The Intelligence Officer,  
NCB,Chennai – 17

PRAYER:

Criminal Revision Case filed under Section 438 read of BNSS, to set aside the order passed in Crl.M.P.No.240 of 2024 dated 12.01.2024 on the file of the Principal Special Judge under EC & ND Act.

For Petitioners : Mr.M.G.Martin Manivannan

For Respondent : Mr.N.P.Kumar  
Special Public Prosecutor for

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<https://www.mhc.tn.gov.in/judis>

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ORDER

This Criminal Revision Petition has been filed to set aside the order dated 12.01.2024 passed in Crl.M.P.No.240 of 2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

2. Heard the learned counsel appearing for the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

3. The respondent registered a case against the petitioners, in RR No.23 of 2023 for the offences under Sections 8(c) read with Section 20(b)(ii)(C), 27, 28 & 29 of the NDPS Act, 1985. Pending investigation, the respondent filed a petition under Section 36(A)(4) of the NDPS Act, seeking further extension of time to complete the investigation and to file charge sheet. The Special Court, on considering the materials placed by the respondent, granted extension of time for further period of six months. Aggrieved by the same, the petitioners/accused 1 and 2 have filed this criminal revision petition.

4. Learned counsel for the petitioners submitted that the <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) respondent registered the case in RR No.23 of 2023, for the offences under Section 8(c) read with Sections 20(b)(ii)(C), 27, 28 & 29 of the NDPS Act, 1985. The petitioners were arrested on 26.07.2023 and remanded to judicial custody on 27.07.2023. The petitioners are driver and cleaner of the vehicle which was alleged to be used for transporting 432.700Kg of ganja. The respondent has not filed a final report within the period of 180 days as stipulated under the NDPS Act, 1985. Hence, the petitioners have filed petition seeking mandatory bail by invoking Section 167(2) Cr.P.C., on 185th day ie., on 05.02.2024 and the same was taken on file in Crl.M.P.No.1197 of 2024 on 06.02.2024 and it was posted on 08.02.2024 and 13.02.2024 for reply of the respondent. The respondent filed the reply and thereafter the Special Court reserved the petition "for orders". The Special Court, while dismissing the petitioners' petition in Crl.M.P.No.1197 of 2024 on 20.02.2024, stating that the respondent/complainant had already filed the petition in Crl.M.P.No.240 of 2024 on 05.01.2024 under Section 36(A)(4) of the NDPS Act seeking extension of time for six months to complete the investigation, the same was granted 12.01.2024. Now, the petitioners have challenged the order <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) passed in Crl.M.P.No.240 of 2024 dated 12.01.2024 by the Special Judge, granting extension of time to complete the investigation.

5. The learned counsel for the petitioners submitted that the learned Special Judge failed to consider the object and scope of Section 36(A)(4) of the NDPS Act and also the ratio laid down by the Hon'ble Supreme Court vide the judgment dated 23.09.2022 made in Crl.A.No.1656 of 2022 [ Jigar @ Jimmy Pravinchandra and another Vs State of Gujarat] and order of this Court dated 31.01.2025 made in Crl.R.C.No.1307 of 2024 [S.Kuppusamy Vs The State of Tamil Nadu] and order dated 27.11.2024 made in Crl.R.C.Nos.1847, 1885, 1849 and 2002 of 2024 [Mohamed Asaruthin Vs The State of Tamil Ndaui]. Further, he submitted that sufficient opportunity was not given to the petitioners and they were also not heard before the impugned order was passed in the absence of the petitioners. Hence the impugned order passed by the Special Court is liable to be set aside.

6. Learned Special Public Prosecutor appearing for the respondent- Police submitted that a case was registered in RR No. 23 of 2023 against <https://www.mhc.tn.gov.in/judis> ( Uploaded on:

03/03/2025 03:51:31 pm ) six accused persons for the offences under Section 8(c) read with Sections 20(b)(ii)(C), 27, 28 & 29 of the NDPS Act, 1985. On information, the respondent-Police intercepted the accused and seized the contraband weighing 432.700 Kg of Ganja. A1 and A5 were arrested for having illegal possession of 432.700 Kg of Kanja and they were remanded to judicial custody on 27.07.2023.

7. He further submitted that the respondent police needed further time to conduct detailed investigation against all the accused, to collect incriminating documents and to trace out a person who belongs to Andhra Pradesh, who is the main supplier for the seized contraband. Hence, the investigation has not been completed within the period, well in advance. Hence on 162nd day, the officer of the respondent filed a petition before the Special Court, invoking Section 36(A)(4) of the NDPS Act seeking extension of time to complete the investigation and the same was granted by the Special Court.

8. Admittedly, the respondent-Police registered a case in R.R.No.23 of 2023 against the petitioners herein and four others. The <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) petitioners are the driver and the cleaner of the seized vehicle respectively, which was used for transporting contraband. The quantity of seized contraband is 432.700 Kg. As per Section 36A(4) of NDPS Act, the prosecution has to lay the charge sheet within a period of 180 days. There is a proviso clause for Section 36A(4) of NDPS Act to the effect that, in case, the investigating agency is not able to complete the investigation within the stipulated period, the Special Court may extend the period up to one year on the report of the Public Prosecutor. In this case, the petitioners were arrayed as A1 and A2 and they were arrested on 26.07.2023 and remanded to judicial custody on 27.07.2023.

9. Pending investigation, the respondent-Police filed a petition in Crl.M.P.No.240 of 2024 on 05.01.2024 itself, seeking extension of time from the Special Court ie., only on 162nd day from the date of remand. Though the learned Special Judge had issued notice to the petitioners, they refused to receive the same. Since the petitioners were in custody, notice was sent through Superintendent of Prison concerned. On a perusal of the records, it is seen that the matter was listed for enquiry on <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) 09.01.2024 and thereafter it was adjourned to 11.01.2024 and on that day, the petitioners were also produced before the Special Court for extension of remand period. In the presence of the petitioners, the matter was heard at length by the learned Special Judge. The order was passed on the next day.

10. The main contention of the petitioners is that impugned order was passed in the absence of the petitioners. On a perusal of the records, it is seen that when the petitioners were produced before the Special Court for extension of remand, the matter was also heard in the presence of the petitioners. Subsequently, the learned Special Judge adjourned the matter on 12.01.2024 only for passing the order. Subsequently, the order was passed on 12.01.2024. Hence, above contention of the learned counsel for the petitioner is not acceptable.

11. On a reading of the materials available on record, it is seen that the learned Special Judge followed the guidelines of this Court and also <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) the ratio laid down by the Hon'ble Apex Court (cited supra) and after

giving opportunity to the parties, in the presence of the accused persons, the order was passed by the learned Special Judge.

12. Considering the fact that the six accused persons were involved in these offences and also according to the prosecution, it is big network and the quantity of contraband is also commercial quantity, considering the serious nature of the offence, this Court does not find any reason to interfere with the impugned order passed by the learned Special Judge.

13. There is no quarrel in proposition of law laid down by the Hon'ble Supreme Court and also the guidelines of this Court regarding mandatory provisions. The decisions referred by the learned counsel for the petitioner are distinguishable to the facts of the case on hand.

14. In the result, this Criminal Revision Case is dismissed. <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm ) 14.02.2025 mfa Index:Yes/No Speaking Order: Yes/No Neutral Citation: Yes/No To

1. The Principal Special Judge under EC & NDPS Act, Chennai.

2. The Intelligence Officer, NCB, Chennai – 17

3. The Public Prosecutor, High Court, Chennai.

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mfa 14.02.2025 <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 03/03/2025 03:51:31 pm )