



*Crl.MP(MD) No.8983 of 2026 in
Crl.A(MD) No.492 of 2026*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.8983 of 2026
in Crl.A.(MD)No.492 of 2026

Jothibasu

... Petitioner

Vs.

State of Tamil Nadu,
Rep by the Inspector of Police,
NIB CID Police Station,
Theni District.
Crime No.57/2013

... Respondent

Prayer: Petition filed under Section 430 of BNSS to suspend the sentence imposed on the petitioner / appellant / sole accused passed by the learned II Additional Special Court for NDPS Act Cases, Madurai in C.C.No.44 of 2016, dated 22.08.2025 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondent : Mrs.V.Moushica,
Government Advocate (Crl. Side)



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ORDER

The petitioner, an accused in C.C.No.44 of 2016, on the file of the learned Additional District Judge, II Additional Special Court for NDPS Act Cases, Madurai was found guilty by the trial Court and was convicted and sentenced as under:-

Sl.No	Sections	Punishment	Fine amount	Default
1	8(c) r/w 20(b)(ii)(B) NDPS Act	10 years RI	Rs.1,00,000/-	12 months SI

As against the conviction and sentence imposed by the trial Court in C.C.No.44 of 2016, dated 22.08.2025, the petitioner has filed a Criminal Appeal in Crl.A(MD)No.492 of 2026 and the same was admitted by this Court on 29.04.2026. The petitioner has also moved this application to suspend the sentence imposed on him by the trial Court.

2. The case of the prosecution is that on 13.06.2013, at about 11.40 hours, behind Kaliyamman Kovil, Pandaraothu, Theni District, this petitioner was found in illegal possession of 21 kg of ganja. Hence, the case.



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3.1. The learned counsel appearing for the petitioner submits that though PW2 alleged to have received the secret information, reduced the same into writing as Ex.P5, and forwarded it to PW3, there is no material evidence to show that Ex.P5 was received by PW3. He further submits that PW2 deposed that the information was communicated to PW3 through phone and PW3 admitted that there was no material to show the preparation of Ex.P5. Therefore, according to the learned counsel, mandatory requirement under Section 42 of the NDPS Act has not been complied with.

3.2. The learned counsel further submits that the alleged contraband would fall under the intermediate quantity category and not commercial quantity. He submits that though the prosecution alleged recovery of 21 kg of ganja, none of the witnesses have spoken about the presence of flowering and fruiting tops. According to him, the alleged contraband contains only stems, branches, and leaves, which cannot be considered as ganja as per the definition under the NDPS Act. Therefore, after excluding the stems, branches, and leaves, the quantity would fall within the intermediate quantity category.



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3.3. The learned counsel also submits that DW1, the wife of the petitioner, and DW2, the neighbour of the petitioner, have categorically deposed that the petitioner was taken into custody by the respondent police on 11.06.2013 from his house, prior to the registration of the case, and a false case was foisted against him. He submits that the prosecution was unable to discredit their evidence, but the Trial Court, without assigning valid reasons, convicted the petitioner.

4. The learned Government Advocate appearing for the respondent submits that mandatory requirements under Section 42 of the NDPS Act has been complied with. According to him, apart from the present case, the petitioner is involved in the following cases:-

(i) Cr.No.10/2022, Theni NIB CID, U/s.8(c) r/w 20(b)(ii)(C)

& 29(1) NDPS Act – Conviction.

(ii) Cr.No.109/2017, Theni NIB CID, U/s.8(c) r/w 20(b)(ii)

(B) NDPS Act – Conviction.

(iii) Cr.No.109/2012, Theni NIB CID, U/s.8(c) r/w 20(b)(ii)

(A) NDPS Act – Conviction.



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(iv) Cr.No.96/2011, Theni NIB CID, U/s.8(c) r/w 20(b)(ii)

(A) NDPS Act – Conviction.

(v) Cr.No.4/2023, Varusanadu Police Station, Theni, U/s.

8(c) r/w 20(b)(ii)(B) NDPS Act – Conviction.

(vi) Cr.No.59/2013, Varusanadu Police Station, Theni, U/s.

8(c) r/w 20(b)(ii)(B) NDPS Act – Acquitted.

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

6. The petitioner is in jail from the date of Judgment i.e., on 22.08.2025. The petitioner has raised certain arguable points, 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 points raised by the petitioner, his period of incarceration and for the reasons that the appeal could not be taken up immediately, this Court is inclined to suspend the sentence imposed on the petitioner, however with stringent conditions.



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7. 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 a sum of Rs.2,00,000/- (Rupees two lakh only) with two sureties each for a like sum to the satisfaction of the learned Additional District Judge, II Additional Special Court for NDPS Act Cases, Madurai. The sureties shall be Government Servants.
- ii. The petitioner and the sureties shall submit a copy of their Aadhaar Card or any other identity card issued by the Government in proof of their residence address, before the trial Court as well as before the respondent Police. In the event, if there is any change of address, the same shall be intimated to the respondent Police without fail.
- iii. The petitioner shall report before the respondent Police, daily at 10.30 a.m., until further orders.
- iv. The petitioner and the sureties shall file an affidavit of undertaking before the respondent police that the petitioner will



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neither misuse the liberty granted by this Court nor involve in any other offence in future.

v. In the event, if the petitioner has violated any of the above conditions, it is open to the respondent police to file an application to cancel the bail granted to him.

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To

1.The learned Additional District Judge,
II Additional Special Court for NDPS Act Cases,
Madurai.

2.The Inspector of Police,
NIB CID Police Station,
Theni District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.,

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