



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.08.2026

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.MP(MD)Nos.13459, 14894 of 2026

in

Crl.A(MD)Nos.784, 861 of 2026

N.Thangavel

... Petitioner in Crl.MP(MD).
13459/2026

K.Vellaisamy

... Petitioner in Crl.MP(MD).
14894/2026

Vs

State of Tamil Nadu,
Rep. by the The Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.
Crime No.27 of 2009

... Respondent

COMMON PRAYER:- Petitions filed u/s.430(1) BNSS / 389(1) CrPC seeking to suspend the sentence imposed by the learned Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, in Spl.C.No.134 of 2011, dated 25.06.2026.



For Petitioners : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)
[In both petitions]

COMMON ORDER

The petitioners are accused nos.1 & 2 in Spl.C.No.134 of 2011 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli. They were prosecuted under the provisions of the Prevention of Corruption Act 1988 and the trial Court, by judgment dated 25.06.2026, found them guilty, convicted and sentenced them as under:-

(i) Accused No.1:

<i>S.No</i>	<i>Offence</i>	<i>Sentence</i>	<i>Fine Amount</i>	<i>In default</i>
1.	Section 7 of Prevention of Corruption Act	Two years rigorous imprisonment	Rs.2000/-	Three months simple imprisonment
2.	Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act	Two years rigorous imprisonment	Rs.2000/-	Three months simple imprisonment



(ii) Accused No.2

<i>S.No</i>	<i>Offence</i>	<i>Sentence</i>	<i>Fine Amount</i>	<i>In default</i>
1.	Section 7 r/w Section 12 of Prevention of Corruption Act	One year rigorous imprisonment	Rs.2000/-	Three months simple imprisonment

As against the conviction and sentence imposed by the trial Court, the first accused has filed Crl.A(MD)No.784 of 2026 and the second accused has filed Crl.A(MD)No.861 of 2026. Both the appeals were admitted by this Court on 09.07.2026 and 24.07.2026 respectively. Along with the appeals, the petitioners have filed separate applications seeking suspension of sentence.

2.Since the petitioners were convicted for a period less than three years, the trial Court, while convicting the petitioners, has suspended the sentence under Section 389(3) CrPC, until 24.07.2026. When these applications were taken up for hearing, the period of suspension granted by the trial Court was over, however, the petitioners have not surrendered on expiry of the period of suspension granted by the trial Court under Section 389(3) CrPC.

3.Learned Senior Counsel appearing for the petitioners submitted that they have been convicted only for a period of two years [A1] and one year [A2] and that the sentence has already been suspended by the trial Court.



According to him, in cases of short term imprisonment, the Appellate Court has to suspend the sentence automatically.

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4.He further submitted that since the petitioners have been convicted for a period of two years [A1] and one year [A2], no notice is required to the Public Prosecutor and that the sentence can be suspended by this Court. He also submitted that there was a delay in dispatching the FIR to the Court, the *defacto* complainant had no necessity to approach the petitioners and that the application made by the *defacto* complainant was defective in nature. In support of his contentions, he has relied on the following decisions:-

(i) *Kiran Kumar v. State of M.P* [(2001) 9 SCC 211]; and

(ii) *Bhagwan Rama Shinde Gosai and Others v. State of Gujarat* [(1999) 4 SCC 421].

5.Per contra, learned Government Advocate (Crl. Side) submitted that the suspension of sentence granted by the trial Court, under Section 389(3) CrPC was over, however, the petitioners have not surrendered after the expiry of the same. Therefore, this Court should not consider the application of the petitioners filed under Section 389(1) CrPC [Section 430(1) BNSS], inasmuch as the petitioners are not under confinement as on date.



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6. Insofar as the merits of the case is concerned, he submitted that the first accused is a Village Administrative Officer and the second accused is a Village Assistant. They are said to have demanded and received a sum of Rs.500/- as an illegal gratification for endorsing the application of the *defacto* complainant / PW3 for an electricity service connection. The petitioners were arrested in the presence of a shadow witness and the prosecution has established its case for the demand and acceptance by the accused officers through the evidence of the *defacto* complainant and the shadow witness, an officer from the Public Works Department. The prosecution has also recovered the application of PW3 for service connection which was endorsed by the first accused and marked the same as Ex.P6. These petitioners were found guilty under corruption charges, a serious offence and also given the conduct of the petitioners in not surrendering after the expiry of the interim suspension period granted by the trial Court, he prayed for the dismissal of these petitions. In support of his contentions, he has relied on the following judgments:-

- (i) *Santhanapandi and Others v. State by Inspector of Police [1999 (I) CTC 49]*;
- (ii) *Atul Tripathi v. State of Uttar Pradesh [(2014) 9 SCC 177]*; and
- (iii) *Shiv Kumar v. State of NCT of Delhi [(2008) 17 SCC 122]*.



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7.This Court considered the rival submissions made on either side and perused the materials placed on record.

8.The petitioners were found guilty, convicted and sentenced by the Special Court for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, as stated supra, on 25.06.2026. Section 389(3) CrPC [Section 430 (3) BNSS] mandates the trial Court to suspend the sentence for a limited period, to enable the accused, who was found guilty, convicted and sentenced upto three years, to prefer an appeal and obtain the orders of the appellate Court under Section 389(1) CrPC. Under this provision, the trial Court has suspended the sentence of the petitioners for a period of thirty days.

9.The appeals filed by the petitioners have been admitted, since they are having a statutory appeal remedy under Section 374(2) CrPC [Section 415(2) BNSS]. They have sought for suspension of sentence under Section 389(1) CrPC [430(1) BNSS] and the provision is extracted hereunder for reference:



"Section 389 (1) CrPC -

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release;

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

Section 430(1) BNSS -

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond:

Provided that the Appellate Court shall, before releasing on his own bond or bail bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail."



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10. Even though the provision clearly uses the words "*the Appellate Court, may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended*", the learned Senior Counsel for the petitioner claimed that suspension of sentence is a matter of right for an accused, if the sentence is below three years. This Court is not acceding the same.

11. The provision uses the word "*may*" and therefore, the suspension of sentence by the appellate Court is not automatic, as claimed by the learned Senior Counsel appearing for the petitioners. In *Angana v. State of Rajasthan* [(2009) 3 SCC 767], the Hon'ble Supreme Court has held that the power to suspend the sentence under Section 389(1) CrPC is a discretionary in nature and the same is to be exercised judiciously depending on the facts and circumstances of each case, the basis of nature of the offence and manner in which occurrence had taken place.

12. Further, the Hon'ble Supreme Court in *Preet Pal Singh v. State of Uttar Pradesh* [AIR 2020 SC 3995] held that in cases of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and therefore, the principle of bail being the rule and jail an exception is not



attracted. It was held that there must strong and compelling reasons for grant of bail in such cases and the matter has to be considered on its merits. The relevant portion is extracted hereunder:

“35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra).

However, in case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”

13. Thus, it is clear that the suspension of sentence under Section 389(1) CrPC [Section 430(1) BNSS] is a discretionary power, to be exercised carefully



and cannot be granted as a matter of course. If the Court feels that there are sufficient reasons for refusing bail, then the bail can also be rejected. In the event if the Court is unable to take up the appeal immediately, then the Court may consider the grant of suspension, provided the accused / convicted person, is in jail.

14.It is the contention of the petitioners that there was a delay in dispatching the FIR to the Court, the *defacto* complainant had no necessity to approach the petitioners and the application made by the *defacto* complainant was incomplete. These points have already been raised before the trial Court and negatived by the trial Court, in its judgment dated 25.06.2026.

15.The petitioners are taking a stand that there is no necessity for the *defacto* complainant to approach the accused. But the fact remains that the document Ex.P6 signed by the first accused, was recovered from the office of the petitioners. The complaint was lodged on 22.09.2009, at 04:30 pm and thereafter, the trap proceedings have been arranged and trap was laid on 23.09.2009, at around 12 am. The FIR reached the trial Court on 23.09.2009, at 11.30 am. Therefore, the delay in dispatching the FIR cannot be considered to be a material defect in the case of the prosecution.



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16.The trial Court has appreciated the evidence and found that the demand and receipt of money has been sufficiently established by the prosecution. That apart, trap was conducted and the prosecution has established the receipt of bribe by conducting phenolphthelin test and from the evidence of the shadow witness. The grounds raised by the petitioners are vague and not satisfactory for considering the grant of suspension of sentence.

17.No doubt, the appeals preferred by the petitioners were admitted by this Court. But the admission of appeals by itself, does not confer a right upon the petitioners to seek bail as a matter of right, without even surrendering, after the period of suspension granted by the trial Court has expired. In fact, Section 389(1) CrPC [Section 430 (1) BNSS] provides that the appellate Court can release the convicted person on bail, if he is in confinement. However, without surrendering after the expiry of this period, the petitioners have filed these petitions.

18.In the decision relied upon by the learned Government Advocate (Crl. Side) in *Shiv Kumar*'s case (supra), the Hon'ble Supreme Court has held



that the Court should consider factors such as nature of accusation made against the accused, manner in which the crime is alleged to have been committed, the gravity of the offence and the desirability of releasing the accused on bail, while considering suspension of sentence.

19. In this case, the petitioners have been convicted in a case under the Prevention of Corruption Act and they have not surrendered, even after the expiry of the interim suspension granted by the trial Court. The grounds raised by the petitioners are also vague. As pointed out by the learned Government Advocate (Crl. Side), the offences under the Prevention of Corruption Act has to be viewed as a grave offence, which affects the society as a whole. In fact, the Hon'ble Supreme Court in *State of M.P. v. Ram Singh* [2000 AIR SC 454], has noted that corruption is a disease like cancer, which if not detected in time, would lead to disastrous consequences.

20. Considering the nature of offence, the conduct of the petitioners in not surrendering after the expiry of interim suspension of sentence granted by the trial Court and the fact that they are presently not in confinement, this Court is not inclined to entertain these petitions.



Accordingly, both the criminal miscellaneous petitions stand dismissed.

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Since the applications for suspension are dismissed, Registry is directed to prepare the typedset of papers and list the appeals for final hearing.

Internet : Yes
Index : Yes / No
NCC : Yes / No

07.08.2026

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To

1.The Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.

2.The Judge,
Special Court for Trial of Cases under the Prevention of Corruption Act,
Tiruchirappalli.



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B.PUGALENDHI, J.

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