



CRL MP(MD)No.2307 of 2025 in

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL MP(MD)No.2307 of 2025 in
CRL A(MD)No.235 of 2025

Eswaran

... Petitioner

versus

The State of Tamil Nadu
The Inspector of Police,
Cumbum North Police Station,
Theni District.
(Crime No.300 of 2018)

... Respondent

Prayer: Petition filed under Section 430(1) of BNSS to suspend the sentence imposed on the petitioner in CC.No.305 of 2018 dated 17.11.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai and release him on bail till the disposal of the main appeal.

For Petitioner : Dr.R.Alagumani

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

The petitioner / accused in CC.No.305 of 2018 on the file of the I Additional Special Court for NPDS Act Cases, Madurai was found guilty, convicted and

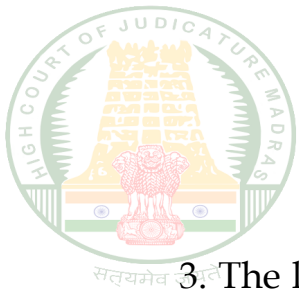


CRL MP(MD)No.2307 of 2025 in

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sentenced to undergo 4 years rigorous imprisonment with a fine of Rs.20,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 8(c) read with Section 20(b)(ii)(B) of NDPS Act. As against the Judgment of conviction and sentence, the petitioner has filed an appeal in CrI A(MD)No.235 of 2025 and the same has been admitted by this Court on 24.02.2025. Along with the appeal, the petitioner has filed this petition to suspend the sentence.

2. The learned counsel for the petitioner submits that the case of the prosecution is that the respondent police arrested the petitioner that he was in possession of 10.20 Kgs of ganja on 06.06.2018 at 6.00 am at Cumbam main road. According to him, the case of the prosecution is a false one that there are two reports under Section 57 of the NDPS Act. He also pointed out that recovery was on 06.06.2018, whereas the contraband has been produced before the court concerned only on 21.06.2018 and it was not produced before the Magistrate, when the petitioner was produced before him on 06.06.2018. He also pointed out that all the three prosecution witnesses are police officials and there is no independent witness. Therefore, the petitioner is having arguable points in this appeal. Since the petitioner is in jail from the date of Judgment, i.e. from 17.11.2023, he seeks to suspend the sentence imposed by the trial Court.



CRL MP(MD)No.2307 of 2025 in

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3. The learned Government Advocate (Crl. Side) opposed this petition that the petitioner is a habitual offender, involved in six cases, out of which, five are similar in nature. He has also furnished the details of the cases and the same are extracted as under:

1. Theni PS Crime No.46 of 2018 – Sections 8(C) r/w 20(b)(ii)(A) of NDPS Act.
2. Theni PS Crime No.112 of 2018 – Section 8(C) r/w 20(b)(ii)(A) of NDPS Act.
3. Cumbum PS Crime No.300 of 2018 Section 8(C) r/w 20(b)(ii)(B) of NDPS Act.
4. Cumbum PS Crime No.185 of 2019 Section 8(C) r/w 20(b)(ii)(B) of NDPS Act.
5. Cumbum PS Crime No.432 of 2020 Section 269 of IPC and Section 3 of ED Act.
6. Cumbum PS Crime No.343 of 2023 Section 8(C) r/w 20(b)(ii)(B), 29(i) and 25 of NDPS Act.

4. The learned counsel appearing for the petitioner submits that all the cases have been foisted against the petitioner and he has not been convicted in any of the cases. He further submits that one Muthaiah, a retired military officer, who served as Havildar, is prepared to stand as surety for the petitioner and file an undertaking affidavit that the petitioner will not involve in any further offence in future. To that effect, the learned counsel has also furnished the affidavit filed by the said



CRL MP(MD)No.2307 of 2025 in

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Muthaiah. The learned counsel further submits that the petitioner is in jail from the date of Judgment, i.e. from 17.11.2023. Since the petitioner has already undergone the substantial portion of the sentence of imprisonment, he seeks to suspend the sentence imposed by the trial Court.

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

6. The petitioner has raised certain arguable points, which can be considered only during the final hearing of the appeal. The appeal could not be taken up for final hearing for want of time. Considering the points raised by the petitioner, period of incarceration and also for the reason that the appeal could not be taken up immediately, this Court is inclined to allow this petition.

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 Rs.1,00,000/- (Rupees one lakh only) with two sureties each for a like sum to the satisfaction of the I Additional Special Court for NDPS Act Cases, Madurai. Out of the two sureties, one surety shall be the said Muthaiah, S/o.Paraman, who filed an affidavit before this Court.

(ii) The petitioner as well as the sureties shall file an undertaking affidavit



CRL MP(MD)No.2307 of 2025 in

before the respondent Police that the petitioner will not involve in any other offence
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in future. The sureties shall also ensure the petitioner's availability till the disposal
of the appeal proceedings.

(iii) The petitioner shall stay in Madurai and report before the Inspector of
Police, Othakadai Police Station, Madurai, daily at 10.30 a.m. until further orders.

sd/-
03/04/2025

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/04/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To

- 1.The I Additional Special Court for NDPS Act Cases,
Madurai.
2. The Superintendent,
Central Prison, Madurai.
- 3.The Inspector of Police,
Cumbum North Police Station,
Theni District.
4. The Inspector of Police,
Othakadai Police Station,
Madurai.



CRL MP(MD)No.2307 of 2025 in

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

ORDER

IN

CRL MP(MD)No.2307 of 2025 in

CRL A(MD)No.235 of 2025

Date :03/04/2025

MK/SAR /03.04.2025 6P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023