



CRL MP(MD) No.5901 of 2025
in Crl.A.(MD)No.518 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.10.2025

Delivered on : 07.11.2025

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) No.5901 of 2025
in
CRL A(MD) No.518 of 2025

Ramasamy

: Petitioner/A3

Vs

State of Tamil Nadu rep by
The Inspector of Police,
NIB, CID Police Station,
Dindigul District.
Crime No.36 of 2021.

: Respondent

Prayer in CRL MP(MD)No. 5901 of 2025 : This Criminal Miscellaneous Petition filed under Section 430(1) B.N.S.S., praying to suspend the sentence of imprisonment imposed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.580 of 2021, dated 29.10.2024, pending disposal of the above said criminal appeal.

Prayer in CRL A(MD) No.518 of 2025 : This Criminal Appeal filed under Section 415 of B.N.S.S., praying to call for the records pertaining to the judgment made in C.C.No.580 of 2021, dated 29.10.2024 on the file of the I Additional Special Court for NDPS Act Cases, Madurai and set aside the same.



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For Petitioner : Mr.W.Pamelin

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (Criminal Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner/accused by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.580 of 2021, dated 29.10.2024, till the disposal of the appeal.

2.The case of the prosecution is that on 10.05.2021, at about 08.30 hours, the Inspector of Police attached to the respondent Police received a secret information that the first accused was exchanging ganja near Kanavai Thottam, Virupatchi, after informing to his higher officials and after getting permission from the higher official, he proceeded to the spot with his team and found that a person came from east to west in a vehicle bearing Registration No.TN-57-U-4974 followed by a car bearing Registration No.TN-56-8263, two persons came in two wheelers bearing Registration Nos.TN-58-U-2084 and MH-02-AN-6699. The persons came in the car as well as in the two wheeler bearing



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Registration No.TN-57-U-4974 have unloaded two white color bags from the car and handed over the same to the persons came in the two wheelers bearing Registration Nos.TN-58-U-2084 and MH-02-AN-6699. The Inspector of Police, Chatrapatti Police Station rounded them and on seeing the police party, except the persons came in the two wheelers bearing Registration Nos.TN-58-U-2084 and MH-02-AN-6699 others fled away from the scene of occurrence and the Police secured the above persons along with ganja and that the police seized 50 Kgs of ganja and on that basis FIR came to be registered in Crime No.157 of 2021 for the offences under Sections 8(c) r/w 20(b)(ii)(C), 25 & 29(1) of NDPS Act.

3. In view of the quantity involved, the case was transferred to the file of the NIB, CID Police Station, Dindigul/respondent herein. After arresting the other accused and after completion of investigation, charge sheet was filed and the same was taken on file in C.C.No.580 of 2021 and was pending on the file of the I Additional Special Court for NDPS Act cases, Madurai.

4. During trial, the prosecution examined 8 witnesses as P.W.1 to P.W.8 and exhibited 29 documents as Ex.P.1 to Ex.P.29 and marked six material objects as



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M.O.1 to M.O.6. The defence examined three witnesses as D.W.1 to D.W.3 and exhibited 18 documents as Ex.D.1 to Ex.D.18.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment, dated 29.10.2024 convicting the accused 1 to 3 and 5 for the offence under Section 8(c) r/w 20(b)(ii)(C) and under Section 29(1) of NDPS Act and sentenced the accused 1, 2 and 5 to undergo 15 years rigorous imprisonment and to pay a fine of Rs.1 lakh, each in default, to undergo three years simple imprisonment and sentenced the third accused/petitioner herein to undergo ten years rigorous imprisonment and to pay a fine of Rs.1 lakh, in default to undergo one year simple imprisonment and acquitted the accused 6 and 7 under Section 248(1) of Cr.P.C. Aggrieved by the impugned judgment of conviction and sentence, the third accused has preferred the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6.The learned Counsel appearing for the petitioner would submit that the petitioner is a driver by occupation and that at the time of occurrence, ie., on 10.05.2021, the petitioner was on his duty as a lorry driver proceeding to Odissa



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and he was not at all present at the time of occurrence; that no contraband was seized from his possession; that since the car bearing Registration No.TN-56-8263 belonging to his wife was implicated, the petitioner was added as an accused and that the petitioner's friend sought permission to take their car for a trip and he had given him for two days and the same has been utilized for the occurrence.

7. The learned Counsel appearing for the petitioner would further submit that the ownership of the vehicle does not automatically imply liability under the NDPS Act; that the prosecution must prove the knowledge and involvement in the illegal use of the vehicle; that the petitioner was falsely implicated on the basis of the confession alleged to have been taken from the second accused; that the petitioner's name was not found in the FIR registered on 10.05.2021 nor he was taken into custody proximate to the occurrence place and that the learned trial Judge, without considering the above aspects has proceeded to record conviction against the petitioner herein.

8. The respondent filed a counter affidavit raising objections. The learned Government Advocate (Criminal Side) appearing for the State would submit that



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the prosecution has proved that the car bearing Registration No.TN-56-8263 is owned by the petitioner's wife; that the petitioner during trial has not denied or disputed the ownership of the said car; that the third accused had handed over the car to the accused 1 and 4 with the knowledge that the same to be used for commission of the offence and that the petitioner has not chosen to examine his wife as defence witness. P.W.7 in his evidence has stated that they have produced necessary evidence including the Customer Application Form to show that there has been nexus between all the accused and the financial transactions between the accused 1 to 3 and 5; that the accused 1 to 5 have conspired together and committed the offence as alleged by the prosecution and that the trial Court considering the evidence in proper perspective, has rightly convicted the petitioner/accused.

9. Though the third accused has taken a stand that the prosecution has failed to prove that the car seized belonging to him and there has been conspiracy between the third accused and the other accused, as rightly pointed out by the learned Government Advocate (Criminal Side), the learned trial Judge, considering the evidence of P.W.7 and also the petitioner's failure to deny or dispute the ownership of the car, which was vested with his wife and his handing



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over the car to the accused 1 and 4 and also taking note of the evidence to show the nexus between the petitioner and the other accused and also the financial transactions between them, has come to a decision that the charge as against the petitioner stood proved. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Narcotic Control Bureau Vs. Lokesh Chadha reported in 2021 SCC Online SC 178***, wherein the Hon'ble Apex Court has held that there is a difference between grant of bail under Section 439 of the Cr.P.C, in case of pre-trial arrest and suspension of sentence under Section 389 of the Cr.P.C and grant of bail, post-conviction and in the case of post conviction, there is a finding of guilt and the question of presumption of innocence does not arise and the relevant passages are extracted hereunder:

9.Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will refer to the decision of a two-



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Judge Bench of this Court in Preet Pal Singh v State of Uttar Pradesh³ where Justice Indira Banerjee, speaking for the Court, observed as follows:

“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.”



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10. The principles which must guide the grant of bail in a case under the NDPS Act have been reiterated in several decisions of this Court and we may refer to the decision in State of Kerala v Rajesh⁴. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS 3 (2020) 8 SCC 645 4 (2020) 12 SCC 122 Act. On the basis of the material which emerged before the learned Special Judge and which forms the basis of the order of conviction, we are of the view that no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside.”

10. In the case on hand, the petitioner was in judicial custody for the period between 24.05.2021 and 21.03.2022 and thereafter, he is in prison from the date of judgment.

11. The learned Government Advocate (Criminal Side) appearing for the State would mainly contend that if the petitioner is granted the relief of suspension of sentence, there is every possibility to abscond to the northern States and it will be difficult to secure him subsequently.

12. Considering the above facts, circumstances and the gravity of the



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charges allegedly levelled and proved against the petitioner and taking note of the period of imprisonment imposed and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

13. In the result, the Criminal Miscellaneous Petition is dismissed.

07.11.2025

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

- 1.The I Additional Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
NIB, CID Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J

das

Pre-delivery order made in
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