

*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.09.2025

Pronounced on : 19.09.2025

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) No.5457 of 2024

in

CRL A(MD) No.452 of 2024

Saba @ Sabarathinam

**Petitioner/
Appellant**

Vs

The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
(Crime No.2361 of 2020)

**Respondent/
Respondent**

Prayer in CRL MP(MD).5457 of 2024 : This Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code, praying to suspend the sentence imposed by the learned I Additional Special Court for EC & NDPS Act cases, Madurai in C.C.No.231 of 2021 vide judgment dated 29.02.2024 and to enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

Prayer in CRL A(MD).452 of 2024 : This Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to call for the entire records and set aside the sentence and conviction imposed in C.C.No.231 of 2021 on the file of learned I Additional Special Court for EC & NDPS Act cases, Madurai vide judgment dated 29.02.2024.

For Petitioner: Mr.M.Jegadeesh Pandian
for Mr.J.Vijayaraja

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner / first accused by the learned Additional District Judge, I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.231 of 2021 dated 29.02.2024, till the disposal of the criminal appeal.

2. The case of the prosecution is that on 25.10.2020 at about 12.00 hours at Madurai Town, Madakkulam Main Road, near Koravaikkal Junction, the accused 2 and 3 were found in possession of two gunny bags, one containing 10 parcels and the other containing 11 parcels, totally 21 parcels weighing 42 kilograms and it was kept in the dicky of silver color Maruthi Suzuki Swift car bearing



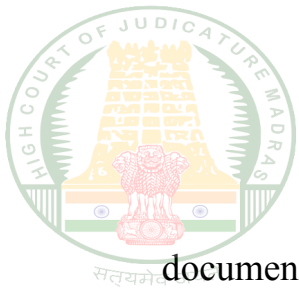
*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

Registration No.TN-38-AQ-4151 and the accused 2 and 3 have informed that the accused 2 to 8 were led by the petitioner and they frequently went to Andhra Pradesh to purchase Ganja and stored at Vyasarpadi, Chennai and they would hand over them to the persons to whom the petitioner directs and that therefore, they were charged with the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances (hereinafter referred as 'NDPS') Act.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act and the case was taken on file in C.C.No.231 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai.

4. During trial, the prosecution examined 3 witnesses as P.W.1 to P.W.3, exhibited 14 documents as Ex.P.1 to Ex.P.14 and marked 8 material objects as M.O.1 to M.O.8. The defence adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 29.02.2024 convicting the petitioner and the accused 2 and 3 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and sentenced them to undergo 14 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- each, in default to undergo simple imprisonment for a further period of 3 years and acquitted them for the offences under Sections 25 and 29(1) of the NDPS Act and also acquitted the other accused 4 and 6 to 8 from all the charges. Aggrieved by the impugned judgment of conviction and sentence, the first accused has preferred the present appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that mandatory provisions under Sections 42(2), 50(1) and 57 of the NDPS Act were not at all followed, that the prosecution has not chosen to examine any independent witnesses, that the evidence of the prosecution witnesses is full of contradictions, that there were serious lapses in the investigation, that there was delay in sending the sample to the Court, that except the confession of two accused, there is no other acceptable evidence available against the petitioner and



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

that the trial Court, without considering the above material aspects, has proceeded to convict the accused, which is liable to be set aside.

7. The learned Additional Public Prosecutor appearing for the respondent police would submit that the trial Court has assigned proper reasons for its decision that Section 42 of NDPS Act is not applicable to the case on hand, that the trial Court has also given sufficient reasons for holding that requirements under Sections 50 and 57 of NDPS Act were duly complied, that the contradictions allegedly pointed out by the defence are very trivial and immaterial enough to affect the case of the prosecution, that the grounds raised by the petitioner are vague and unsustainable and that the trial Court, considering the evidence available, has rightly convicted the petitioner and the accused 2 and 3 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and acquitted them for the offences under Sections 25 and 29(1) of the NDPS Act.

8. Regarding non-compliance of the requirements under Sections 42(2), 50(1) and 57 of the NDPS Act, the learned trial Judge, upon considering the evidence, has held that since the contraband was recovered from a private vehicle



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

and not from an enclosed place, the provision of Section 42 of the NDPS Act cannot be made applicable. Even assuming for arguments sake that it is applicable, the learned trial Judge, by referring to the evidence of P.W.2 and P.W.3, has held that the prosecution has proved the compliance of Section 42 of the NDPS Act. The learned trial Judge, considering the evidence of P.W.1 and the search consent letter given by the accused 2 and 3 and also the evidence given by P.W.2 during the cross-examination made by the petitioner, has held that the prosecution has proved the compliance of Section 50(1) of the NDPS Act. Regarding Section 57 of the NDPS Act, the learned trial Judge, by observing that the evidence of P.W.2 and P.W.3 that 57 report along with FIR was received and proceeded for further investigation, has recorded that there is substantial compliance of Section 57 of the NDPS Act. Moreover, as rightly contended by the learned Additional Public Prosecutor, whether the findings of the trial Court with regard to the compliance of Sections 42(2), 50(1) and 57 of the NDPS Act are correct or not cannot be gone into at this stage and is to be decided in the main appeal.

9. The learned Additional Public Prosecutor appearing for the respondent police would submit that the petitioner was having 24 previous cases in various



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

police stations of Madurai City and Ramanathapuram District including the cases under the NDPS Act and that the petitioner was acquitted in 8 cases. He would further submit that the petitioner has not paid the fine amount imposed by the trial Court.

10. The learned counsel appearing for the petitioner would rely on a decision of the Hon'ble Supreme Court in *Jitendra and others Vs. State of Uttar Pradesh* passed in *SLP (Crl.) No.7162 of 2024 dated 04.10.2024*, wherein, the Hon'ble Apex Court has observed that mere pendency of other cases where the appellant is an accused (on bail) cannot be regarded as sufficient for denying him the benefit of suspension of sentence in the present case and after all, he is presumed to be innocent till found guilty. In the above decision case, the appellant therein was convicted for murder and was sentenced to life imprisonment. When the prosecution raised various objections and also on the ground that the appellant is an accused in two other cases, for which, the defence has established that they were not having knowledge about one case and in another case, the High Court has granted bail and the trial was yet to be concluded. In the case on hand, as already pointed out, the petitioner has a record of being accused in 24 cases, with



Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

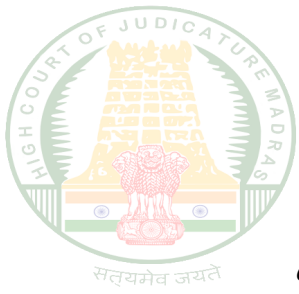
acquittal in 8 of those cases.

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11. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)*** reported in ***2023 LiveLaw (SC) 260***,

“Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 – Effect of delay in trial – Grant of bail on ground of undue delay in trial not fettered by Section 37 – Imperative of Section 436A of Code of Criminal Procedure Act – Requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods – Applicable to offences under the NDPS Act – Held, special conditions as enacted under Section 37 can only be considered within constitutional parameters when the court is reasonably satisfied on a prima facie look at the material on record that the accused is not guilty – A plain and literal would effectively exclude grant of bail altogether – Further held, appellant deserved to be enlarged on bail – Appeal allowed.

Right to speedy trial – Laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable – Incarceration has further



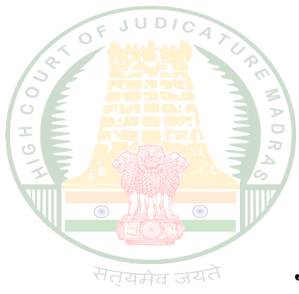
Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

WEB COPY

deleterious effects – where the accused belongs to the weakest economic strata; immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

12. It is also 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**,

*“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-Judge Bench of this Court in *Preet Pal Singh v State of Uttar Pradesh*³ where*

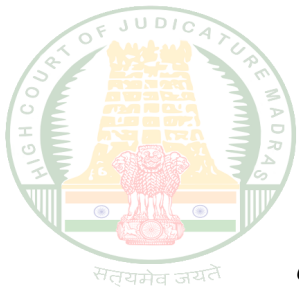


Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

Justice Indira Banerjee, speaking for the Court, observed as
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“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



Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

WEB COPY

compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”

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.”

13. The learned counsel appearing for the petitioner would also rely on a decision of the Hon'ble Supreme Court in the case of **Narcotic Control Bureau Vs. Lakhwinder Singh** passed in **Crl.A.No.475 of 2025 dated 29.01.2025**, wherein, the Hon'ble Apex Court, considering the fact that the respondent / accused had undergone incarceration for a period of 4½ years out of the fixed term



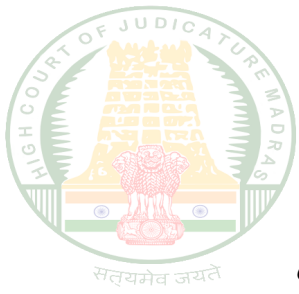
*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

sentence of 10 years, has dealt with the objections raised by the prosecution that

Section 37 of NDPS Act is also applicable at the stage of an appeal and held that there is no dispute about the fact that the appellate Court is bound by constraints of Section 37 of the NDPS Act, however, if an accused has undergone a substantial part of the substantive sentence and considering the pendency of criminal appeals, his appeal is not likely to be heard before the accused undergoes the entire sentence, the appellate Court can exercise the power of releasing the accused on bail pending the appeal and if the relief of bail is denied in such a factual situation only on the grounds of Section 37 of the NDPS Act, it will amount to the violation of the rights of the accused under Article 21 of the Constitution of India. In the case on hand, as already pointed out, the petitioner was sentenced to 14 years rigorous imprisonment. According to the petitioner, the petitioner had undergone incarceration for a period of 3 years 3 months.

14. The learned Additional Public Prosecutor appearing for the respondent police would rely on a judgment of the Hon'ble Supreme Court in ***Neeru Yadav Vs. State of Uttar Pradesh and another*** reported in (2016) 15 SCC 422,

“13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an



Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

WEB COPY

established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

“Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of



WEB COPY



Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024

it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history- sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.”

15. In **Ash Mohammad Vs. Shiv Raj Singh** reported in (2012) 9 SCC 446, relied on by the learned Additional Public Prosecutor appearing for the respondent police, the Hon'ble Apex Court has observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

a well-ordered society, the Courts play an even more important role, and the burden is heavy and emphasized on the need to have a proper analysis of the criminal antecedents of the accused.

16. Considering the above facts and circumstances and also the nature and gravity of the offences levelled and allegedly proved against the petitioner and also taking note of the fact that the impugned judgment was pronounced only on 29.02.2024 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

17. In the result, the Criminal Miscellaneous Petition is **dismissed**.

19-09-2025

CSM

To

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

2.Do through the Chief Judicial Magistrate,
Madurai District.

15/16



*Crl.MP.(MD)No.5457 of 2024
in Crl.A.(MD)No.452 of 2024*

3. The Inspector of Police,
S.S.Colony Police Station,
Madurai District.

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