

CRL MP(MD). No.8031 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
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Dated : 11/08/2025

CORAM

THE HONOURABLE DR. JUSTICE R.N.MANJULA

CRL MP(MD). No.8031 of 2025  
in CrI.A(MD) No.696 of 2025

Sakthiyendran @ Sakthi

... Petitioner

Vs

The State of Tamil Nadu,  
Rep by the Inspector of Police,  
Keerathurai Police Station,  
Madurai District.  
Crime No.413 of 2021..

... Respondent

PRAYER :-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed against petitioner in C.C.No.17 of 2022 dated 28.05.2025 passed by the learned Principal Sessions Judge EC and NDPS Act Cases, Madurai and enlarge the petitioner on bail.

For Petitioner : Mr.G.Karuppasampandian

For Respondent : Mr.R.Meenakshi Sundaram,  
Additional Public Prosecutor



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## ORDER

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The present appeal has been filed against the Judgment of the learned Principal and Sessions Judge, EC and NDPS Act Cases, Madurai, dated 28.05.2025, made in C.C.No.17 of 2012.

2.The petitioner/appellant is the third accused, who has been charged for the offences under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(i) of NDPS Act and 25(1B)(b) of Arms Act, who has been convicted and sentenced in the following manner:

| S. No | Provisions under which convicted  | Sentence of imprisonment       | Fine amount                                                       |
|-------|-----------------------------------|--------------------------------|-------------------------------------------------------------------|
| 1     | 8(c) r/w 20(b)(ii)(C) of NDPS Act | 10 Years rigorous imprisonment | Rs.1,00,000/-, in default to undergo 6 months simple imprisonment |

3.The case of prosecution is that on 08.07.2021 at about 13.45 hours, PW2 has conducted vehicle check-up and at that time, he intercepted a Car bearing registration No.TN 59 CK 3492, driven by the accused Nos.1 and 3 and a bike without number plate, rode by the 2<sup>nd</sup> accused and after explaining the formalities



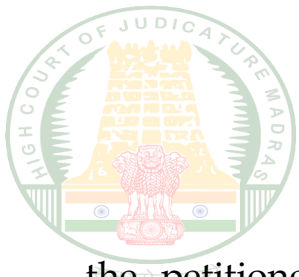
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and obtaining consent from the accused, PW2 has conducted search and 25 kgs of Ganja was found in the Car and by observing the legal formalities the same was recovered under seizure mahazar and samples were also taken. PW2 has also recorded confession from the first and second accused and seized the alleged vehicles under mahazar and sent the accused to prison. There are other two accused, A4, A5, who have been arrested on the allegation of criminal conspiracy and abetment.

4.After completion of investigation, charge sheet has been filed against the accused persons. At the conclusion of trial, the accused 1 to 3 were found guilty and A3/petitioner/appellant, who has been convicted and sentenced as stated supra. The 4<sup>th</sup> accused has been acquitted and the case against A5 has been split up and the same is pending.

5.The learned counsel for the petitioner/appellant submitted that no recovery has been made against the petitioner/appellant/A3 and he has not given any confession. Despite there is no evidence to show that the petitioner/appellant has abetted and entered into criminal conspiracy, he has been convicted. Even though it is alleged that the petitioner/appellant was also travelled in a Car along with A1, it is not established that the contraband seized from the petitioner/appellant. As



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the petitioner/appellant is the Driver of the Car and he has not given any confession. Even in the mahazar, the name of the petitioner/appellant has not been mentioned and his signature was also not obtained.

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6.The learned Additional Public Prosecutor vehemently submitted that the petitioner/appellant is the person, who accompanied the first accused and the contraband has been recovered from the Car, in which, A1, A3 were travelling. The incriminating evidence against the petitioner/appellant has been dealt by the trial Court in a meticulous manner and only in pursuant to that, this petitioner/appellant has been convicted.

7.The learned Additional Public Prosecutor further submitted that the offence under NDPS Act has to be dealt seriously than the offence of murder case. The offence relating to NDPS Act cases causes deleterious effects and a deadly impact on the society. In support of his above submission, he has relied on the decision of State of Kerala Vs Rajesh, reported in 2020 SAR CrI 326. Reference has also been made to the decision of Hon'ble Supreme Court in State (GNCT Of Delhi) Narcotics Control Beureau V Lokesh Chadha, dated 02.03.2021, wherein, it is held that where the trial has ended in an order of conviction, the High Court should not ignore the fact that a finding of guilt of the accused has been arrived at by the Trial



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Judge only after appreciation of the evidence. By making the difference between the enlargement of accused on bail during pre-trial arrest and suspension of sentence and grant of bail, post-conviction, the Hon'ble Supreme Court has held that in the case of post-conviction bail, the Court has to consider the prima-facie merits of the appeal coupled with other factors and there should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspending the sentence. The relevant part of order of the Hon'ble Supreme Court is extracted as under:

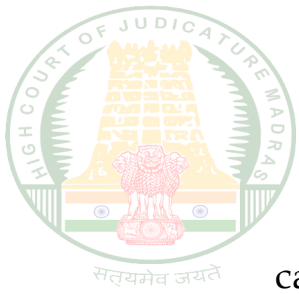
"9. While considering the rival submissions, we must at the outset advert to the manner in which the learned Single Judge of the High Court has dealt with the application for suspension of sentence under Section 389(1) of CrPC. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the NDPS Act. The findings of the learned Special Judge which have been arrived at after a trial on the basis of evidence which has been adduced indicate that the respondent who was a proprietor of a courier agency was complicit with a foreign national in the booking of two parcels which were found to contain 325 grams of heroin and 390 grams of pseudoephedrine. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also



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for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail". 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 (2020) 8 SCC 645 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



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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."

"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 Rajesh (2020) 12 SCC 122*. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS 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



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established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside."

8. Admittedly, this is not a pre-trial bail application. As each case has its own facts on the grounds taken for appeal, this Court was convinced to admit the appeal, after being satisfied that there are prima facie grounds and arguable points to hear the appeal. Considering the fact that the petitioner/appellant is said to have been undergone incarceration for more than a year and there is no possibility to take up the appeal immediately, I feel it is appropriate to suspend the sentence of imprisonment alone on conditions.

9. 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:

1. that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Sessions Judge, EC and NDPS Act Cases, Madurai;
2. that the petitioner shall appear before the trial Court on all working days at 10.30a.m., till the disposal of the appeal.



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10. Accordingly, this Criminal Miscellaneous Petition is allowed.

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

PNM

TO

1.The Principal Sessions Judge, EC and NDPS Act Cases, Madurai;

2.The Superintendent,  
Central Prison, Madurai

3. The Inspector of Police,  
Keerathurai Police Station,  
Madurai District. Crime No.413 of 2021.

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

+2 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate ( SR-8659[I] dated  
11/08/2025 )



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PR/12.08.2025 10P/7C

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