



WEB COPY



CRL MP(MD) No.8864 of 2025
in Crl.A.(MD)No.1152 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.10.2025

Delivered on : 07.11.2025

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) No.8864 of 2025
in
CRL A(MD) No.1152 of 2024

K.Shanmugam

: Petitioner

Vs

State of Tamil Nadu rep by
The Inspector of Police,
NIB CID,Dindigul Police Station,
Dindigul District.
Crime No.5 of 2022.

: Respondent

Prayer in CRL MP(MD)No. 8864 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 learned Principal Special Judge for EC & NDPS Act cases, Madurai, in C.C.No.934 of 2022, dated 13.09.2024, pending disposal of the above said criminal appeal.

Prayer in CRL A(MD) No.1152 of 2024 : 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.934 of 2022, dated 13.09.2024 on the file of the learned Principal Special Judge for EC & NDPS Act cases, Madurai, and set aside the same.



WEB COPY



CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024

For Petitioner : Mr.S.Ilamuhil,

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 learned Principal Special Judge for EC & NDPS Act cases, Madurai, in C.C.No.934 of 2022, dated 13.09.2024, till the disposal of the appeal.

2.The case of the prosecution is that on 29.03.2022 at about 23.30 hours, the Inspector of Police attached to the respondent police received a secret information and after getting permission from the higher officials, went to Kakathoppu along with his team and Village Administrative Officer Murugesan; that their informant identified the vehicle bearing Registration No.TN-52-Q-1587, 12 wheel Ashok leyland lorry; that they found two persons including the petitioner/third accused along with the first accused and on search, they found 8 sacks, each containing 25 kgs of ganja and another sack containing 15 kgs ganja, total weighing 215 kgs; that the first accused gave a voluntary confession and on that basis, the accused 2 and 4 were added and FIR came to be registered in



*CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024*

Crime No.5 of 2022 against the four accused persons including the petitioner for the offence under Sections 8(c) r/w 20(b)(ii) (C) 25 of NDPS Act.

3. It is the further case of the prosecution that the second accused was arrested and on the basis of the confession taken from him, fifth accused was added and after completing the investigation final report came to be filed and the same was taken on file in C.C.No.934 of 2022 and the same was pending on the file of the Principal Special Court for EC & NDPS Act cases, Madurai.

4. During trial, the prosecution examined 3 witnesses as P.W.1 to P.W.3 and exhibited 24 documents as Ex.P.1 to Ex.P.24 and marked 27 material objects as M.O.1 to M.O.27. Whereas, the accused had adduced neither oral nor documentary evidence.

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 13.09.2024 convicting the accused 1 and 3 for the offence under Section 8(c) r/w 20(b)(ii)(C) 25 and 29(1) of NDPS Act and sentenced them to undergo ten years rigorous imprisonment and to pay a fine of



*CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024*

Rs.1 lakh, each in default, to undergo six months simple imprisonment and the second accused was acquitted from the charges. The case as against the accused 4 and 5 were ordered to be split up and the same was pending on the file of the said Court. Aggrieved by the impugned judgment of conviction and sentence, the petitioner/ 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 no contraband was recovered from the petitioner; that there are no incriminating materials both in the First Information Report as well as in the evidence of the prosecution as against the petitioner with regard to his active role in possession of contraband; that Ex.P.1 to Ex.P.12 does not bear the seal of the Village Administrative Officer, who was present during the search, seizure and arrest of the petitioner/A3 and hence, the prosecution did not chose to examine the said Village Administrative Officer, which has been brushed by the trial Court without assigning any reason; that the trial Court has committed a grave error in holding that the prosecuting has proved the conscious possession of contraband as contemplated under Section 54 of NDPS Act and it is for the petitioner/3rd accused to rebut the said presumption; that the learned Magistrate at the time of



*CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024*

remand has recorded that the material object was not produced and there was no explanation by the prosecution in the final report or in the evidence of the prosecution witnesses; that the petitioner has denied the evidence given against him during the questioning under Section 313 of Cr.P.C.; that he was travelling along with the first accused, who is the owner of the vehicle, as cleaner/acting driver and that he was not aware of the materials in the vehicle.

7. The learned Counsel appearing for the petitioner would further submit that he has been in incarceration for the period of 1120 days; that he is an innocent and is in noway connected with the alleged occurrence and that therefore, he may be granted the relief of suspension of sentence.

8. The respondent filed a counter affidavit raising objections. The learned Government Advocate (Criminal Side) appearing for the State would submit that the petitioner was very much available in the vehicle at the time of seizing the contraband of 215 kg of ganja; that the petitioner was found in the seat adjacent to the driver and hence, the trial Court has rightly come to a finding that the prosecution has proved the conscious possession of contraband; that the petitioner has failed to rebut the presumption and that the other points or aspects



CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024

canvassed by no stretch of imagination can be taken as reasons or grounds for suspending the sentence and are to be considered only at the main appeal and that therefore, the present application is liable to be dismissed.

9. As rightly contended by the learned Government Advocate (Criminal Side), the learned trial Judge, considering the evidence available on record, has given a finding that search consent letter has already been prepared for the petitioner/accused as he was found nearby the driver seat; that P.W.1 has deposed that the petitioner's signature is available in Ex.P.8/Arrest Intimation and Ex.P.10/search letter and the petitioner has not denied the same and no explanation was put forth from his side.

10. 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-Judge Bench of this Court in *Preet Pal Singh v State of Uttar Pradesh*³ 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.”

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.”

11. It is the specific case of the prosecution that the contraband of 215 kg was recovered and that the third accused was very much available at the time of seizure of the said contraband.



*CRL MP(MD) No.8864 of 2024
in CrI.A.(MD)No.1152 of 2024*

WEB COPY

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

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

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

07.11.2025

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



WEB COPY



*CRL MP(MD) No.8864 of 2025
in Crl.A.(MD)No.1152 of 2024*

K.MURALI SHANKAR,J

das

To

- 1.The Principal Special Judge for EC & 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.

Pre-delivery order made in
CRL MP(MD) No.8864 of 2025
in
CRL A(MD) No.1152 of 2024

07.11.2025