



CRL MP(MD) NO. 602 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07-04-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) Nos. 602, 2422, 4697, 4693 of 2025 and 9761 of 2024
in

CRL A(MD) Nos. 44 of 2025, 714, 546, 1009, 769 of 2024

CRL MP(MD) NO. 602 of 2025

Ananthakumar

S/o Palsamy, Kammalapatti, Kalappanpatti Post, Peraiyur taluk, Madurai District.

Petitioner(s)

Vs

The state of Tamil Nadu

Rep by The Inspector of Police, Sedapatti Police station, Madurai District. Crime No.
123/2022

Respondent(s)

CRL MP(MD) NO. 2422 of 2025

Ananthan

S/o.Sethuraman, Kammalapatti Village, Peraiyur Taluk, Madurai District.

Petitioner(s)

Vs

The State of Tamilnadu

Respondent(s)

CRL MP(MD) NO. 4697 of 2025

R.Matsyarasa Devaraju

S/o.Rambabu

Jimadukulu,

Paderi,

Visagapattinam District.

Andhra Pradesh

At Present Confined in

Central Prison Madurai

As Convict Prisoner.

Petitioner(s)



CRL MP(MD) NO. 602 of 2025

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The State of Tamilnadu

Vs

Respondent(s)

CRL MP(MD) NO. 4693 of 2025

Sarepalavengatagiripabu
S/o. Vangatarao,
Kulapadu Village,
Gemmeli PO,
G.Madugula,
Visakhapatnam District.
Andhra Pradesh.
(Now confined as Convict Prisoner at Madurai Central Prison.)

Petitioner(s)

Vs

The State of Tamilnadu

Respondent(s)

CRL MP(MD) NO. 9761 of 2024

Pusaralaharish
S/o. Pusarala Vengataramana,
Janakipuram,
Nasipattnam,
Rogukunda Mandalam,
Visakhapatnam District.

Petitioner(s)

Vs

The State of Tamilnadu

Respondent(s)

CRL MP(MD) NO. 602 of 2025

For Petitioner(s):
S. Mandhiralingeswaran
Vikram.S



CRL MP(MD) NO. 602 of 2025

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

CRL MP(MD) NO. 2422 of 2025

For Petitioner(s):

Mr.V.Kathirvelu,
Senior Counsel
for M/s.K.Prabhu
Ravikumar.M
Kanagaraj.S

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

CRL MP(MD) NO. 4697 of 2025

For Petitioner(s):

M/s.Manimaran.Na.
Kavitha. K
Kanagaraj. S
Balaji. K

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

CRL MP(MD) NO. 4693 of 2025

For Petitioner(s):

M/s.R.Alagumani
S.Ramesh Kumar
B. Dhanasekaran
R.Manibharathi
S. Mohammed Yunnis Raja
Saha A.V.
M. Muthuselvam
Anand Raj. C
P. Ravindar



CRL MP(MD) NO. 602 of 2025

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

CRL MP(MD) NO. 9761 of 2024

For Petitioner(s):

M/s.S.G.L.Rishwanth
Manikandan. K
Veerapandi. B

For Respondent(s):

Mr.T.Senthil Kumar,
Additional Public Prosecutor

ORDER

The petitioners are accused nos.1, 2, 7, 8 & 10. They were tried along with other accused in CC.No.430 of 2023 before the Principal Special Court for EC and NDPS Act Cases, Madurai, for the offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1), 25 of the NDPS Act. In conclusion of the trial, the trial Court acquitted the accused nos.3 to 6. For accused nos.11 to 14, the trial was split up and the same is still pending. The remaining accused were convicted. Among the convicted accused, excepting the ninth accused, all others have filed the present applications to suspend the sentence imposed on them by the trial Court.

2.Mr.V.Kathirvelu, learned Senior Counsel appearing for the first accused submitted that the main accused [A5] was acquitted. The contraband which was recovered was produced with much delay and that has been taken as a ground by the



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trial Court to acquit the accused nos.3 to 6. Therefore, this benefit of doubt extended to the accused nos.3 to 6 ought to have been extended to the first accused, however, he was convicted by the trial Court erroneously.

3.By referring the evidence of PW1, learned Senior Counsel submitted that there were five accused in the place of occurrence and out of the five, three persons have absconded. But the prosecution case is otherwise that there were only three accused and one has absconded. Therefore, it creates a doubt with regard to the arrest and recovery from this petitioner. He has also relied on the evidence of DW1, the Panchayat Secretary and submitted that the place of occurrence has been disputed by the Panchayat Secretary and therefore, the prosecution has not proved the place, from where the contraband was recovered. Therefore, he prayed for appropriate orders.

4.The respective learned Counsel appearing for the other petitioners have adopted the arguments of the learned Senior Counsel.

5.Apart from that, the learned Counsel appearing for the second accused submitted that there is no recovery from the second accused and there is no independent witness for the recovery as well.

6.Learned Counsel appearing for the seventh accused submitted that he was arrested as he was found in the Innova Car where the contraband has been recovered. He was not the owner of the car. In fact, the owner of the car was not identified.



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Neither he was examined as a witness nor added as an accused.

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7.Learned Counsel appearing for the eighth accused submitted that the eighth accused was arrested on 15.10.2022, but he was produced before the Court only on 20.10.2022. According to him, the contraband was produced with much delay and the mandatory provision under Section 57 of the NDPS Act was not complied with. He has also pointed out that PW4 / Inspector of Police stated that she left for Andhra Pradesh on 10.10.2022 in the early morning. However, the special team itself has been constituted only based on the confession statement of the third accused, who was arrested on 10.10.2022 at about 02.00 PM. When the special team itself was formed after the arrest of the third accused, the possibility of PW4 proceeding to Andhra Pradesh, as the Special Team, itself creates a doubt with regard to the manner in which the case has been registered and the accused has been arrested.

8.Learned Counsel appearing for the tenth accused submitted that the police team went to the Andhra Pradesh only for the purpose of securing the fifth accused. The third accused gave a statement that this contraband has been procured only from the fifth accused and therefore, a special team was formed to secure the fifth accused. The fifth accused was also secured on 13.10.2022. Therefore, the purpose for which the special team was constituted has been achieved on 13.10.2022 itself with the arrest of the fifth accused, while so, there is no reason for the special team to stay back at



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Andhra Pradesh and arrest the remaining accused on 15.10.2022. This version of the
WEB COPY prosecution is highly doubtful. He further submitted that the mandatory provision under Section 50 of the NDPS Act not followed. There was no translator and the tenth accused was not produced before the Court at Andhra Pradesh and was produced before the Court only on 20.10.2022.

9.Learned Additional Public Prosecutor appearing for the State submitted that the accused nos.1 & 2 were arrested along with the contraband on 07.10.2022. There are totally 14 accused in this case. The accused have operated from Andhra Pradesh. The third accused / father of the first accused, who was also found along with the accused nos.1 & 2, absconded on seeing the police party on 07.10.2022. Therefore, a special team was formed and he was secured on 10.10.2022. They also got some information from the confession statement of the first accused and the confession statement of the third accused with regard to the manner in which the contraband has been procured from Andhra Pradesh. Therefore, they proceeded to Andhra Pradesh. They secured the fifth accused on 13.05.2022. Some of the police team have remained at Andhra Pradesh to find out the other accused and they secured the other accused on 15.10.2022.

10.According to the learned Additional Public Prosecutor, a protest was made by the Andhra Pradesh Police that the contraband along with the accused have to be



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left with them. That was objected by the Tamil Nadu Police and after getting permission from the higher officials, the accused were taken from Andhra Pradesh along with the contraband to Tamil Nadu and they were remanded before the concerned Court only on 20.10.2022. Though there is a delay in producing the accused and the contraband before the concerned Court, this delay is due to the transit and the difficulties which were caused by the Andhra Pradesh Police. These factors have also been considered by the trial Court and the trial Court has rendered its judgment.

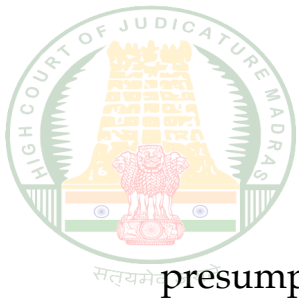
11.He further submitted that the appreciation of evidence cannot be considered at the time of considering the application for suspension of sentence. In this regard, he has relied upon the following judgments:-

i) Omprakash Sahni v. Jai Shankar Chaudhary and Another [(2023) 6 SCC 123] -

“33. ... The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

ii) Preet Pal Singh v. State of Uttar Pradesh and Another [(2020) 8 SCC 645] -

“35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be



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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.* 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) CrPC.

12.Learned Additional Public Prosecutor has also relied on the decision of the Hon'ble Supreme Court in *Hardip Singh v. State of Punjab* [(2008) 8 SCC 557] and submitted even a delay of 40 days in producing the samples, which were recovered from the accused, to the Forensic Department was condoned, inasmuch as the sample was intact with seal. The delay in producing the contraband alone cannot be a ground



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for acquittal or for suspending the sentence.

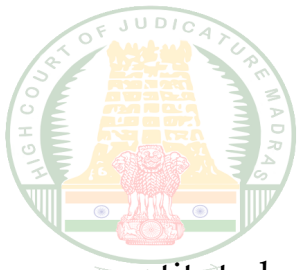
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Therefore, he prayed for dismissal.

13.This Court considered the rival submissions made on either side and also perused the materials placed on record.

14.Totally there are 14 accused in this case. The accused nos.11 to 14 are yet to be arrested and therefore, the trial as against those accused is still pending. The trial was proceeded as against the accused nos.1 to 10. Among these accused, the accused nos.3 to 6 were acquitted. The fifth accused was projected as the main accused in this case, who supplied the contraband from Andhra Pradesh. However, the fifth accused was permitted to surrender, warrant has been recalled and trial was concluded within three months and he was acquitted. Learned Additional Public Prosecutor submitted that the State is intending to file an appeal as against the acquittal of the fifth accused.

15.This Court has to view the case in totality with the circumstances in which the case has been registered. The accused nos.1 & 2 were arrested on 07.10.2022. The respondent Police has recovered 24 kgs of ganja from the first accused and arrested the third accused, who is said to have fled from the occurrence place, on 10.10.2022. The information collected by the investigation agency revealed that the contraband has been supplied from Andhra Pradesh and therefore, a special team was



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constituted. This special team went to Andhra Pradesh and they have also successfully nabbed the accused from Andhra Pradesh and also recovered 60 more kgs of ganja from Andhra Pradesh and two vehicles have also been recovered.

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16.Learned Additional Public Prosecutor has pointed out that there were some objections from the Andhra Pradesh Police and that the Andhra Pradesh Police have insisted that the contraband, along with the accused, have to be left with them. However, with much difficulty, they have brought the accused to Tamil Nadu and remanded the accused along with the contraband before the Court at Tamil Nadu. Therefore, according to him, there is some delay in producing the contraband and the accused before the Court. Though there is no evidence to the effect, this Court has to consider that the remaining contraband was recovered from Andhra Pradesh.

17.Probably, for the first time, the State Police went to Andhra Pradesh, found the source point and also recovered the contraband from there. Day in and day out, this Court is witnessing several cases, where it is claimed that the contraband has been supplied from Andhra Pradesh. However, this issue has not been properly attended to by the Department. Neither the local police, who are registering the case, nor the NIB CID are taking any steps to find out the source point from where the contraband has been supplied. In this case, they have taken some initiative by forming a special team and also recovered the contraband from Andhra Pradesh.



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18. The accused nos. 3 to 6 were acquitted by the trial Court. Admittedly, there is no recovery from them. In any event, learned Additional Public Prosecutor now submitted that they are intending to file an appeal as against the order acquitting the fifth accused. In this background of the case and also considering the quantity of ganja involved in this case, this Court is not inclined to suspend the sentence. Moreover, the grounds raised by these petitioners can be considered only at the time of final hearing.

Accordingly, all these criminal miscellaneous petitions stand dismissed. It is seen that the typed set of papers are made ready. Therefore, Registry is to list these appeal for final hearing in the third week of June, 2025.

sd/-
07/04/2025

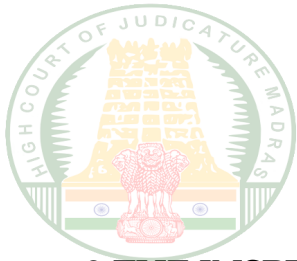
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/06/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GK
TO

1 THE PRINCIPAL SPECIAL COURT
FOR EC AND NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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3 THE INSPECTOR OF POLICE,
SEDAPATTI POLICE STATION,
MADURAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL MP(MD) Nos. 602, 2422, 4697, 4693 of 2025 and 9761 of
2024
in CRL A(MD) Nos. 44 of 2025, 714, 546, 1009, 769 of 2024
Date :07/04/2025

SA/SAR. /12.06.2025/13P/5C

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