



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.2262 of 2026

in

Crl.A.No.152 of 2026

K.Selvakumar
S/o. Kumarappa
No.14-B, Wardarpet,
Vallapalayam Main Road,
Tiruppur District.
(Presently confined at
Central Prison, Coimbatore)

... Petitioner

Vs.

The State Represented by
The Senior Intelligence Office,
Directorate of Revenue Intelligence,
Regional Unit, Coimbatore.
(in F.No.VII/48/02/2009-DRI, Regional Unit,
Coimbatore)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS, 2023 praying to suspend the sentence imposed on the petitioner / appellant / accused No.1 by the judgment of the Hon'ble Additional District Judge / Special Court under EC Act /NDPS Act Cases at Coimbatore C.C.No.28 of 2012 dated 30.09.2025, pending disposal of the

1 / 8



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

above Criminal Appeal.

For Petitioner : Mr.T.Sai Krishnan
for Mr.K.Madhu
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by judgment dated 30.09.2025 passed in C.C.No.28 of 2012, by the learned Additional District Judge / Special Court under EC Act / NDPS Act Cases at Coimbatore, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2. The petitioner arrayed as A1 before the trial Court were convicted by the learned Additional District Judge / Presiding Officer, Special Court for EC and NDPS cases for the offences under Section 9A(2) r/w. 25A and 8(c) r/w. 29(1) of NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- in default, to undergo rigorous imprisonment for a period of one year each, for the offence under Section 9A(2) r/w. 25A and he is convicted and sentenced to undergo rigorous



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- in default, to undergo rigorous imprisonment for a period of one year, for the offence under Section 8(c) r/w. 29(1) of NDPS Act, 1985.

3. The gist of the prosecution case is that on 23.11.2009 on specific information from the Revenue Intelligence Department that 100 kgs of Ephedrine, a drug covered under the NDPS Act was concealed in the house of one K.Selvakumar (A1) in Labour Colony at Tiruppur, the officers of the respondents proceeded to search the house of A1. During the search they found some polythene bags with white coloured powdery substance packed in seven polythene bags believed to be Ephedrine, a controlled substance under the NDPS Act. Thereafter, the respondents conducted investigation and filed a complaint before the Court of the Essential Commodities and Special Judge for NDPS Act, Coimbatore.

4. Mr.T. Sai Krishnan, the learned counsel for the petitioner, would submit that the impugned prosecution cannot be sustained; that the recovery has not been proved; that there are several contradictions in the evidence of P.W.1 and P.W.2 as regards to the alleged seizure said to have been made from the house of the petitioner; that since the contraband that was seized from the



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

petitioner is a control substance, the rigours of Section 37 of the NDPS Act would not be applicable; that the sentence imposed on co-accused A2 and A3 has been suspended by this Court by the order dated 16.12.2025 in Crl.M.P.Nos.19480 & 21080 of 2025 in Crl.A.Nos.1608 and 1730 of 2025 and prayed for suspension of sentence.

5. Mr.N.P.Kumar, the learned Special Public Prosecutor, filed his counter affidavit and vehemently opposed to the grant of suspension of sentence and would submit that the rigours of Section 37 of NDPS Act would be applicable and that the trial Court has rightly rendered the finding of guilt and the power to suspend the sentence of the petitioner is restricted in view of Section 32 A of the NDPS Act; that there is no infirmity in the finding of guilt by the trial Court and prayed for dismissal of the appeal.

6. This Court had suspended the sentence imposed on A2 and A3. While suspending the sentence, this Court has made the following observations:

“ ..7.This Court had perused the impugned judgment and the evidence of DW1. It is the specific case of DW1 that he was compelled to make such statement and infact, the prosecution had also cross examined DW1 and suggested to him that his deposition is contrary to his statement made to the respondent that it was the petitioners, who



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

had handed over the controlled substance to him. Though DW1 had marked the statements said to have been given in another case in S.C.No.284/2010, in which he was an accused, this Court is of the view that the said statement is inadmissible as it was made under Section 67 of the NDPS Act. If DW1 had stated in his deposition that the petitioners had handed over the substance, then that possibly could have been taken into consideration. On the other hand, DW1 had confirmed that he was forced to make a statement that the petitioners handed over the controlled substance. Therefore, prima facie this court is of the view that the evidence of DW1 cannot come to the aid of the prosecution. Apart from that, admittedly, there is no other evidence except for the statements made under Section 67 of the NDPS Act. Therefore, this court is of the view that petitioners have made out a prima facie case for suspension of sentence.

8.Section 32A insofar as it restricts the power of the Appellate Court to suspend the sentence has been held to be unconstitutional by the Hon'ble Supreme Court. However, the Hon'ble Supreme Court held that suspension of sentence would be subject to the restrictions under Section 37 of NDPS Act. As observed earlier in the facts of the instant case, the petitioners have satisfied the twin conditions under Section 37 of the Act. In any case, since the substance that was seized from the co-accused is only a controlled substance, the rigours of Section 37 of NDPS Act also would not be applicable. Hence for all these reasons, this court is inclined to suspend the sentence imposed on the petitioners."



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

7. That apart, it is seen that the petitioner has raised several grounds in the above appeal and as pointed out there are several infirmities in the evidence of P.W.1 and P.W.2. The appeal is not likely to be taken up in the near future. Considering the above facts, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above criminal appeal and the petitioner is ordered to be released on bail on the following conditions:

- (i)The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only), with two sureties, each for a like sum to the satisfaction of the Additional District Judge / Special Court under EC Act / NDPS Act Cases at Coimbatore;
- (ii)The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii)The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on



Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

18.02.2026

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To

1. The Additional District Judge / Special Court under EC Act / NDPS Act Cases at Coimbatore

2.The Senior Intelligence Office,
Directorate of Revenue Intelligence,
Regional Unit, Coimbatore.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.



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Crl.M.P.No.2262 of 2026
in Crl.A.No.152 of 2026

SUNDER MOHAN, J.

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Crl.M.P.No.2262 of 2026
in
Crl.A.No.152 of 2026

18.02.2026