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Crl.M.P.Nos.2838, 3608, 3741 & 3810 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.Nos.2838, 3608, 3741 & 3810 of 2026
in Crl.A.Nos.192, 224, 234 & 239 of 2026

Muneer Kattilpuram	... Petitioner in Crl.M.P.No.2838 of 2026
A.Basil Zaman	... Petitioner in Crl.M.P.No.3608 of 2026
B.Shahbas	... Petitioner in Crl.M.P.No.3741 of 2026
B.Siyad	... Petitioner in Crl.M.P.No.3810 of 2026

Vs.

The State represented by,
The Inspector of Police,
Masinagudi Police Station,
The Nilgiris.

(Crime No.164 of 2023) ... Respondent in all Crl.M.Ps.

Common Prayer: Criminal Miscellaneous Petitions are filed under Section 430(2) of the Bharatiya Nagarik Suraksha Sanhita, to suspend the sentence imposed on the petitioners vide judgment dated 06.02.2026 in C.C.No.17 of 2024 by the Additional District Judge, Special Court under EC and NDPS Act Cases, Coimbatore and enlarge the petitioners on bail pending disposal of the criminal appeal.

In Crl.M.P.No.2838 of 2026,

For Petitioner/A1	: Mr.R.Vivekananthan
For Respondent	: Ms.J.R.Archana Government Advocate (Criminal Side)



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In Crl.M.P.No.3608 of 2026,

For Petitioner/A2 : Mr.M.Dinesh
for Mr.NA.Manimaran
For Respondent : Ms.J.R.Archana
Government Advocate (Criminal Side)

In Crl.M.P.No.3741 of 2026,

For Petitioner/A4 : Mr.M.Dinesh
for Mr.K.Sakthivel
For Respondent : Ms.J.R.Archana
Government Advocate (Criminal Side)

In Crl.M.P.No.3810 of 2026,

For Petitioner/A3 : Mr.M.Dinesh
For Respondent : Ms.J.R.Archana
Government Advocate (Criminal Side)

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed seeking suspension of sentence of imprisonment, imposed by the learned Additional District Judge, Special Court under EC and NDPS Act Cases, Coimbatore, in C.C.No.17 of 2024, vide judgment dated 06.02.2026.

2. The case of the prosecution is as follows:-

2.1. On 26.10.2023, when the respondent police was on routine vehicle check up duty at Kakkanallah Check Post along with the Revenue and Forest Department Officials, at about 08.30 p.m., they had



seen the accused persons coming from the State of Karnataka in a White colored Ford Eco Sport car bearing registration No.KL 1 AY 2200, which belongs to A3.

2.2. The respondent police intercepted them, enquired and explained them about the statutory right under the NDPS Act with the assistance of Mr.Suresh Kumar, Special Sub-Inspector of Police, who knows Malayalam. After obtaining consent letter for search from the accused individually, the respondent police conducted a search. During such time, the respondent police found that the first accused was in illegal possession of 120 grams of MDMA in his pant pocket.

2.3. The contraband was seized from A1 by the respondent police under seizure mahazar in the presence of the Village Administrative Officer, Harisha and Village Assistant, Chandrika.

2.4. Thereafter, voluntary confession statements were recorded from the accused and the car of A3 was also seized.

2.5. After returning to the respondent police station, the respondent police, registered a case in Crime No.164 of 2023 for the offences under Sections 8(c) r/w 22(C), 25 and 29(1) of the NDPS Act, against the accused on the same day.

2.6. On 27.10.2023, the accused were produced before the learned Judicial Magistrate, Gudalur and remanded to judicial custody.



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2.7. Subsequently, the investigating officer produced the seized contraband before the I Additional Special Court for Exclusive trial of NDPS Act Cases, Coimbatore vide PR.No.492 of 2023 dated 10.11.2023. Thereafter, through proper channel, the sample contraband was sent to the Forensic Lab at Coimbatore for chemical analysis. The report was obtained on 02.01.2024 vide NAR No.1729/2023.

2.8. After completion of the investigation, the investigating officer filed a charge sheet before the I Additional Special Court for Exclusive trial of NDPS Act Cases, Coimbatore and the same was taken on file as C.C.No.17 of 2024.

2.9. On issuance of summons, the accused appeared before the Court on 26.06.2024 and in compliance of Section 207 of Cr.P.C., copies of relied upon documents were furnished to them.

2.10. After hearing the counsel on both sides, charges were framed against the accused. During initial questioning in respect of the incriminating materials, the accused denied the charges and sought trial.

2.11. On the side of the prosecution, PW1 to PW7 were examined and Ex.P1 to Ex.P17 and M.O.1 & M.O.2 were marked. On the side of the defence, no witnesses were examined and Ex.D1 was marked through PW1.



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2.12. The trial Court, after hearing the arguments on

both sides and upon consideration of the entire materials on record, found the accused guilty of the offences charged and convicted and sentenced them vide judgment dated 06.02.2026 as follows:-

<i>Accused</i>	<i>Under Section</i>	<i>Sentence</i>
A1, A2 & A4	8(c) r/w 22(C) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act	twelve years rigorous imprisonment and fine of Rs.1,00,000/-, in default, to undergo one year rigorous imprisonment each.
A3	8(c) r/w 22(C) and 29(1) and 25 of the Narcotic Drugs and Psychotropic Substances Act	twelve years rigorous imprisonment and fine of Rs.1,00,000/-, in default, to undergo one year rigorous imprisonment each.
The sentences were ordered to run concurrently.		

3. The submissions of Mr.R.Vivekananthan, learned counsel appearing for the petitioner/appellant (A1) in Crl.M.P.No.2838 of 2026 in Crl.A.No.192 of 2026 are as follows:-

3.1. The trial Court failed to take into consideration the non-compliance of Sections 42(2), 50 and 57 of the NDPS Act.

3.2. A careful reading of Ex.P1, consent letter for search of A1, would clearly prove that there is no substantial compliance of Section 50 of the NDPS Act as mandated under the Act and upheld by the Hon'ble Apex Court.



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3.3. The trial Court failed to take note of the discrepancies and contradictions in the evidence of PW1, Inspector of Police, who had arrested the accused and registered the case, and the evidence of PW6, Deputy Superintendent of Police, who conducted the investigation.

3.4. In such circumstances, there is every possibility of the appeal being allowed. Further, there are arguable points available in the Criminal Appeal, which is unlikely to be taken up for final hearing in the near future and the petitioner/appellant (A1) has a fair chance of succeeding in the appeal.

3.5. The petitioner/appellant (A1) has been suffering incarceration in the Central Prison, Coimbatore, from the date of arrest i.e., on 27.10.2023.

3.6. Hence, the sentence imposed on the petitioner/appellant (A1) may be suspended and he may be enlarged on bail.

4. In support of his contention, the learned counsel appearing for the petitioner/appellant (A1) in Crl.M.P.No.2838 of 2026, relied on the judgment of the Hon'ble Apex Court in *State of Himachal Pradesh vs. Surat Singh* reported in 2026 SCC OnLine SC 376.



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5. Mr.M.Dinesh, the learned counsel, appearing for the petitioners/appellants (A2 to A4) in Crl.M.P.Nos. 3608, 3741 & 3810 of 2026 in Crl.A.Nos.224, 234 & 239 of 2026, while concurring with the submissions made by the learned counsel in Crl.M.P.No.2838 of 2026, submitted that the alleged recovery is said to have been made from the pant pocket of the first accused alone and that other than traveling along with A1 in car, the petitioners/appellants (A2 to A4) were not aware of the possession of the contraband. He further submitted that there is a violation of Section 50 of the NDPS Act and consequently, the entire search and the arrest are vitiated, rendering the prosecution unreliable. Accordingly, the petitioners/appellants (A2 to A4) are entitled to an acquittal. He also submitted that A2 has been suffering incarceration in the Central Prison, Coimbatore, from the date of arrest i.e., on 27.10.2023 and the others have been in custody from 06.02.2026. Hence, he prayed that the sentence imposed on the petitioners/appellants (A2 to A4) may be suspended and they may be enlarged on bail.

6. The relevant paragraphs from the *State of Himachal Pradesh vs. Surat Singh, supra*, regarding compliance of the provisions of Section 50 of the NDPS Act are as follows:-



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“17. The High Court vide its judgment dated 08.10.2015 acquitted the respondent-accused while observing as under:

17. “The accused was apprehended on 13.03.2013 while carrying a bag. However, despite that his personal search was carried out. The police has given option to the accused either to be personally searched before the Magistrate or the Gazetted Police Officer. The accused was also given option whether he wanted to be searched by the I.O. in the presence of witnesses mentioned in Ext. PW-1/A. According to Section 50 of the ND & PS Act, the accused has to be apprised of his legal right to be searched either before the Magistrate or the Gazetted Officer. There is no third option to be searched before the Police Officer. Thus, the consent obtained from the accused was not in conformity with Section 50 of the Act. It has vitiated the entire trial.

18. Their lordships of the Hon'ble Supreme Court in the case of Suresh v. State of Madhya Pradesh, (2013) 1 SCC 550 : (2013) 1 SCC (Cri) 541, have held that in a case where the accused were merely asked whether they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer concerned, it will amount to non-compliance of Section 50(1) of the ND & PS Act. Their lordships have held as follows:

“16) The above Panchnama indicates that the appellants were merely asked to give their consent for search by the police party and not apprised of their legal right provided under Section 50 of the NDPS Act to refuse/to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a gazetted officer or a Magistrate but consent was sought for their personal search.



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Merely asking them as to whether they would offer their personal search to him, i.e. the police officer or to gazetted officer may not satisfy the protection afforded under Section 50 of the NDPS Act as interpreted in Baldev singh's case.

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in Baldev Singh's case, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but “failure to inform” the person concerned of his right as emanating from sub-section (1) of Section 50 may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law. In Vijaysinh Chan Jadeja's case (supra), recently the Constitution Bench has explained the mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance. The Bench also held that failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. The concept of substantial compliance as noted in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) were not acceptable by the Constitution Bench in Vijaysinh Chandubha Jadeja, accordingly, in view of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable in law.”

19. In the instant case the accused was to be apprised of his legal right to be searched either before the Gazetted Officer or before the Magistrate and not before the Police Officer.



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20. *Their lordships of the Hon'ble Supreme Court in case of State of Rajasthan v. Parmanand, (2014) 5 SCC 345 : (2014) 2 SCC (Cri) 563, have held that if merely a bag is carried by person is searched without there being any search of his person, S. 50 will have no application but if bag carried by him is searched and his person is also searched, S. 50 would be attracted. Their lordships have also held that it was improper for PW-10 S.I. "Q" to tell respondents that a third alternative was available. It has been held as follows:*

15. *"Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No. 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No. 2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."*

7. Learned Government Advocate (Criminal Side) appearing for the respondent opposed for grant of suspension of sentence stating that while the respondent police and his team were on their routine vehicle check up, they found that the petitioners/appellants were in illegal possession of 120 grams of MDMA, which is a commercial quantity. She further submitted that after the seizure, the accused were arrested and brought to the police station and upon registration of the case, they were taken to the learned Judicial Magistrate, Gudalur, where samples from the



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contraband were taken and thereafter, the contraband was sent to the Special Court. She also submitted that the trial Court, after taking into consideration the oral and documentary evidence produced by the prosecution, rightly found the petitioners/appellants guilty and convicted and sentenced them, as stated above.

8. Heard the learned counsel for the petitioners/appellants and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials on record including Ex.P1, consent letter for search of A1.

9. Considering the facts and circumstances of the case and also the submissions made by the learned counsel on either side and taking note of the period of incarceration undergone by the petitioners/appellants, this Court is of the view that the petitioners/appellants have made out a *prima facie* case for the grant of suspension of sentence. Therefore, the sentence of imprisonment can be suspended and the petitioners/appellants can be granted bail on certain conditions. Accordingly, pending disposal of the appeals, the substantive sentence of imprisonment alone is suspended and the petitioners/appellants are enlarged on bail, subject to the following conditions:-



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“(i) The petitioners/appellants shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, with two sureties (out of which one shall be a blood relative), each for a like sum to the satisfaction of the learned Additional District Judge, Special Court under EC and NDPS Act Cases, Coimbatore;

(ii) The petitioners/appellants shall also appear before the trial Court on the first working day of every English calendar month at 10.30 a.m., until further orders;

10. Accordingly, these Criminal Miscellaneous Petitions stand ordered.

16.04.2026

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To

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1. The Additional District Judge,
Special Court under EC and NDPS Act Cases,
Coimbatore.
2. The Inspector of Police,
Masinagudi Police Station,
The Nilgiris District.
3. The Superintendent,
Central Prison,
Coimbatore
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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in Crl.A.Nos.192, 224, 234 & 239 of 2026***

16.04.2026