



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2026

CORAM

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

CRL MP No. 6631 of 2026

in

CRL A No. 1380 of 2025

Bijaya Kumar Nayak,
S/o.Pratap Nayak,
Bhagibindha, Saradpur,
Bhadrak, Odisha State.

..Petitioner(s)

Vs

The State rep by, The Inspector of Police,
Katpadi Railway Police Station,
Vellore District.
Cr.No.113 of 2022.

..Respondent(s)

PRAYER:This petition has been filed under Sections 389 of Cr.P.C. and 430(1) of BNSS, seeking to suspend the sentence imposed in Spl.C.C.No.69 of 2023 dated 27.01.2025 on the file of the Additional District Judge and Presiding Officer, Special Court under NDPS & EC Act, Salem and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner(s): Mr.T.Balaji

For Respondent(s): Ms.J.R.Archana, GA(Crl.Side)

**ORDER**

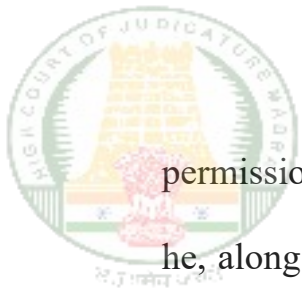
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This petition has been filed seeking to suspend the sentence imposed on the petitioner in Spl.CC.No.69 of 2023 dated 27.01.2025 on the file of the Additional District Judge and Presiding Officer, Special Court under NDPS & EC Act, Salem pending disposal of the Criminal Appeal and release the petitioner/accused on bail.

2.The petitioner/accused in Spl.CC.No.69 of 2023 was convicted and sentenced by the trial Court by its judgment dated 27.01.2025, for the following offence:

<i>Under Section</i>	<i>Sentence</i>
8(c) r/w.20(b)(ii)(C) of NDPS Act	Fifteen years rigorous imprisonment and fine of Rs.1,50,000/-, in default, to undergo six months simple imprisonment.

3. The case of the prosecution is that on 08.10.2022, when Mr.Murali Manokaran, Special Sub-Inspector of Police, Railway Police Station, Katpadi was on duty at the said Railway Police Station, at about 2.40 a.m., he received secret information that a person was taking ganja chocolate and gutka tobacco near the toilet of the public compartment in front of the Howrah to Bangalore Train No.12683. Acting on the said information, at 2.45 a.m., after getting



permission from the Inspector of Police in the said police station over phone, he, along with his team, viz., Constables Sathyamurthy and Dhanapal, went to Katpadi Railway Station (platform No.4), where they found that one person namely Bijayakumar Nayak was carrying 5 white sack bags and 1 yellow sack bag; one white bag contained CHARMINAR GOLD MUNAKKA ganja chocolate weighing 40 kg, and another 4 white sacks bags contained 296 packets named as FEEL THE REAL TASTE weighing of 119 kgs TOBACCO and another yellow sack bag contained 99 packets named as REAL TASTE I REAL FLAVOR MAYUR GUNDI MIX weighing of 36 kg TOBACCO and he was attempting to sell the same without valid permission or license of the Government for drug trade. Thereafter, a case was registered at Katpadi Railway Police Station in Cr.No.113 of 2022, U/s.6 (C) r/w.20(b) (ii) (C), of the NDPS Act and 6, 24 (1) COTPA, 2003 and 328 IPC against the accused. Thereafter, the Inspector of Police conducted further investigation and laid final report before the Additional District Judge and Presiding Officer, Special Court Under NDPS & EC Act, Salem which was taken on file as Spl.C.C.No.69 of 2023.

4. On the side of the prosecution, 5 witnesses were examined and 10 exhibits and 3 MOs were marked. On the side of the accused, no witness was examined and no document was marked.



5. The learned Trial Judge, on consideration of both oral and documentary evidence available on record, vide judgment dated 27.01.2025, convicted and sentenced the petitioner/accused as stated above.

6. The learned counsel for the petitioner/accused would submit that the entire case of the prosecution is doubtful. Though the alleged contraband is said to be recovered on 08.10.2022 and produced before the Judicial Magistrate Court on the same day of recovery of the contraband, the same were kept in the police station and thereafter, they were produced before the Special Court only on 01.12.2022. No explanation has been offered by the prosecution for the said delay in producing the contraband before the Special Court. He would further submit that no evidence has been let in by the prosecution to prove that there was no tampering with the contraband. He would further submit that this aspect assumes significance particularly when all the witnesses are police officials and no independent witness has been examined and as such, there is every chance of tampering with the contraband. He would further submit that there is violation of procedures contemplated under the Standing Order No.1/89 and also Section 52A of the NDPS Act, thereby shaking the very foundation of the prosecution case. In cases of such non-compliance, a duty is cast upon the prosecution to satisfy the Court that the same does not affect its case against the accused.



7. The learned counsel for the petitioner/accused would further submit that there are arguable points in the criminal appeal, which is unlikely to be taken up for final hearing in the near future and the petitioner/accused has a fair chance of succeeding in the appeal and hence, he would urge that the sentence imposed on the petitioner/ accused may be suspended and the petitioner/accused may be enlarged on bail, subject to payment of 50% of the fine amount.

8. The learned counsel would further submit that the petitioner hails from Orissa and has been in custody from the date of his arrest and he would also seek for waiver of payment of fine and also bail and suspension of sentence. In support of his contention, the learned counsel for the petitioner would rely on the judgment of the Hon'ble Apex Court in ***Surepally Srinivas vs. State of Andhra Pradesh (Now State of Telangana)*** reported in 2025 SCC OnLine SC 683, the relevant portion of which reads as under:-

“12. We do not propose to hold that a conviction should be interdicted for any minor breach of Standing Order No. 1/89. What is required is a substantial compliance of the statutory provisions and the procedure laid down in such standing order.

13. In *Bharat Aambale* (supra), this Court held that the purport of Section 52-A, NDPS Act read with Standing Order 5/11 extends beyond mere disposal and destruction of seized contraband and serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. This decision stresses upon the fact that what is to be seen is whether there has



been substantial compliance with the mandate of Section 52-A and if not, the prosecution must satisfy the court that such non-compliance does not affect its case against the accused. This is also what has been held in Kashif (supra).

14. In the present case, from the evidence on record, it can be seen and it is clear that the seized contraband was not properly sealed. Coupled with this is the fact of the seized contraband not being produced before the trial court prior to 3rd July, 2010. It is difficult to accept the prosecution case that though there may not have been strict compliance of Standing Order No. 1/89, the seized contraband was not tampered at all. Keeping of the seized contraband by PW-3 in a separate room in his office for fifteen days could give rise to an allegation that the seized contraband was by itself substituted and some other items planted to falsely implicate the accused. To avoid suspicious circumstances and to ensure fair procedure in respect of search and seizure, it is always desirable to follow the standing order which provides suitable guidance for the officers investigating crimes under the NDPS Act. Should there be any departure, the same must be based on justifiable and reasonable grounds. We are, satisfied, on appreciation of the evidence on record, that the possibility of tampering during this fifteen-day period cannot be totally ruled out and that not only has there been no substantial compliance of the standing order, the departure has also not been justified.

15. We have also found from the materials on record that there has been clear non-compliance with the provisions contained in Section 52-A of the NDPS Act. Either possibly due to lack of experience of the investigating officer or his lack of knowledge of the relevant provisions of the NDPS Act, there were lapses which



were duly noted by the Sessions Judge. Thus, we are unable to hold that there was primary and reliable evidence before the trial court in respect of the offence committed. The onus of proving that compliance with Section 52-A did not affect the case of the prosecution has not been duly discharged by the prosecution.”

9. The learned Government Advocate (Crl.Side) appearing for the respondent has filed a counter affidavit and she would submit that based on the information received, the respondent and his team proceeded to the scene of occurrence and intercepted the petitioner/accused in the presence of witnesses, and from him, 40 kgs. of ganja and 119 kgs. of tobacco were recovered. Though the trial Court has acquitted the petitioner/accused in respect of the charges levelled against him under the COTPA, the trial Court had relied on the evidence and rightly convicted the petitioner/accused for the offence under the NDPS Act. She would further submit that merely because there was delay in producing the contraband before the Special Court, it cannot be inferred that there was tampering with the contraband. Likewise, non-examination of the independent witnesses also cannot make the Court come to a conclusion that the petitioner/accused was falsely implicated in this case. She would further submit that the contraband was initially produced before the Judicial Magistrate on the same day and as per the directions of the Judicial Magistrate, it was produced before the Special Court on 26.10.2022. The nature of the offence being



grievous, she strongly opposed for granting suspension of sentence to the petitioner/accused.

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10. Heard the learned counsel on either side and perused the entire materials available on record.

11. Having heard the learned counsel for the petitioner/accused and learned Government Advocate (Criminal Side) appearing for the respondent and upon perusal of the materials on record, this Court is of the opinion that with regard to the non-compliance of Standing Order No.1/89 and also Section 52 A of the NDPS Act, it is the admitted case of even PW1 that there has been non-compliance of the said provisions. Further, no evidence has been adduced by the prosecution to satisfy the Court that such non-compliance has not affected its case. It is also admitted that the contraband which was seized on 08.10.2022 was produced before the Special Court only on 01.12.2022 and no explanation has been offered for such delay. This assumes significance when the witnesses are police witnesses.

12. In view of the above, this Court is of the view that the petitioner/accused has made out a *prima facie* case for grant of relief of suspension of sentence and bail. Accordingly, this Court grants the reliefs of suspension of sentence and bail to the petitioner/accused, till the disposal of the



criminal appeal, on the following conditions.

(i) The petitioner shall deposit 50% of the fine amount before the trial Court;

(ii) The petitioner/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with two sureties (out of whom one should be a blood related surety who shall produce proof of permanent residence at Orissa), each for a like sum, to the satisfaction of the learned Additional District Judge and Presiding Officer, Special Court under NDPS & EC Act, Salem;

(iii) The petitioner/accused shall appear before the trial Court on the first working day of every English calendar month at 10.30 a.m., until further orders.

13. This criminal miscellaneous petition stands ordered accordingly.

27-04-2026

Neutral Citation: Yes/No

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A.D.JAGADISH CHANDIRA J.

DN

To

1. The Inspector of Police,
Katpadi Railway Police Station,
Vellore District.

2. The Additional District Judge and Presiding Officer,
Special Court under NDPS & EC Act, Salem

3. The Superintendent,
Central Prison, Salem

4. The Public Prosecutor,
High Court of Madras.

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