



*Crl.M.P.(MD)No.649 of 2024
in Crl.A.(MD)No.62 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2026

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.649 of 2024

in Crl.A.(MD)No.62 of 2024

Thangamalai

... Petitioner

versus

The State represented by
The Inspector of Police,
NIB CID Police Station,
Theni District.

... Respondent

Prayer in Crl.M.P.(MD)No.649 of 2025: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. seeking to suspend the sentence imposed on the petitioner in C.C.No.234 of 2016, dated 04.12.2023 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

For Petitioner : Mr.C.Iyyaparaj



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For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

ORDER

The petitioner is the 1st accused in C.C.No.234 of 2016 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. He was tried along with another accused for the offence under Section 8(c) r/w. 20(b)(ii)(C) and 25 of the NDPS Act. During the trial, the 2nd accused died and therefore, the charges framed as against the 2nd accused are abated. In conclusion of trial, the trial Court, by its Judgment dated 04.12.2023, found the petitioner guilty for the offence under Section 8(c) r/w. 20(b)(ii)(C) of the NDPS Act and convicted and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo one year simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.62 of 2024 and the same has been admitted by this Court on 23.01.2024. The petitioner has also moved this petition seeking to suspend the sentence imposed by the trial Court.



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2. The learned counsel appearing for the petitioner submits that the petitioner is in jail from the date of conviction, i.e. from 04.12.2023. He further submits that the vital documents, such as, Exs.P1 to P5, namely, secret information, search consent letter, seizure mahazar, arrest namuna, search namuna were not filed by the Investigation Agency at the time of the filing the final report. The final report was filed in the year 2016. However, these vital documents, such as, Exs.P1 to P5 were produced before the trial Court only in the year 2022 along with an application to take those documents on file. Though the petitioner has opposed the said application, the trial Court has allowed the said application. According to the learned counsel, those documents have been created subsequently. The learned counsel further submits that the contraband was subjected to be recovered on 25.10.2014. However, the same was produced on 06.11.2014 with a delay of 11 days. He further submits that the mandatory provisions as required under Sections 50, 55 and 57 of NDPS Act were not complied with. Since the petitioner is having certain arguable points in this appeal, he seeks to suspend the sentence imposed by the trial Court till the disposal of the appeal.



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3. The learned Additional Public Prosecutor submits that the contraband, which was recovered on 25.10.2014 was produced before the concerned Judicial Magistrate along with Form-91. However, the Magistrate Court directed the Investigation Agency to produce the contraband before the trial Court. While producing the contraband before the trial Court, there was a delay of 11 days.

4. The learned Additional Public Prosecutor has also relied on paragraph 30 of the Judgment of the trial Court and submits that this point was already considered by the trial Court and it was rejected. With regard to other submission made by the learned counsel for the petitioner as to the missing of Exs.P1 to P5 along with the final report, the learned Additional Public Prosecutor submits that these documents have been filed along with the final report in the year 2016, however, these documents were misplaced in the Court and they came to know about the same only during the evidence of P.W.1. Therefore, the Investigating Officer has filed an application before the trial Court in Crl.M.P.No.1094 of 2022 under Section 173(5) Cr.P.C. to receive those documents as additional documents and the same was allowed by the trial



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Court, by order dated 26.10.2022 and the petitioner was also heard before passing the said order. Therefore, the petitioner cannot take this plea without challenging the order passed in Crl.M.P.No.1094 of 2022.

5. This Court considered the rival submissions and perused the materials placed on record.

6. Admittedly, the documents Exs.P1 to P5 were not found in the Court. The occurrence was in the year 2014 and final report was filed in the year 2016. These documents have been produced before the trial Court by filing an application under Section 173(5) Cr.P.C. only in the year 2022. The contraband said to have been recovered on 25.10.2014 was produced before the concerned Court only on 06.11.2014 with a delay of 11 days.

7. The explanation offered by the learned Additional Public Prosecutor that the contraband needs to be produced before the concerned Magistrate where the accused was produced as per the provision under Section 36(b) of NDPS Act, cannot be accepted. No doubt, as per this provision, the respondent Police has to produce the accused before the concerned Judicial Magistrate



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within a period of 24 hours. But, it does not mean that the Investigating Agency can also produce the contraband before a Magistrate Court, which is not dealing with the case and get an order from the Magistrate, retaining the contraband in the Police Station and thereafter, producing it at their convenience before the trial Court. In this case, the contraband was produced after a delay of 11 days.

8. The appeal was admitted in the year 2024 and the same is kept pending for final disposal. However, the appeal could not be taken up for hearing for want of time. Further, the appellant/petitioner is in jail from 04.12.2023 and during the trial, he was in jail for 178 days.

9. Considering the points raised by the petitioner, the period of incarceration and also considering the fact that the appeal could not be taken up for hearing for want of time, this Court is inclined to allow this petition.

10. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the



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I Additional Special Court for NDPS Act Cases, Madurai and on further condition that the petitioner shall appear before the respondent Police daily at 10.30 a.m. until further orders.

10.03.2026

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To

1. The I Additional Special Court for NDPS Act Cases,
Madurai.
2. The Superintendent,
Central Prison,
Madurai.
3. The Inspector of Police,
NIB CID Police Station,
Theni District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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