



Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2026

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.4037 of 2025

in Crl.A.(MD)No.387 of 2025

Sethupathi

... Petitioner

versus

State of Tamilnadu,
Rep. by the Inspector of Police,
Austinpatti Police Station,
Madurai District.
(Crime No.93 of 2021)

... Respondent

Petition filed under Section 430 of BNSS 2023, to enlarge the petitioner on bail by suspending the sentence imposed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.449 of 2022 vide Judgment dated 04.02.2025 pending the disposal of the main criminal appeal.

For Petitioner : Mr.A.Saravanan

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



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*Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025*

ORDER

The petitioner is the 3rd accused in Crime No.93 of 2021 on the file of the respondent Police. He was arrested along with three others that they had transported 70 kgs. of ganja in two motorcycles bearing Reg.No.TN57AF 3990 and TN57BU 2088. The petitioner/3rd accused said to have driven the motorcycle bearing Reg.No.TN57BU 2088 along with the 4th accused and 34 kgs. of ganja was recovered by the respondent Police from that vehicle. The final report was filed as against the petitioner and three others for the offence under Section 8(c) r/w. 20(b) (ii) (C) and 29(1) of NDPS Act. After the trial, the trial Court, by its Judgment dated 04.02.2025, found the petitioner guilty, convicted and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo two years simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has filed an appeal before this Court in Crl.A.(MD)No.387 of 2025 and the same was admitted by this Court on 26.03.2025. Along with the appeal, the petitioner has filed this petition to suspend the sentence imposed by the trial Court.



*Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025*

2. The learned counsel appearing for the petitioner has raised the following points:-

(i) P.W.2 deposed that he received the secret information at about 06.30 hrs. on 24.03.2021 and recorded the said information. But, he did not produce the said information before the Court. Therefore, the respondent has not followed the process under Section 42(1) of NDPS Act.

(ii) The respondent has not examined private witness in this case in order to prove the charges levelled as against the petitioner.

(iii) The respondent has not followed the due process of law under Section 50 of NDPS Act. Moreover, the respondent has not properly explained about the search to the petitioner as well as other accused persons. The P.W.2 has admitted that he has not properly examined about the right of search of the accused persons.

(iv) The contraband was recovered on 23.04.2021 and the same was produced on 16.08.2021, nearly, 4 months delay and the delay to produce the property before the trial court was admitted by P.W.2 in this case.

(v) P.W.4 has admitted that he has not received the report under Section 57 of NDPS Act from P.W.2 who has conducted the raid along with his police party. Therefore, Section 57 of the NDPS Act was not complied with.



*Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025*

(vi) The respondent has not taken any samples in the presence of Judicial Magistrate. But, P.W.2 deposed that the respondent has taken the samples at the place of occurrence. Therefore, Section 52A of NDPS Act was not complied with.

According to him, the petitioner was in jail during the investigation from 24.03.2021 to 24.09.2021 and thereafter, he is in jail from 24.01.2025 to 16.03.2026. Therefore, he seeks to suspend the sentence imposed on the petitioner pending the appeal.

3. The learned Additional Public Prosecutor submits that on the date of occurrence, the contraband was produced before the concerned Judicial Magistrate, however, the learned Judicial Magistrate has returned the same with a direction to produce it before the concerned Special Court. Therefore, it cannot be taken as a ground for suspending the sentence. With regard to non-compliance of Section 52A of NDPS Act, the learned Additional Public Prosecutor submits that it is not a material defect and this issue has already been settled.

4. This Court considered the rival submissions made and also perused the



*Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025*

Form-95 dated 24.03.2021.

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5. The contraband, said to have been seized by the respondent Police on 24.03.2021, was produced before the learned Judicial Magistrate, Thirumangalam, on 24.03.2021, however, a seal has been affixed as if it has been produced on 25.03.2021 and there is no endorsement of the learned Judicial Magistrate, directing the respondent Police to produce the contraband before the Special Court, as projected by the learned Additional Public Prosecutor.

6. Section 52A(2)(c) of NDPS Act reads as under:

“52A-Disposal of seized narcotic drugs and psychotropic substances:

(1)

(2)

(a)

(b)

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.”



*Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025*

7. Admittedly, the samples have not been taken in the presence of the Magistrate and the contraband said to have been recovered on 24.03.2021 was produced before the concerned Special Court only on 16.08.2021.

8. The petitioner has raised certain points, which can be considered only during the final hearing. However, the appeal could not be taken up for final hearing for want of time. Further, the petitioner is in jail for nearly 21 months.

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 final 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 the following conditions:

(i) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two sureties each for a like sum to the satisfaction of the I Additional Special Court for NDPS Act Cases, Madurai.

(ii) the persons who are giving sureties should be Government Servants



Crl.M.P.(MD)No.4037 of 2025

in Crl.A.(MD)No.387 of 2025

and the sureties shall file an affidavit before the respondent Police, by ensuring that the petitioner will not indulge in any other offence in future and he will be available till the disposal of the appeal proceedings.

(iii) The petitioner shall report before the respondent Police daily at 10.30 a.m. until further orders.

16.03.2026

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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,
Austinpatti Police Station,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Crl.M.P.(MD)No.4037 of 2025
in Crl.A.(MD)No.387 of 2025

B.PUGALENDHI, J.

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Crl.M.P.(MD)No.4037 of 2025

in Crl.A.(MD)No.387 of 2025

16.03.2026