

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2026

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CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.MP(MD)No.6519 of 2026
in
Crl.A(MD)No.452 of 2024

Saba @ Sabarathinam

: Petitioner

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
S.S.Colony Police Station,
Madurai District.
Cr.No.2361/2020

: Respondent

PRAYER: Petition filed under Section 430(i) BNSS to suspend the sentence of imprisonment imposed by the learned Additional District and Sessions Judge, Special Court for EC and NDPS Act Cases, Madurai, in C.C.No.231 of 2021, dated 29.02.2024 and enlarge the petitioner on bail.

For Petitioner : Mr.M.A.Gouthaman

For Respondent : Mrs.V.Moushika,
Government Advocate (Crl. Side)



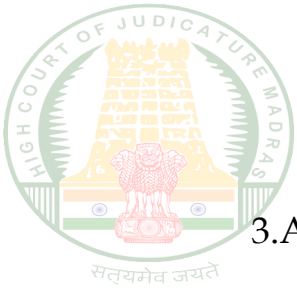
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ORDER

This application has been filed to suspend the sentence imposed on the petitioner / first accused by the learned Judge, Special Court for NDPS Act Cases, Madurai, in C.C.No.231 of 2021 dated 29.02.2024.

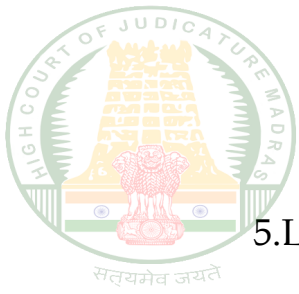
2.The petitioner is the first accused in C.C.No.231 of 2021 on the file of the learned Additional District Judge, I Additional Special Court for NDPS Act Cases, Madurai. He was tried for the offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred as “NDPS Act”) and the trial Court by its judgment dated 29.02.2024 convicted the petitioner and the accused nos. 2 and 3 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and sentenced them to undergo 14 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- each, in default to undergo simple imprisonment for a further period of 3 years and acquitted them for the offences under Sections 25 and 29(1) of the NDPS Act and acquitted the accused nos.4, 6 to 8 from all the charges.



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3. Aggrieved by the impugned judgment of conviction and sentence, the first accused has preferred Crl.A(MD)No.452 of 2024 along with an application for suspension of sentence in CRL.MP(MD)No.5457 of 2024 and this Court has dismissed the same by its order dated 19.09.2025. This is the second application seeking suspension of sentence.

4. The case of the prosecution is that on 25.10.2020 at about 12:00 pm at Madurai Town, Madakkulam Main Road, near Koravaikkal Junction, accused nos.2 and 3 were found in possession of two gunny bags, one containing 10 parcels and the other containing 11 parcels, totally 21 parcels weighing 42 kilograms of contraband and it was kept in the dicky of a silver color Maruthi Suzuki Swift car bearing Registration No.TN-38-AQ-4151. They have informed the respondent police that the accused nos.2 to 8 were led by the petitioner and they frequently went to Andhra Pradesh to purchase Ganja and stored the same at Vyasarpadi, Chennai and they would hand over them to the persons to whom the petitioner directs.



5.Learned Counsel for the petitioner submitted that the mandatory provisions under Sections 42(2), 50(1) and 57 of the NDPS Act were not followed in this case. According to him, the prosecution did not examine any independent witnesses and that the evidence of the prosecution witnesses is full of contradictions.

6.He further submitted that there was no recovery of contraband from the petitioner. The prosecution has not collected any call data records or any other materials connecting the petitioner with the other accused, excepting the alleged confession statement of two accused persons. Moreover, the contraband was sent to the trial Court with an unexplained delay of 39 days. As per the decision of the Hon'ble Supreme Court in *Union of India v. Mohanlal* [2016 (3) SCC 379], the process of drawing samples ought to be held in the presence of a Magistrate as per Section 52(A)(2)(c) of the NDPS Act, which was not done in this case.

7.According to him, the petitioner is having a good chance of succeeding in appeal, however, he is in jail for more than four years.



Though the appeal preferred by him has been admitted, the same has not been taken up for final disposal and the petitioner is still languishing in jail.

8. With regard to the antecedents, by placing reliance on the decision of the Hon'ble Supreme Court in *Abhimanue v. State of Kerala* [2025 SCC Online 2037], learned Counsel contended that the presence of criminal antecedents by themselves alone cannot constitute a ground for the denial of bail. Therefore, he prayed for suspending the sentence.

9. On the contra, the learned Government Advocate (Crl. Side) appearing for the respondent police has opposed the grant of bail to this petitioner and submitted that the petitioner is having 23 cases, out of which 7 cases were registered for the offence under Section 302 IPC. The details of the cases are furnished before this Court and the same is extracted as under:

S.No.	Police Station	Crime No. / Sections of Law / Case Details
1	Thideer Nagar PS	Cr.No.680/2020 - U/s 25(1A) Arms Act, 20(b)(ii)(B), 8(c) NDPS Act - CC No.550/2021 dated 18.11.2021 by EC Court, Madurai
2	Subramaniapuram PS	Cr.No.1453/2020 - U/s 20(b)(ii)(C), 25, 29(1), 8(c) NDPS Act

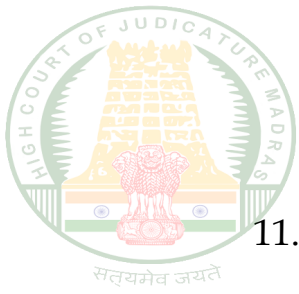


S.No.	Police Station	Crime No. / Sections of Law / Case Details
3	B4 Keeraithurai PS	Cr.No.607/2019 - U/s 20(b)(ii)(C), 8(c) NDPS Act @ 20(b)(ii)(B), 25, 29(1), 8(c) NDPS Act - PT CC No. 314/2019 dated 26.08.2019, EC Court, Madurai
4	B4 Keeraithurai PS	Cr.No.349/2017 - U/s 147, 148, 302, 341, 506(ii) IPC @ 120B, 147, 148, 302, 341, 506(ii) IPC - PT PRC No. 43/2017 dated 08.08.2017 before JM-IV, Madurai
5	B4 Keeraithurai PS	Cr.No.396/2018 - U/s 147, 148, 341, 294(b), 302, 506(ii), 120B IPC (NTF)
6	B4 Keeraithurai PS	Cr.No.877/2021 - U/s 3 & 4 of Explosive Substances Act, 1908
7	B4 Keeraithurai PS	Cr.No.447/2008 - U/s 307, 506(ii) IPC - SC No.89/2009 dated 08.12.2009 - Acquitted on 24.09.2014
8	B4 Keeraithurai PS	Cr.No.674/2011 - U/s 120B, 323, 341 IPC.
9	South Gate PS	Cr.No.90/2015 - Man Missing @ U/s 147, 148, 201, 302, 364 IPC @ 147, 148, 149, 201, 302, 364 IPC
10	South Gate PS	Cr.No.165/2019 - U/s 302, 341, 506(ii) IPC @ 109, 114, 120B, 147, 148, 149, 201, 302, 506(ii) IPC - PT SC No. 262/2022 dated 26.08.2022 before Addl. Sessions Court-I, Madurai
11	Madurai City PEW	Cr.No.544/2019 - U/s 4(1)(A), 4(1)(aaa) of Tamil Nadu Prohibition Act
12	CBCID Madurai City PS	Cr.No.11/2015 - U/s 109, 120B, 147, 148, 149, 202, 216, 302, 34, 341, 342 IPC and Section 3(1) TNPPDL Act @ 212, 216, 149, 342, 302, 34, 341, 109 IPC and Section 3(1) TNPPDL Act 120(B), 147, 148, 148 IPC
13	Sikkal PS, Ramanathapuram District	Cr.No.72/2016 - U/s 147, 148, 294(b), 302, 212, 120B IPC - PT SC No.174/2022 dated 03.08.2022 before Principal Sessions Court, Ramanathapuram
14	Paramakudi Town PS	Cr.No.96/2021 - U/s 20(b)(ii)(C), 8(c) NDPS Act
15	Paramakudi PS	Cr.No.590/2021 - U/s 120B, 147, 148, 294(b), 307, 324, 341 IPC & Section 3 of TNPPDL Act @ 109, 120B, 147, 148, 149, 294(b), 302, 307, 324, 341 IPC & Section 3 of TNPPDL Act
16	Theppakulam PS	Cr.No.604/2017 - U/s 147, 148, 302, 324, 341, 506(ii) IPC @ 120B, 147, 148, 302, 324, 341, 506(ii) IPC - SC No. 424/2019 dated 22.10.2019 - Acquitted by Addl. Dist. Sessions Court-I, Madurai on 06.04.2023



S.No.	Police Station	Crime No. / Sections of Law / Case Details
17	Theppakulam PS	Cr.No.1746/2010 - U/s 387, 506(ii) IPC - CC No. 294/2010 dated 14.12.2010 - Acquitted by JM-I, Madurai on 23.05.2011
18	Theppakulam PS	Cr.No.1110/2010 - U/s 392, 397 IPC - SC No.57/2011 dated 22.02.2011 - Acquitted by JM-I, Madurai on 27.01.2012
19	Theppakulam PS	Cr.No.1105/2011 - U/s 323, 324, 341, 506(ii) IPC - Referred
20	V2 Avaniyapuram PS	Cr.No.324/2009 - U/s 397 IPC - SC No.49/2015 dated 10.03.2015 - Acquitted by Addl. District Judge Court on 10.03.2015
21	V2 Avaniyapuram PS	Cr.No.332/2009 - U/s 392 IPC
22	Vilakkuthoon PS	Cr.No.635/2021 - U/s 324, 341, 506(ii) IPC @ 109, 307, 341, 506(ii) IPC - PRC No.354/2022 dated 09.11.2022 before JM-I, Madurai
23	C3 S.S. Colony PS	Cr.No.153/2018 - U/s 147, 148, 392 r/w 397, 294(b), 506(ii) IPC & Section 25(1) of the Arms Act

10.She further submitted that there are two groups, this petitioner is heading one group and that the other group is headed by one Vellaikalai. Both groups have been involved in several criminal cases in Madurai. In the event if the petitioner is released on bail, he might not cooperate with the trial pending as against him in the other cases. Hence, she prayed for dismissal of this application.



11.Considering that the cases registered as against this petitioner during the years 2015, 2016 and 2017 are still pending without any substantial progress, this Court, by order dated 18.06.2026, directed the Inspector General of Police, South Zone, Madurai, and the Commissioner of Police, Madurai City, to file a report regarding the reasons for the failure to proceed with the trials against this petitioner. Pursuant to the same, they have filed reports before this Court.

12.The Inspector General of Police, South Zone, Madurai has filed a report stating that three murder cases are pending as against the petitioner in the Ramanathapuram District in Crime Nos.590 of 2021, 74 of 2025 on the file of the Paramakudi Town Police Station and in Crime No.72 of 2016 on the file of the Sikkal Police Station. All these cases are pending trial and that a Special Monitoring Team headed by the Superintendent of Police, Ramanthapuram has been set up on 21.06.2026 for day-to-day monitoring of the trial proceedings and to expedite the trial in the above cases. The Deputy Inspector General of Police, Ramanathapuram Range would review the progress made by the Special Monitoring Team every month till the completion of the trials.



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13. The Commissioner of Police, Madurai City has also filed a report stating that the petitioner is A+ Category History Sheeter and is a notorious gang leader in Madurai. According to him, three murder cases are pending against the petitioner in Madurai limits in Crime Nos.349 of 2017, 396 of 2018 on the file of the Keeraithurai Police Station and in Crime No.165 of 2019 on the file of the B5 South Gate Police Station and all these cases are pending trial. He claimed that the petitioner and the co-accused are not cooperating with the trial proceedings pending as against them and are habitually absconding by taking turns to remain in hiding, which has led to the persistent delay in the trials as against them. He also stated that periodical review of the cases as against the petitioner is being undertaken to ensure speedy trial.

14. This Court considered the rival submissions made by the respective parties and perused the materials on record.

15. The petitioner has been convicted for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act that the petitioner was the leader of



the other accused and they frequently went to Andhra Pradesh to purchase Ganja, on his instructions and that they would store the same at Vyasarpadi, Chennai and hand over the Ganja to the persons directed by the petitioner. It appears that the petitioner is a A+ Category History Sheeter and has 23 cases pending against him, out of which 7 cases are murder cases under Section 302 IPC.

16.No doubt, the petitioner is in jail for nearly 4 years in this case as pointed by the learned Counsel for the petitioner and the appeal filed by him though admitted by this Court on 12.06.2024 has not been taken up for final disposal. Hence, his personal liberty has been curtailed to some extent. However, the petitioner is also implicated in 23 other cases, out of which, seven murder cases are pending for trial. The cases as far back as 2015 are pending for more than 10 years for want of appearance of accused and due to delay caused by the investigating agency.

17.The Courts are obligated to protect the rights of the accused persons and protect their personal liberty pending disposal of the criminal appeal. At the same time, the Courts are also answerable to the



victims in the murder cases, wherein the right to life of those victims was allegedly taken away by the petitioner and other accused.

18. Some of the cases registered against the petitioner are pending even without framing of charges and according to the reports filed by the Inspector General of Police, South Zone and the Commissioner of Police, Madurai City, in some of these trials, the petitioner and other accused are continuously failing to cooperate with the trial proceedings pending as against them and are habitually absconding by taking turns to remain in hiding. Therefore, the apprehension of the respondent police that the petitioner may not be available in the other cases, in the event if he is released on bail, is a reasonable one and is a relevant factor that has to be considered by this Court.

19. It is relevant to note that suspension of sentence is a discretionary power of this Court and not a vested right of the accused. In *Angana v. State of Rajasthan* [(2009) 3 SCC 767], the Hon'ble Supreme Court has held that the discretion to suspend the sentence is to be exercised judiciously depending on the facts and circumstances of



each case, the basis of nature of the offence and manner in which occurrence had taken place. Further, in *Narcotic Control Bureau v. Lokesh Chadha* [2021 SCC Online SC 178], the Hon'ble Supreme Court has held that there is no presumption of innocence when considering post-conviction bail and that there must be strong and compelling reasons for grant of suspension of sentence. The relevant portions are extracted as under:

*“9. ... Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will refer to the decision of a two-Judge Bench of this Court in *Preet Pal Singh v State of Uttar Pradesh* where Justice Indira Banerjee, speaking for the Court, observed as follows:*

“35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of



criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra).

However, in case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C." ... "

20. In the present case, there is already a finding of guilt as against the petitioner by the trial Court. Moreover, it is relevant to note that this petitioner has previously filed an application for the suspension of this sentence in CRL.MP(MD)No.5457 of 2024 and this Court has dismissed the same by its order dated 19.09.2025. In the said decision, this Court



has cited the decision of the Hon'ble Supreme Court in *Ash Mohammad v. Shiv Raj Singh* [(2012) 9 SCC 446], wherein it was observed that when

citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the Courts play an even more important role, and the burden is heavy and emphasized on the need to have a proper analysis of the criminal antecedents of the accused. Even though the petitioner claims that there is a change in circumstances, he has failed to substantiate as to what are the change in circumstances warranting the release of the petitioner on bail.

21.No doubt, the existence of antecedents alone cannot be a ground to reject bail. However, it is also a settled position that prior antecedents is a relevant consideration along with other factors such as the nature and gravity of offence, the materials available as against the accused, the previous conduct of the accused and whether there is a strong and compelling reason for the grant of bail. This Court is duty bound to consider all these factors while considering the application of the petitioner.



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Since this Court is dismissing the petition for suspension of sentence, Registry is directed to list the main appeal for final hearing under the caption 'accused in jail cases'.

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25.06.2026

To

1. The Judge,
Special Court for EC and NDPS Act Cases,
Madurai.
2. The Inspector of Police,
S.S.Colony Police Station,
Madurai District.



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