



Crl.M.P.(MD)No.8011 of 2026

in Crl.A.(MD)No.442 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2026**

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.8011 of 2026

in Crl.A.(MD)No.442 of 2026

Murugan @ Ettamadaai Murugan

... Petitioner

versus

The State of Tamil Nadu
Rep. by the Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

... Respondent

Petition filed under Section 430(1) BNSS Act, to suspend the execution of sentence imposed by the learned Additional District and Sessions Court, Madurai in S.C.No.347 of 2023 dated 17.03.2026 and enlarge the petitioner on bail till the disposal of the criminal appeal.

For Petitioner : Mr.A.Balakrishnan

For Respondent : Mr.S.Prakash
Government Advocate (Crl. Side)



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Crl.M.P.(MD)No.8011 of 2026

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ORDER

The petitioner is the sole accused in S.C.No.347 of 2023 on the file of the Additional District and Sessions Court, Padmanabhapuram. He was tried for the offence under Section 436 IPC that he alleged to have set fire to a shop. After the trial, the trial Court, by its Judgment dated 17.03.2026, found the petitioner guilty and convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has filed an appeal before this Court in Crl.A.(MD)No.442 of 2026. Along with this appeal, the petitioner has filed this petition seeking to suspend the sentence. However, this petition has not been listed today and it has been listed through additional list.

2. The learned counsel appearing for the petitioner submits that the petitioner was convicted only for a period of three years and he is in jail for one month. He has also raised certain arguable points to suspend the sentence as under:

(i) The extraordinary delay in examination renders the eyewitness unreliable.



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(ii) There are material contradictions in the deposition of the so-called eye witnesses with the facts that emerged during trial.

(iii) P.W.1 in her chief examination deposed that she witnessed the accused setting fire to the shop at 3.30 a.m., but, in her cross examination, she admitted that she was inside the house at the time of occurrence and came outside only after hearing the noise of the shop burning.

(iv) The defacto complainant Kumaraswamy died before trial and could not be cross-examined. His wife P.W.1, testifying 35 years later with material contradictions, cannot substitute for his unavailable testimony.

(v) The learned trial Judge failed to appreciate that the defence raised through cross examination of P.W.2 that the appellant/petitioner was residing at Kerala at the time of the occurrence is a legitimate alibi defence.

(vi) Under Section 103 of the Indian Evidence Act, the burden of proof of the appellant/petitioner's presence at the crime scene rests entirely on the prosecution, which has not been proved beyond reasonable doubt.

3. The learned Government Advocate (Crl. Side) submits that the FIR in Cr.No.479 of 1991 was registered in the year 1991 and the final report was filed in the year 1992. Since the petitioner absconded and evaded the trial, the trial



Crl.M.P.(MD)No.8011 of 2026

in Crl.A.(MD)No.442 of 2026

was concluded only in the year 2026. Therefore, according to the learned Government Advocate, in the event, if the petitioner is released on bail, he may abscond and he may not be available for appeal proceedings.

4. This Court considered the rival submissions made.

5. Though the petitioner has raised certain arguable points, considering the conduct of the petitioner that he has evaded the trial for more than 30 years, this Court is not inclined to suspend the sentence. The petitioner is at liberty to move a fresh petition along with the undertaking affidavit of two government sureties for ensuring the availability of the petitioner pending the appeal.

6. With this liberty, this Criminal Miscellaneous Petition is dismissed.

16.04.2026

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To



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1. The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.M.P.(MD)No.8011 of 2026

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B.PUGALENDHI, J.

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Crl.M.P.(MD)No.8011 of 2026

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