



CRL MP(MD). No.19258/2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 13.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

**CRL MP(MD). No.19258/2025
in
CRL A(MD)No.1316/2025**

Nazarudeen Sha

... Petitioner

Vs

The State of Tamilnadu Rep by
The Inspector of Police,
Nagamalai Pudukottai Police Station
Madurai District.
[Cr.No.33/2023].

... Respondent

PRAYER :- Petition filed under Section 430[2] of BNSS to suspend the sentence of imprisonment imposed by the learned Additional District Judge, Principal Special Court for EC and NDPS Act Cases, Madurai, made in CC.No.809/2023 by the judgment dated 23.01.2025 and to enlarge the petitioner/appellant on bail.

For Petitioner : Mrs.A.Devaki

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition is filed by the petitioner who is arraigned as A1 out of 5 accused, to suspend the sentence imposed on him in CC.No.809/2023 dated 23.01.2025, by the learned Additional District Judge, Principal Special Court for EC and NDPS Act Cases, Madurai, pending disposal of the criminal appeal.

2.The case of the prosecution in brief is that, on 01.02.2023, at about 6.30 a.m., on receipt of secret information by PW3-Sub Inspector of Police, a police party led by him intercepted a Maruti Suzuki Brezza car bearing Registration No.KL-02-BP-9193 and upon search, seized 100Kgs of Ganja. On enquiry, it was found that the contraband was procured by A4 and A5 from Andhra Pradesh and that, A1 to A3, were illegally trafficking the contraband at a stretch from Dindigul to Virudhunagar Road, near Thuvariman Kanmai. Therefore, a case in Crime No.33/2023, was registered against the petitioner u/s. 8[c] read with 20[b][ii][C], 25 and 29[1] of NDPS Act, 1985 and was taken on file in CC.No.809/2023 by the learned Additional District Judge, Special Court for EC and NDPS Act Cases, Madurai.



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3.Before the Trial Court, on the side of the prosecution, 5 witnesses were examined as PW1 to PW5 and 19 documents were filed as Exs.P1 to P19. Seven material objects were marked as MO1 to MO10. On the side of the accused, neither witness was examined nor document was marked.

4.On completion of trial, the Trial Court, by its judgment dated 23.01.2025, convicted and sentenced the petitioner for the offence u/s. 8[c] r/w.20[b][ii][C] of NDPS Act, and sentenced him to undergo rigorous imprisonment for ten years with fine amount of Rs.1,00,000/-, and in default to undergo simple imprisonment for a period of 6 months.

5.Aggrieved by the aforesaid conviction and sentence, the petitioner has preferred the above appeal along with the petition to suspend the sentence.

6.The respondent filed a detailed counter denying all the contentions raised in the petitioner's affidavit. The respondent stated that the offences committed by the petitioner are serious in nature and the prosecution proved its case beyond reasonable doubt. The respondent further stated that the petitioner was present in the scene of occurrence along with A2 and A3 and was caught red-handed with the contraband



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weighing 100 Kgs. The respondent further stated that the crime committed by the petitioner was heinous in nature and if the petitioner was enlarged on bail, there was every possibility of re-occurrence. The respondent therefore prayed for dismissal of the application.

7.The learned counsel for the petitioner submitted that the mandatory provisions under Sections 42 and 52[A] of NDPS Act were not followed and that, the petitioner has a fair chance of succeeding in the appeal. The learned counsel further submitted that though PW6 and PW7 were examined before the Trial Court, the Trial Court judgment does not refer to their evidence. The learned counsel therefore prayed that the petition for suspension of sentence be allowed?.

8.Heard the learned Additional Public Prosecutor appearing for the State and perused the materials on record.

9.The Trial Court, on appreciation of evidence on record, found that there was compliance of the provisions under Section 42 of the Act and as far as Section 52[A] was concerned, the Trial Court found that the provisions of Section 52[A] of the Act were not applicable to the facts of the case and therefore, rejected the contention of the petitioner that the prosecution case was vitiated for non-compliance of the provisions of



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Section 52[A] of the Act. As regards the contention of the learned counsel that there is no reference about PW6 and PW7 in the judgment of the Trial Court, it is seen from the judgment of the Court below that the learned Trial Judge has recorded the statements of PW6 and PW7 and therefore, the aforesaid contention is meritless.

10. The Hon'ble Supreme Court in the case of ***Om Prakash Sahni Vs. Jaishankar Chaudhary and Another [2023 [6] SCC 123]***, held in paragraph No.33 as follows:-

"33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair



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chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

11.The learned counsel for the petitioner was not able to demonstrate before this Court any palpable error in the judgment of the Trial Court. The issues raised by the learned counsel for the petitioner, are matters to be considered at the time of final hearing of the appeal. Therefore, this Court finds no compelling reason to grant the relief of suspension of sentence to the petitioner.

12.Hence, this Criminal Miscellaneous Petition is **dismissed**.

13.Post the main Criminal Appeal in the usual course.

13.02.2026

AP
Internet: Yes



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TO

- 1.The Additional District Judge,
Principal Special Court for EC and NDPS Act Cases, Madurai,
- 2.The Inspector of Police
Nagamalai Pudukkottai Police Station
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.MALA,J

AP

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