



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Sixteenth day of February Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.1382 of 2016

IN

CRL A(MD) No.53 of 2016

PETCHIAMMAL

... PETITIONER/APPELLANT/ACCUSED (SINGLE)

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
KOVILPATTI WEST POLICE STATION,
THOOTHUKUDI DISTRICT.
CR. NO.1075/2010

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the II Additional Special Court for NDPS Act cases Madurai, Madurai District in C.C.No.126 of 2013 vide his judgement dated 19.1.2016 pending disposal of the main Crl.A.

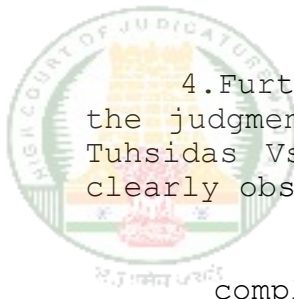
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S R.ANAND, Advocate for the petitioner and of MR.P.KANDASAMY, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

This is a petition filed by the petitioner/Appellant/sole accused to suspend the sentence imposed on her dated 19.01.2016 in C.C.No.126 of 2013 passed by the learned II Additional Special Court for NDPS Act Cases, Madurai, Madurai District, pending dispose of the criminal appeal.

2.The husband of the petitioner/appellant has filed affidavit along with the petition. In the affidavit, it is stated that the trial Court has convicted the accused under the provisions of Section 8(c) read with 20(b)(2)(B) of NDPS Act and sentenced to undergo one year R.I. And to pay a fine of Rs.5,000/- in default to undergo three months R.I.

3.It is stated in the affidavit that already fine amount has been paid. Further, the learned counsel for the petitioner/appellant has pointed out in the grounds of appeal that the mandatory provisions of N.D.P.S. Act have not been complied with and hence, the whole proceedings have become vitiated and more over, a report under Section 57 of the said Act has not been placed to the superior officers of the respondent. Further, Section 57 of the N.D.P.S. Act reads as follows:

"57.Report of arrest and seizure.- Whenever any person makes any arrest or seizure under this Act, he shall, within twenty-four hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior."



4. Furthermore, the learned counsel for the petitioner has relied upon the judgment reported in (2000) 8 Supreme Court Cases 437 - Dadu alias Tuhsidas Vs. State of Maharashtra, wherein, the Hon'ble Apex Court has clearly observed in para 25 as follows:

"Judged from any angle, the section insofar as it completely debars the appellate courts from the power to suspend the sentence awarded to a convict under the Act (N.D.P.S. Act), cannot stand the rest of constitutionality.

5. Further, on a careful perusal of the trial Court Judgment, it is clearly pointed by the trial Court that the accused has been already confined in prison for women between 29.11.2010 to 16.12.2010 and thereafter, the appellant has got bail. From 19.01.2016, the appellant, who is a lady is in jail. Further, as reported on behalf of the petitioner, it is seen that the petitioner is a lady and she has to take care of the family and there is no previous case, which, ultimately, ended in conviction as against the petitioner/appellant. The trial Court judgment also has not stated about the previous conviction granted as against the appellant herein.

6. Further, on a perusal of the entire record, this Court is satisfied that there are reasonable grounds of believing that the appellant is not guilty of such offence and that she is not likely to commit any offence while on bail, with certain conditions

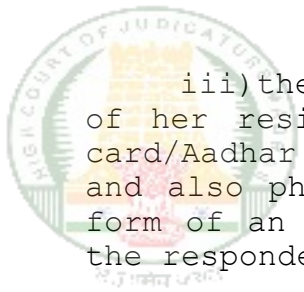
7. Considering the various grounds raised in the memorandum of criminal appeal, this Court finds that there are substantial and arguable points in the present case. Further, when the appellate Court finds that due to practical reasons, appeal cannot be disposed of expeditiously, the appellate Court must bestow special concern in the matter of suspending the sentence, as prayed for in the present petition, so as to make the appeal right, meaningful and effective. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time.

8. Further, it is also seen that if certain stringent conditions are imposed, there is no chance for the petitioner/appellant to abscond. Further, after hearing the main appeal alone, the correct and proper finding in the main case can be given.

9. Further, it is seen that various points raised in the grounds of appeal require an indepth/threadbare examination at the time of final hearing of the main appeal and also on going through the various grounds raised in the memorandum of criminal appeal, at this stage, this Court, to prevent aberration of justice, suspends the substantial sentence of imprisonment alone pending disposal of the above criminal appeal with the following conditions:-

i) the petitioner/appellant shall be released on bail on her executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a likesum to the satisfaction of the learned II Additional Special Court for NDPS Act Cases, Madurai, Madurai District;

ii) the petitioner/appellant shall appear before the said Court twice in a month viz., on the first working day of the first week and the first working of the third week of every month until further orders, failing which the Court is directed to inform about the details of failure committed by the petitioner in complying with the said conditions, to the Registry of this Court, forthwith.



iii) the petitioner/Appellant shall furnish her present full details of her residential address along with the copies of the family ration card/Aadhar Card/voter ID card issued by the Election Commission of India and also phone numbers (mobile/landline) if any to the said Court in the form of an affidavit, after serving an advance true copy of the same to the respondent police; and

iv) on receipt of the true copy of the said affidavit, the respondent police is directed to verify the veracity of the particulars given in the said affidavit and also liberty is granted to respondent to take appropriate follow up action, in accordance with law.

sd/-

16/02/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE II ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI, MADURAI DISTRICT

2 THE SUPERINTENDENT
SPECIAL PRISON FOR WOMAN
TRICHIRAPPALLI

3 THE INSPECTOR OF POLICE
KOVILPATTI WEST POLICE STATION,
THOOTHUKUDI DISTRICT.

4 THE ADDL. PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to M/S R. ANAND Advocate SR.No.9135,9188

ORDER

IN

CRL MP (MD) No.1382 of 2016

IN

CRL A (MD) No.53 of 2016

Date : 16/02/2016

AM/17.02.2016/JGB.DP/AR (CS-II) /3P/7C