



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

Thursday, the Twenty First day of April Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.2651 of 2016

IN

CRL A(MD) No.99 of 2016

KANNUSAMY

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
KANDAMANUR POLICE STATION,
THENI DISTRICT.

... RESPONDENT/RESPONDENT

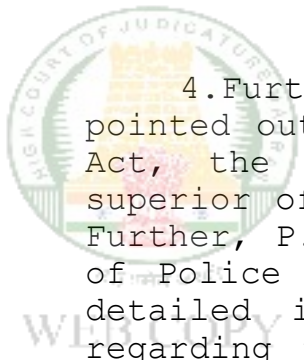
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the 2nd Additional NDPS Act Cases, Madurai passed in C.C.No. 304 of 2008 dated 11.03.2016 pending disposal of the Crl.A.

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

This is an application filed by the petitioner to suspend the sentence imposed on him dated 11.03.2016 in C.C.No.304 of 2008 passed by the learned II Additional Special Court for NDPS Act Cases, Madurai, pending disposal of the criminal appeal.

2.In the affidavit enclosed with the petition filed by the wife of the petitioner, it is stated that the trial Court has convicted the petitioner/Appellant under the provisions of Section 8(c) read with 20(b)(ii)(B) of NDPS Act and sentenced him to undergo 15 months R.I. and to pay a fine of Rs.5,000/- in default to undergo four months R.I. and hence, the offence would not come under commercial quantity. It is further stated that the fine amount has been paid by the accused and it is also reported that during the trial court proceedings, the petitioner/Appellant has enjoyed the benefit of the bail and also, the appellant has regularly complied with the conditions, imposed by the Court below.

3.Further, it is clearly stated in the affidavit enclosed with the petition that the petitioner is in custody at Central Prison, Madurai from 11.03.2016 onwards and before the date of conviction also, he has been in jail custody from 29.11.2008 to 17.12.2008.



4.Further, the learned counsel for the petitioner/appellant has pointed out that as per the provision of Section 42(2) of N.D.P.S. Act, the information has not been forwarded to the immediate superior officer by the police officer, who has conducted the raid. Further, P.W.4 has admitted that he has already served as Inspector of Police and he has also admitted that he has not received any detailed information report from the Sub Inspector of Police, regarding the present case and the kanja involved in the present case has been seized on 29.11.2008 itself and the same has been produced before the Court only on 23.12.2008 and he has not affixed the specimen seal in the requisition letter and also in the sample sent for forensic department. Further, as per the details enclosed at page No.26, the appellant has paid the fine amount of Rs.5,000/- imposed by the trial Court.

5.Further, in the grounds of appeal, it is stated that all the records have been prepared at the police station and the investigating officer has admitted the same in his deposition also. Further, according to the counsel for the appellant that the delay in filing the F.I.R., alteration of time of occurrence, difference in weight of contraband, discrepancies in the number of sealed bags would clearly establish that the appellant is an innocent and he has been falsely implicated in the present case.

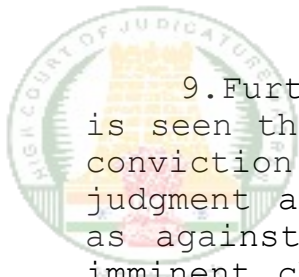
6.Further, it is also pointed out in the grounds of appeal that the mandatory provisions of N.D.P.S. Act have not been complied with and hence, the whole proceedings have become vitiated and more over, a report under Section 57 of the said Act has not been placed to the superior officers of the respondent. 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 forty eight 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."

7.Furthermore, the learned counsel for the petitioners has rightly 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 test of constitutionality."

8.The respondent has filed counter affidavit, denying the averments made in the affidavit as well as in the grounds of appeal. However, after taking into consideration, the entire evidence, exhibits and material objects, only, the Court can come to the proper conclusion.



WEB COPY

9. Further, on a careful perusal of the trial Court Judgment, it is seen that 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 petitioner/appellant herein and hence, there is no imminent chance for the petitioner to commit the offence in future also.

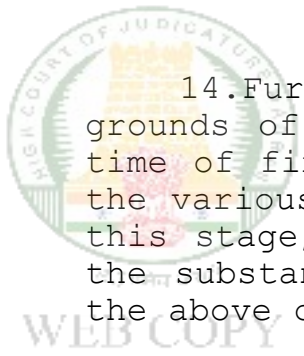
10. Further, on a perusal of the entire records, this Court is prima facie satisfied that there are reasonable grounds of believing that the appellant is not guilty of such offence and that he is not likely to commit any offence while on bail, with certain conditions .

11. 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.

12. 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.

13. Further, in the judgment reported in **(2015) 1 MLJ 645** in the case of **R. Balamurugan V. State rep. By the Superintendent**, this Court has cleared observed as follows:

"The Supreme Court has recorded the opinion that a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50 and the communication of the said right to the person who is about to be searched is not an empty formality and it has a purpose. It was further observed that most of the offences under the NDPS Act, carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed and these are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual and the accused must be made aware of the existence of such a right. On the fact of the case, the Hon'ble Supreme Court of India held that a joint communication to both accused which was acknowledged by one of the accused may create confusion and the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate."



14. 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 his executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties for a likesum to the satisfaction of the learned II Additional Special Court for NDPS Act Cases, Madurai;

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 day of the third week of every month until further orders, failing which the said 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 his present full details of his residential addresses 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/-
21/04/2016

/ 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.
- 2 THE ADDL. PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE SUPERINTENDENT CENTRAL PRISON, MADURAI
- 4 THE INSPECTOR OF POLICE
KANDAMANUR POLICE STATION, THENI DISTRICT.

+1. C.C. to M/S S.MUNIYANDI Advocate SR.No.22341
RG.JGB-DP/AR-I 25.04.2016 4P/6C

ORDER IN
CRL MP(MD) No.2651 of 2016 IN
CRL A(MD) No.99 of 2016
Date : 21/04/2016