



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

Thursday, the Eleventh day of August Two Thousand Sixteen

PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.4755 of 2016
IN
CRL A (MD) No.216 of 2016

KASIMAYAN

... APPELLANT/ACCUSED No.2

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
KUMULI 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.139 of 2012 dated 7.6.2016 pending disposal of the Crl.A.

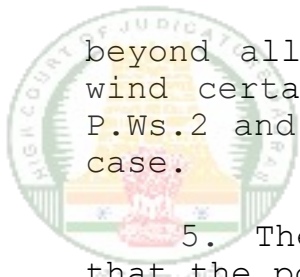
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S S.MUNIYANDI, Advocate for the petitioner and of Mr.P.KANDASAMY, Government Advocate (Crl.side) on behalf of the Respondent while admitting the Criminal Appeal, the court made the following order:-

A2 in C.C.No.139 of 2012 on the file of the learned II Additional Special Judge under NDPS Act Cases at Madurai, challenging his conviction and sentence, seeks appeal bail.

2. After trial, he has been convicted under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act and he was sentenced to 5 years R.I. and also imposed a fine of Rs.20,000/-, i/d., 6 months R.I. He has paid the fine amount. Now, he is undergoing the sentence in Central Prison, Madurai.

3. In this case, 7 kgs. of ganja is involved. Thus, it is not a commercial quantity.

4. The learned counsel for the petitioner/appellant contended that at every stage, the prosecution is vitiated. The prosecution has failed to establish the charges framed against the accused



beyond all reasonable doubts. The Investigation Officer thrown to wind certain provisions of the NDPS Act. The cross-examination of P.Ws.2 and 4 exposed the weakness of the prosecution version of the case.

5. The learned counsel for the petitioner further contended that the police witnesses admitted that consent before the search as mandated under the Act has not been obtained from the accused. Further, the report of search has not been submitted to the immediate superior police officer. In this regard, there is inconsistency in the evidence of P.Ws.2 and 4. Further, the property was not recovered from the petitioner. As against the petitioner, absconding charge sheet was filed. Further, the property has been introduced in this case. Further, the property was produced before the Court after 10 days of delay. Even in sending the sample to the Lab for analysis, proper procedure has not been followed. The seal of the concerned officer has not been found on the sample packet. Petitioner is not involved in any other case. He has prima facie case. Through out the trial, he was on bail. He may be granted appeal bail.

6. The prosecution filed counter.

7. The learned Government Advocate (Crl.side) submitted that all the procedural formalities have been strictly complied with. Based on the evidence adduced, the trial Court has rightly convicted him and also appropriately punished him.

8. I have anxiously considered the rival submissions and perused the impugned judgment and the materials on record.

9. This case involves intermediate quantity. The rigor of Section 37(b) of the NDPS Act is not applicable to this case. Yet the petitioner has to satisfy a prima facie case.

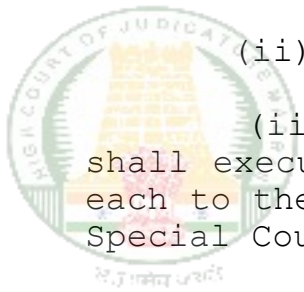
10. The learned counsel for the petitioner drawn our attention to Sections 50 and 57 of the NDPS Act and also referred to the evidence of P.Ws.2 and 4 with regard to the non-compliance of the said aspect and also with regard to the delayed submission of the case-property and he has also argued that there is material inconsistency in the evidence of the prosecution witnesses.

11. Considering the above aspects, some eminently arguable points are involved in this criminal appeal. They are required to be examined in detail in the main criminal appeal. Thus, there is prima facie case in favour of the petitioner. There is no previous case against the petitioner. There is no allegation that if the petitioner is let on bail, he will flee away from justice or abscond. It is a fact that it will take some time for the disposal of the criminal appeal.

12. In view of the above, ordered as under:

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(i) Appeal bail granted.



(ii) His sentence of imprisonment alone is suspended.

(iii) There shall be two sureties, they and the petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen Thousand only) each to the satisfaction of the learned II Additional Special Judge, Special Court for NDPS Act Cases, Madurai.

(iv) The petitioner shall appear before the Inspector of Police, Kumuli Police Station on every Friday at 10.30 a.m. until further orders.

sd/-
11/08/2016

/ TRUE COPY /

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

TO

1. THE II ADDITIONAL SPECIAL JUDGE,
SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
KUMULI POLICE STATION,
THENI DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
4. THE SUPERINTENDENT.
CENTRAL PRISON,
MADURAI.

+1. C.C. to M/S S.MUNIYANDI Advocate SR.No. 43710

ORDER
IN
CRL MP(MD) No.4755 of 2016
IN
CRL A(MD) No.216 of 2016
Date :11/08/2016

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TE/NGM-MP/SAR-I : 16/08/2016 : 3P/6C

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