



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

Friday, the Nineteenth day of August Two Thousand Sixteen

PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.6076 of 2016
IN
CRL A (MD) No.270 of 2016

SAMY @ CHELLASAMY

... PETITIONER/APPELLANT/
ACCUSED (SINGLE)

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
SHENCOTTAI POLICE STATION,
TIRUNELVELI DISTRICT.
(CRIME NO. 270 OF 2009)

... 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 Honourable II Additional Special Court for NDPS Act Cases, Madurai in C.C.No. 41 of 2010 dated 19.07.2016 pending the disposal of the main Crl.A.

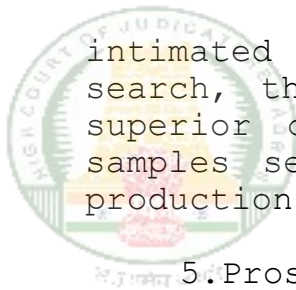
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.P.PONMANOHARAN, Advocate for the petitioner and of M/S.P.KANDASAMY, Government Advocate (Crl.Side), on behalf of the Respondent, the court made the following order:-

The sole accused in C.C.No.41 of 2010, while assailing the conviction and sentence, seeks appeal bail under Section 389(1) Cr.P.C.

2.After trial, the learned II Additional Special Judge under N.D.P.S. Act at Madurai convicted him under Section 8(C) r/w 20(b) (ii) (B) of NDPS Act and sentenced him to 2 years R.I. and fined him Rs.10,000/- in default to undergo 3 months S.I.

3.He has paid the fine amount. Now, he is undergoing his sentence in the Central Prison, Madurai.

4.The learned counsel for the petitioner contended that in this case certain mandatory provisions of the NDPS Act has not been complied with. He contends that the information that the police is said to have received has not been recorded and it has not been



intimated to superior police officers. Further, as regards the search, the raiding official has not submitted his report to the superior officers. Further, there was no proper sealing of the samples sent to the Lab for analysis. Further, there is delayed production of the case-property to the Court.

5. Prosecution filed counter.

6. The learned Government Advocate (Criminal side) would submit that all the mandatory provisions of the Act in conducting investigation have been strictly complied with. Based on ample evidence, the trial Court has rightly convicted the accused. Further, he is a history sheeter. He is involved in number of criminal cases.

6. In reply, the learned counsel for the petitioner would submit that number of criminal cases have been cooked up as against the accused. Except in two cases, in all other cases, petitioner was acquitted. Those two cases are also put up cases. They are foisted against him. Further, in those cases, the petitioner is on bail.

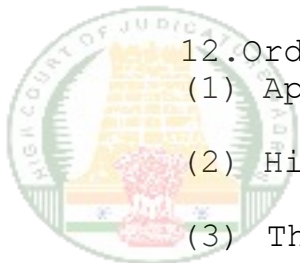
7. I have anxiously considered the rival submissions, perused the impugned judgment, the averments made in the counter filed by the respondent and also referred to relevant piece of evidence.

8. The contraband involved in this case is 4 kg of Ganja. It is not a commercial quantity.

9. It has been contended strenuously by the learned counsel for the petitioner that receipt of information prior to search has not been intimated to the superior police officers. Further, there is delay in submitting the case properties. Further, there is inconsistency on certain aspects in the evidence of witnesses. In the facts and circumstances, though independent witnesses are available except police witnesses other witnesses have not been examined.

10. Crime No. 208 of 2015 under Section 147, 148, 341, 294(b), 387, 307 and 506(ii) I.P.C. has been registered as against the petitioner and others by Kadayam Police. In this case he has been granted bail. So also in another case registered by Shenkottai Police under Section 294(b), 323 and 506(i) I.P.C. in Crime No. 140 of 2013. In this connection, it has been contended by the learned counsel for the petitioner that these two cases have been foisted against the petitioner. He has also read out the gist of the allegations made in the F.I.R.

11. In the facts and circumstances, certain arguable points are involved in this Criminal Appeal. Further, the petitioner was on bail throughout the trial Court proceedings. Further, it will take some time for the disposal of this criminal appeal. There is no allegation that if bail is granted he will abscond or he is likely to flee away from justice. I see prima-facie case in his favour. Thus, I am inclined to grant him appeal bail.



12. Ordered as under:

(1) Appeal bail granted.

(2) His sentence of imprisonment alone is suspended.

(3) 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 learned II Additional Special Judge under N.D.P.S. Act, Madurai.

(4) The petitioner shall appear before the Inspector of Police, Shencottai Police Station, Tirunelveli District on every Monday and Friday at 10.30 a.m. until further orders.

sd/-

19/08/2016

/ TRUE COPY /

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

TO

1 THE II ADDITIONAL SPECIAL JUDGE UNDER N.D.P.S. ACT,
MADURAI.

2 THE GOVERNMENT ADVOCATE (CRL.SIDE),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

4 THE INSPECTOR OF POLICE
SHENCOTTAI POLICE STATION,
TIRUNELVELI DISTRICT.

+1. C.C. to M/S.P.PONMANOHARAN Advocate SR.No.45794.

ORDER

IN

CRL MP (MD) No.6076 of 2016

IN

CRL A (MD) No.270 of 2016

Date : 19/08/2016

AM/AAL.MPA/SAR-III/23.08.2016/3P/6C