



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

Monday, the Twenty Second day of August Two Thousand Sixteen

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PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.7124 of 2016
IN
CRL A (MD) No.295 of 2016

SELVI

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.433/2010

... RESPONDENT/RESPONDENT

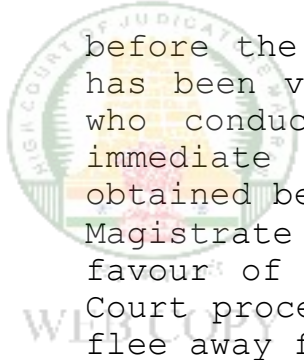
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence imposed by the 2nd Additional Special Court for NDPS Act Cases, Madurai passed in C.C.No.81 of 2011 dated 1.8.2016 pending disposal of the Criminal Appeal.

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) for the Respondent the court made the following order:-

The sole accused in C.C.No.81 of 2011, on the file of the learned II Additional Special Judge under N.D.P.S.Act @ Madurai, while challenging her conviction and sentence, seeks appeal bail under Section 389(1) Cr.P.C.

2. In the said Court, she has been prosecuted under Section 8 (c) r/w 20(b)(ii)(B) N.D.P.S.Act. She was found guilty and sentenced to 1 ¼ years R.I., and fined Rs.5,000/- with default sentence. She has paid the fine amount. Now, she is lodged in Central Prison, Madurai.

3. The learned counsel for the petitioner contended that the prosecution suffers from very serious infirmities in this case. The prosecution has not established its case beyond all reasonable doubts. After a long delay, the case-property has been produced



before the Trial Court. In taking sample, the mandatory procedure has been violated. Only one sample has been taken. The Officer, who conducted the search, has not submitted his report to his immediate superior Officer. Consent of the accused has not been obtained before making search as to her option to produce before the Magistrate or a Gazetted Officer. There is *prima facie* case in favour of the petitioner. She was on bail throughout the Trial Court proceedings. There is no allegation that she will abscond or flee away from justice.

4. The learned Government Advocate (Criminal Side) submitted that proper procedure has been adopted. No mandatory procedure has been violated. The petitioner is already involved in a similar case. It is pending for trial. Appreciating the evidence adduced the Trial Court has rightly convicted and appropriately sentenced her. There is no *prima facie* case in her favour.

5. I have anxiously considered the rival submissions, perused the impugned Judgment and also the materials on record.

6. In this case, the contraband involved is 2 Kgs., of Ganja. Thus, it does not involve in commercial quantity. It has been contended by the learned counsel for the petitioner that only one sample has been taken as against two samples. The facts that after the search no report has been submitted to the superior Police Officer and no consent has been obtained from the accused before making search, have been admitted by the Investigating Officer. It has also been contended that the case-property is stated to have been seized on 03.09.2010, however, it was produced only on 27.05.2012 and this aspect was also admitted by the Investigating Officer. It has been contended that the Investigation Officer had also admitted that there was no endorsement in Form-95 as to whether it was already produced before the Court and endorsement has been obtained.

7. The earlier case of the petitioner in Crime No.3 of 2007, on the file of Palani Taluk Police, involves 3 Kgs., of Ganja. It is pending trial. In the said case, she is already on bail. She was on bail throughout the Trial Court proceedings. There is no allegation that she will abscond or flee away from justice. Thus, I find *prima facie* case in favour of the petitioner.

8. Ordered as under:

(i) Appeal bail granted.

(ii) Her 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 under N.D.P.S.Act @ Madurai.



(iv) The petitioner shall appear before the Inspector of Police, Palani Taluk Police Station, Dindigul District, on every Monday and Friday at 10.30 a.m., until further orders.

sd/-
22/08/2016

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

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TO

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

2. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3. THE INSPECTOR OF POLICE, PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT.

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

+1. C.C. to M/S.S. MUNIYANDI Advocate SR.No.46120

GJM/AAL-MPA/SAR(I)-22.8.176-2p-6c

ORDER
IN
CRL MP (MD) No.7124 of 2016
IN
CRL A (MD) No.295 of 2016
Date : 22/08/2016