



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

Friday, the Twenty Seventh day of October Two Thousand Seventeen

PRESENT

**The Hon`ble Mr.Justice A.M.BASHEER AHAMED**

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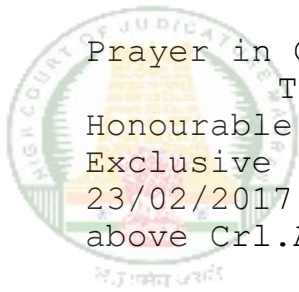
CRL MP(MD) No.1858 of 2017  
IN CRL A(MD) No.71 of 2017  
and CRL MP(MD)NOS.1859 & 3360 OF 2017  
IN CRL A(MD)NO.72 OF 2017  
AND CRL MP(MD)NO.2558 OF 2017  
IN CRL A(MD)NO.92 OF 2017

JEYAPRAKASH, ... PETITIONER/APPELLANT/ ACCUSED NO.4  
IN CRL MP(MD)NO.1858/2017 IN CRL A(MD)NO.71/2017  
MURUGAN ...APPELLANT/ ACCUSED NO.1  
IN CRL MP(MD)NO.1859/2017 IN CRL A(MD)NO.72/2017  
1 ESWARAN  
2 KUBENDRAN ...PETITIONERS/APPELLANTS 2&3/  
ACCUSED NOS.2 & 3  
IN CRL MP(MD)NO.3360/2017 IN CRL A(MD)NO.72/2017  
ESWARAN ...APPELLANT/APPELLANT/ACCUSED NO.5  
IN CRL MP(MD)NO.2558/2017 IN CRL A(MD)NO.92/2017  
Vs

THE STATE REPRESENTED BY  
THE INSPECTOR OF POLICE,  
ALLINAGARAM POLICE STATION,  
THENI DISTRICT.  
(CRIME NO.698 OF 2009) ... RESPONDENT/RESPONDENT/COMPLAINANT  
IN ALL THE PETITIONS

PRAYER IN CRL MP(MD)NO.1858/2017 IN CRL A(MD)NO.71/2017 :  
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 District and Sessions Court  
for Exclusive Trial of N.D.P.S.Act Cases, Madurai in C.C.No.27 of  
2010 dated 23.02.2017 pending the disposal of the main Crl.A.(MD)  
No.71 of 2017 and thus render justice.

Prayer in CRL MP(MD). 1859/ 2017 IN CRL A(MD)NO.72/2017 :  
To suspend the sentence imposed on the Petitioner by the  
Honourable II Additional Special District and Sessions Court for  
Exculsive Trial of NDPS Act Cases, Madurai in C.C.No.27 of 2010  
dated 23.02.2017 enlarge the Petitioner on bail, pending disposal of  
the Crl.A.(MD)No.72 of 2017 and thus render justice.



Prayer in CRL MP(MD). 3360/ 2017 IN CRL A(MD)NO.72/2017 :

To suspend the sentence imposed on the petitioners by the Honourable 2nd Additional Special District and Sessions Court for Exclusive Trial of NDPS Act Cases, Madurai in C.C.No.27/2010 dated 23/02/2017 enlarge the petitioner on bail, pending disposal of the above Crl.A.

Prayer in CRL MP(MD). 2558/ 2017 IN CRL A(MD)NO.92/2017 :

To enlarge petitioner on bail by suspending the sentence imposed by the Honourable II Additional Special District and Sessions Court for Exclusive Trial of NDPS Act Cases, Madurai in C.C.No.27/2010 dated 23/02/2017 pending disposal of the instant Crl.A

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.P.PON MANOHARAN, Advocate for the petitioner IN CRL MP(MD) NO.1858/2017 IN CRL A(MD)NO.71/2017 and of MR.K.P.S.PALANIVEL RAJAN, Advocate for the Petitioner IN CRL MP(MD)NO.1859 & 3360/2017 IN CRL A(MD)NO.72/2017 and of MR.J.LAWRANCE, Advocate for the petitioner IN CRL MP(MD)NO.2558/2017 IN CRL A(MD)NO.92/2017 and of MR.T.MOHAN, Additional Public Prosecutor for the Respondent in all the petitions the court made the following order:-

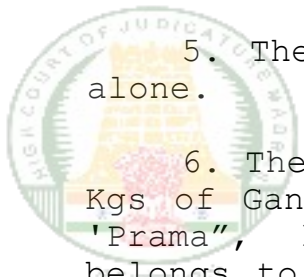
The above Criminal Miscellaneous Petitions have been filed by the Petitioners / Appellants, praying to suspend the sentence of imprisonment imposed on them, by the learned II Additional Special District and Sessions Judge for Exclusive Trial of N.D.P.S.Act Cases, Madurai, in C.C.Nos.27 of 2010, dated 23.02.2017 and enlarge the them on bail, pending disposal of the above Criminal Appeals.

2. The petitioners in Crl.M.P.(MD)No.1859 of 2017 & Crl.M.P.(MD)No.3360 of 2017 in Crl.A.(MD)No.71 of 2017 & Crl.A.(MD)No.72 of 2017 are arrayed as A1 & A2 ; the petitioner in Crl.M.P.(MD)No.1858 of 2017 in Crl.A.(MD)No.71 of 2017 is arrayed as A4 and the petitioner in Crl.M.P.(MD)No.2558 of 2017 in Crl.A.(MD)No.92 of 2017 is arrayed as A5 respectively in C.C.No.27 of 2010, on the file of learned II Additional Special District and Sessions Judge for Exclusive Trial of N.D.P.S.Act Cases, Madurai.

3. After trial, the petitioners have been been convicted and sentenced as under:

| Accused  | Conviction                                    | Sentence                                                     |
|----------|-----------------------------------------------|--------------------------------------------------------------|
| A1 to A3 | Section 8(c) r/w.20 (b) (ii) (C) of NDPS Act. | Each 13 Years R.I. + each 1,00,000/-, i/d 1 Year S.I., each. |
| A\$ & A5 | Section 25 of NDPS Act.                       | Each 13 Years R.I. + each 1,00,000/-, i/d 1 Year S.I., each. |

4. Aggrieved by the order of conviction, the accused preferred the present Criminal Appeals before this Court and are pending.

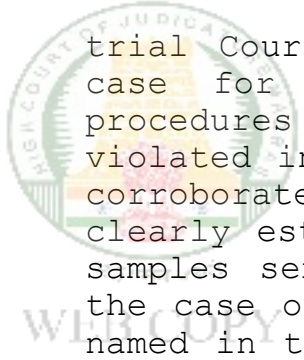


5. The fine amount imposed by the trial Court was paid by A1 alone.

6. The case of the prosecution is that A1 to A5 transported 158 Kgs of Ganja from Andhra Pradesh by a Lorry contained the name of 'Prana', bearing Registration No.TN-32-Z-7749, Ashok Leyland, belongs to A6, without any permission and license, on 18.10.2009. While P.W.1 was on duty in his office on 18.10.2009 at about 12 Hrs., received information from an informant over phone and recorded it and submitted the same to the Superintendent of Police, Theni District and got necessary permission from him to take action in that report. He along with P.W.2 and one Manikandan and Manimaran, Head Constable with necessary equipments went to Madhurapuri Villukku Road, and in front of E.B.Sub Station conducted vehicle check up. While so, around 1.30 a.m., P.W.1 stopped the lorry bearing Registration No.TN-32-Z-7749. He found A1 to A5 were sitting inside the cabin of the said lorry and during the course of enquiry, he found that A4 is the driver of the said lorry and A5 is the cleaner. P.W.1 informed them about the search of the accused as well as the lorry and their rights under NDPS Act and the accused replied that they did not want to be taken before the Judicial Magistrate or Gazetted Officer for such search. After obtaining Exs.P2 to P6, the letters of consent for search, P.W.1 searched the lorry and found Ganja kept into the inner floor of the lorry covered with wooden bench. P.W.1 arrested them for the offence of illegal transportation of Ganja and recorded the confession statement of A1 to A4 and seized 20 Kgs, 16 Kgs & 16 Kags of Ganja from A1; 20 Kgs & 16 Kgs of Ganja from A2 and 20 Kgs, 20 Kgs & 16 Kgs of Ganja from A3 taken by themselves from the lorry respectively and 100 grams of Ganja was taken from each bags as sample and was divided into two equal parts each containing 50 grams. P.W.1 seized the said lorry, cement colour tarpaulin and wooden benches containing different measurement from A4. Thereafter, P.W.1 returned to the Police Station with the accused and seized the properties and registered the case in Crime No.698 of 2009 for the offence under NDPS Act.

7. The learned counsel appearing for the accused / petitioners would submit that the mandatory provision of Sections 42 and 57 are not properly complied with by P.W.1; that the initials found in the seized bags containing the contraband has not reflected in Exs.P15 to P18 athachi; that 18 samples were not sent for chemical analysis and there is no mentioning on the samples as to which sample relates to which accused; that there is no independent witnesses in preparation of seizure mahazar; that the names of other persons mentioned in the confession of the co-accused have not been added as accused in this case and there is no documentary evidence and other evidence to show that A4 is the driver of the said seized lorry.

8. The learned Additional Public Prosecutor appearing for the respondent would submit based on the counter statement of the respondent that the trial Court has rightly convicted the accused on appreciating the evidence produced by the prosecution before the

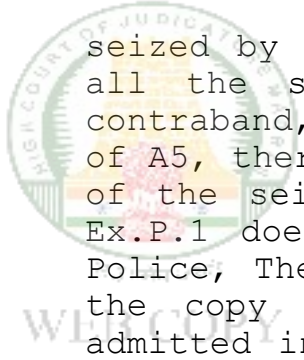


trial Court; that the petitioners are not having any prima facie case for suspension of sentence in these appeals; that the procedures contemplated in Sections 42 and 57 of NDPS Act were not violated in the instant case; that Ex.P15 to 18 athacies have been corroborated with other documentary and material evidence and clearly established the case of the prosecution that the number of samples sent for chemical analysis through Ex.P26 has not damaged the case of prosecution and the absence of implicating the persons named in the confession statement has gone against the prosecution is not acceptable, since P.W.5 has deposed that such persons are not connected to the instance case after examining them during the course of investigation.

9. Perused the materials on record. Heard and considered the rival submissions made by either side.

10. A perusal of evidence of P.W.1 would show that Ex.P1 was recorded on the basis of the information received over phone from the informant while he was in Police Station and placed the said information, seeking to proceed for further action in this matter from the Superintendent of Police, Theni District and the said lorry was stopped at Theni - Periyakulam Road in front of E.B.Sub Station. A1 to A4 who were sitting in the cabin of the said lorry and after obtaining the consent letters from the accused, the accused and lorry were searched and the contraband ie., 158 Kgs of Ganja in 9 bags were seized from the lorry through A1 to A3 and a special report was also prepared and submitted to P.W.5, the Deputy Superintendent of Police, Theni District for further investigation in this matter. The above facts are admitted by P.W.3 also in this case. The trial Court has also decided that, since the contraband were seized in the public place then P.W.1 need not comply with Section 42(1) & (2) of NDPS Act. However, P.W.1 submitted the information to the Superintendent of Police, Theni District and on that basis, the Superintendent Police authorized P.W.5 to take up further investigation, since P.W.1 seized the Ganja in this case. Hence, learned Additional Public Prosecutor would submit that P.W.1 complied the provisions of Section 42(1) & (2) of NDPS Act. As per the confession given by the accused, the contraband was seized from the lorry through A1 to A3 each containing different weights of Ganja.

11. On perusal of the evidence adduced by the prosecution, there are some discrepancies while drawing, sealing and marking the samples of contraband at the place of seizure. P.Ws.1 and 4 admit that there is no mentioning about the samples as to which sample belongs to which accused in this case. P.W.1 has admitted that it is not stated in the seizure mahazar as to which sample was taken from which bags and it belong to which accused. The further case of the prosecution is that three bags containing each 20 Kgs, 16 Kgs & 16 Kgs of Ganja were taken by A1; two bags each containing 20 Kgs & 16 Kgs of Ganja were taken by A2 and 20 Kgs, 20 Kgs & 16 Kgs of Ganja were taken by A3 and that 4 bags each containing 20 Kgs, 20 Kgs, 10 Kgs and 16 Kgs were taken by A3 bearing different inscription written on the said bags from the lorry, which were



seized by P.W.1. But, the signature of the concerned accused and all the signatures of the witnesses in the seized 9 bags of contraband, Except the confession statement of A4 and the statement of A5, there is no evidence to show that they are driver and cleaner of the seized lorry respectively. P.W.1 has further stated that Ex.P.1 does not contain any endorsement of the Superintendent of Police, Theni and also there is no mentioning about the despatch of the copy to the Superintendent of Police, Theni. It is also admitted in the evidence of P.W.1 that there is two days delay in handing over the contraband, which was returned by the concerned Magistrate and the same was produced before the concerned NDPS Court and no explanation was given in the evidence regarding the custody of the said contraband during the two days.

12. In the facts and circumstances, perusing the impugned Judgment and the materials on record, I am of the view that certain eminently arguable points are involved in this criminal appeals. They are required to be examined in detail in the main criminal appeals. Further, it will take some time for the disposal of the criminal appeals.

13. On considerations, ordered as under:

- (i) Appeal bail granted.
- (ii) Substantial sentence alone is suspended on condition that the each petitioners shall execute a bond for Rs.15,000/- (Rupees Fifteen thousand only) with two sureties for the like sum each to the satisfaction of the learned learned II Additional Special District and Sessions Judge for Exclusive Trial of N.D.P.S.Act Cases, Madurai,
- (iii) The petitioners shall appear before the said Court weekly twice ie., on every Monday and Friday at 10.30 a.m., until further orders.
- (iii) The petitioners / A2 to A5 shall deposit the fine amount of Rs.1,00,000/- (Rupees one Lakh), as ordered by the Court below, except A1, since he already deposited the fine amount.

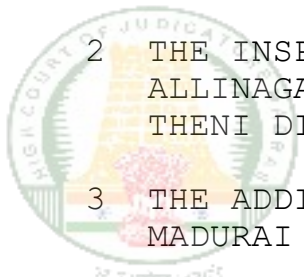
sd/-  
27/10/2017

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

TO

1. THE II ADDITIONAL SPECIAL DISTRICT AND SESSIONS JUDGE  
FOR EXCLUSIVE TRIAL OF NDPS ACT CASES, MADURAI.



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

+2. C.C. to M/S.P.PON MANOHARAN Advocate SR.No. 33310  
+1cc to MR.K.P.S.PALANIVEL RAJAN, Advocate in SR.No.33328,33329  
+1cc to MR.J.LAWRANCE, Advocate in SR.No. 33345

GJM/CM/MSA/SAR-I-27.10.2017-6P-9C

ORDER  
IN  
CRL MP (MD) No.1858 of 2017  
IN CRL A (MD) No.71 of 2017  
and CRL MP (MD) NOS.1859 & 3360 OF 2017  
IN CRL A (MD) NO.72 OF 2017  
AND CRL MP (MD) NO.2558 OF 2017  
IN CRL A (MD) NO.92 OF 2017  
Date :27/10/2017