

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fourteenth day of November Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1441 of 2018

in CRL.A.No.65 of 2018

SRIKANTH

[PETITIONER/APPELLANT]

Vs

STATE REP BY

[RESPONDENT/RESPONDENT]

THE INSPECTOR OF POLICE,
NARCOTICS INTELLIGENCE BUREAU,
CHENNAI CITY.
IN CRIME NO.75 OF 2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.65 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Honble Principal Special Judge for NDPS Act Cases, Chennai in C.C.No.49 of 2016 dated 13.10.2017, pending disposal of this Criminal Appeal and release the petitioner on bail.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.65 of 2018 on the file of the High Court and upon hearing the arguments of M/S.S.PERIYASAMY, Advocate for the petitioner and of M/S.T.P.SAVITHA Government Advocate on behalf of the Respondent the court made the following order:-

This Miscellaneous Petition has been filed by the petitioner/accused to suspend the sentence imposed against him in C.C.No.49 of 2016 on 13.10.2017 by the learned Principal Special Judge for NDPS Act Cases, Chennai and enlarge him on bail, pending disposal of Crl.A.No.65 of 2018.

2. The petitioner/accused has been convicted for the offences under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- in default to undergo 30 months rigorous imprisonment. Against the conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.65 of 2018, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that on 01.08.2016, when the Police Personnel were on routine track patrolling duty between Korukkupet and Basin Bridge, the accused was found carrying two travels bags, containing 21 kgs of Ganja, pursuant to which, the accused was brought to the Police Station along with seized items, produced before the learned XVI Metropolitan Magistrate and remanded to judicial custody. In this regard, a case in Crime No.75 of 2016 under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act came to be registered against the accused on the said date and the Trial Court, after considering the oral and documentary evidence, convicted the accused for the offences as stated supra.

4. Learned counsel for the petitioner / appellant would submit that the accused was initially investigated and was taken into custody by an Officer belonging to Railway Police Force (RPF), who is not vested with any such power to do so. Moreover, while conducting search, the Officers have not followed any procedures adumbrated under the relevant provisions of law, in absence of which, the search itself would be construed as unauthorized. He would further submit that the factum of seizure of the contraband and the subsequent creation of seizure mahazar (Ex.P6) is doubtful, as PW1 in his deposition was not sure as to whether the contraband weighed 20 kgs. or 21 kgs. Further, the place of seizure was also not clearly mentioned, as according to the case of prosecution, Ex.P6 was prepared at Egmore Railway Station, whereas the deposition of PW2 was otherwise. Contending that the prosecution had miserably failed to prove the case beyond reasonable doubt, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

5. On the other hand, the learned Government Advocate (Crl.Side) has contended that the guilt of the accused has been clearly established by the prosecution by way of examination of six witnesses, marking 11 exhibits and through 21 material objects. On seizure of the contraband, immediately, the same was sent to Forensic Science Department, Chennai for chemical analysis and a report was also duly received from the concerned authorities, on the basis of which and upon scrutinizing the same, the Trial Court had convicted the accused. Learned Government Advocate (Crl.Side) has further contended that the prosecution has proved the guilt of the accused beyond reasonable doubt through oral and documentary evidence and the Trial Court, on the basis of the incriminating materials against the petitioner/accused, has rightly convicted him and therefore, the accused person is not entitled to the grant of suspension of sentence and the petition is liable to be dismissed.

6. In the light of the submissions made on either side hereinabove, taking into account the fact that the accused is in jail for about nine months; that according to the learned counsel for the petitioner, since the seizure of contraband and the creation of

mahazar are contradictory, he has got some arguable points in the appeal and also the fact that the appeal is not likely to be heard in the near future, this Court is inclined to grant suspension of the sentence to the petitioner/accused.

7. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioner in C.C.No.49 of 2016 on 13.10.2017 by the learned Principal Special Judge for NDPS Act Cases, Chennai, is suspended till the disposal of Criminal Appeal No.65 of 2018;

c) the petitioner shall be released on bail on his executing a bond for a sum of Rs.25,000/- and two sureties each for a like sum to the satisfaction of the learned Principal Special Judge for NDPS Act Cases, Chennai;

d) and on further condition that he shall appear before the said Court weekly twice, viz., on the first and last working days of every week at 10.30 a.m. until further orders.

-sd/-
14/11/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

सत्यमेव जयते
Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR NDPS ACT CASES, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

WEB COPY

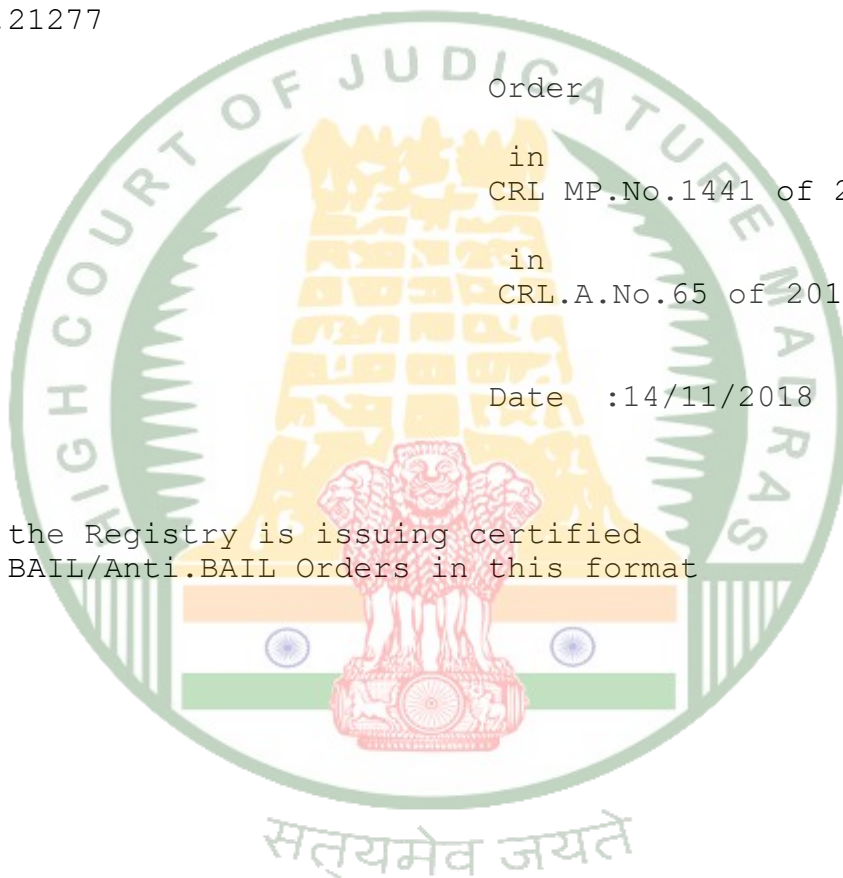
3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI - I,
CHENNAI

4 THE INSPECTOR OF POLICE,
NARCOTICS INTELLIGENCE BUREAU,
CHENNAI CITY

+1C.C. to M/S.S.PERIYASAMY Advocate on payment of necessary
charges SR.NO.21277

Order
in
CRL MP.No.1441 of 2018
in
CRL.A.No.65 of 2018
Date :14/11/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cm 16/11/2018



WEB COPY