

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Sixth day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.1752 and 1753 of 2018

IN CRL A.157 & 461 /2017

MANIVANNAN @ RUBAN @ SUBASH, [PETITIONER/APPELLANT/ACCUSED
IN CRL.MP.NO.1752/2018]

1 BADREELAL [PETITIONERS/APPELLANT/ACCUSED
2 MUNNIBAI IN CRL.MP.NO.1752/2018]
3 REKHA

Vs

1 STATE BY, [RESPONDENT
INTELLIGENCE OFFICER, IN BOTH THE PETITIONS]
DIRECTORJ OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT,
CHENNAI-600 017.
F.NO.VIII/48/15/2012-DRI)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal Nos.157 & 461/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by order in C.C.No.42 of 2012 on the file of the Special Judge for I Additional Special Court Under EC & NDPS Act, Chennai and enlarge him on bail till the disposal of the appeal filed by the petitioner in C.A.No.157 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.157 & 461 on the file of the High Court and upon hearing the arguments of MR.ANIL LALLA FOR M/S.M.S.CHARLES, Advocate for the petitioner and of MR.N.P.KUMAR SPECIAL PUBLIC PROSECUTOR[CRL.SIDE]on behalf of the Respondent the court made the following order:-

The petitioners/appellants in Crl.M.P.No.1753 of 2018 in Crl.A.No.461 of 2017 are Father, Mother and Daughter, who are arrayed as accused A2, A3 and A4 and the petitioner/appellant in Crl.M.P.No.1752 of 2018 in Crl.A.No.157 of 2017 is arrayed as fifth accused in C.C.No.42 of 2012 on the file of the learned Special Judge, I Additional Special Court Under NDPS Act, Chennai. They have

been convicted along with first accused and sentenced, vide impugned judgment dated 04.02.2017, as follows:-

Rank of the accused	Conviction under section	Sentence Awarded
A2, A3, and A4	u/s.8(c) r/w.21(c) and 29 of the NDPS Act	To undergo ten years rigorous imprisonment and pay a fine of Rs.1,00,000/- for each offences in default to undergo rigorous imprisonment for another six months.
A5	U/s 8(c) r/w.21(c) and 8(c) r/w.28 and 29 of NDPS Act	To undergo ten years rigorous imprisonment and pay a fine of Rs.1,00,000/- for each offences in default to undergo rigorous imprisonment for another six months.

The Trial Court ordered the sentences to run concurrently and also granted set-off under section 428 Cr.P.C. Now, the petitioners pray for suspension of sentence pending appeal.

2 The case of the prosecution is that 6.630 kgs of Heroin were recovered from the possession of the petitioners/accused on 11.05.2012, Chennai, for which, they along with others, admitted their guilt and hence, all the accused were arrested and remanded to the judicial custody.

3 The learned counsel for the petitioners/appellants submitted that they are innocent and the case has been falsely foisted against them by the respondent police and they were arrested by the respondent on 11.05.2012 and are still in custody. The learned counsel further submitted that exclusive possession of the contraband is not proved by the prosecution beyond reasonable doubt. Even as per the prosecution witness, the contraband was not in the custody of the petitioners and therefore, they cannot be charged for the possession and seeks suspension of sentence. The learned counsel for the petitioner/fifth accused in CrI.M.P.No.1752 of 2018 contended that there is non compliance of mandatory provision of Sections 42(i) and 42(ii) of NDPS Act and also non compliance of Section 50 of NDPS Act. The learned counsel for the petitioner/5th accused in CrI.M.P.No.1752 of 2018 further contended that the voluntary statement said

to have been recorded under Section 67 of the NDPS Act, is not correct and he drawn my attention to the statement made by A3, A4 and A5. The learned counsel for the 5th accused relied upon the decision of the Hon'ble Supreme Court in **CDJ 2013 SC 659 [Ramnik Singh Versus Intelligence Officer Directorate of Revenue Intelligence]**.

4 Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor appearing for NDPS Cases submitted that the petitioner/accused along with other accused, knowingly involved themselves in the illicit transaction and further they have admitted their involvement in the voluntary statement given under Section 67 of NDPS Act. The entire seizure proceedings were conducted as contemplated under the provisions of the NDPS Act, in the presence of independent witnesses and all the mandatory requirements as required under Section 42 and 50 are duly complied with, without any violation. The learned Special Public Prosecutor further submits that in the judgment reported in **2000 Cr.L.J 4619(SC) [Dadu alias Tulsidas Vs State of Maharashtra]** and **2009(1) Supreme 524=(2009)2 SCC 624-Union of India Vs. Rattan Malik @ Habul**, the Hon'ble Apex Court has held that the provisions of Section 37 of the NDPS Act, are applicable to bail in appeal cases. The petitioner has not made out any case for suspension of sentence and not satisfied any condition as mentioned under Section 37 of NDPS Act and strongly opposed for grant of bail, pending appeal.

5 Heard both sides and perused the records.

6 On appreciation and assessment of the evidence on record, the learned Special Judge found that the petitioners/accused are guilty u/s.8(c) r/w.21(c) & 29 with the other accused for the offence charged against them and accordingly convicted them under the provisions of the NDPS Act. It is seen from the judgment of the Trial Court that the quantity of Heroin involved in this case is 6.630 kgs, which is admittedly a commercial quantity as per the provisions of the NDPS Act. Therefore, it clearly attracts the provisions of Section 37 of the NDPS Act, for bail. The petitioners/accused have to satisfy this Court that there are reasonable grounds for believing that they are not guilty of such offence and that they are not likely to commit any offence while on bail.

7 On perusal of the order passed by the Trial Court as well as from the documents marked before the Trial Court during the evidence, it is seen that the Trial Court has given categorical finding based upon the evidence of the prosecution witnesses PW.2, PW.7, PW.8, Pw.10, Pw.11, and PW.12. The prosecution has categorically proved that the right given under Section 50 of NDPS Act, was explained to all the accused in respect of the officer concerned and accordingly, the Trial Court held that the mandatory provisions under Section 50 of NDPS Act, has been duly complied with. After perusing the documents, I am also concurring with the same and accordingly, the contention raised by the appellant that the mandatory provisions under section 50 has not been complied with stands negatived for the purpose of determination of these

petitions.

8 On factual ground, it is seen that in the instant case, contraband was seized from the bag carried by the accused and the contraband was seized in the presence of the accused as laid down by the Hon'ble Supreme Court of India. In view of the settled provision of Law by the Hon'ble Supreme Court, if there is no such seizure on the person of the accused, the mandatory provisions under Section 50 are not attracted and hence viewing from any angle, the contention of the learned counsel for the petitioner, does not hold ground.

9 It seen that the petitioner/5th accused retracted his confession on 25/05/2012. However, when he was produced before the Magistrate on 12.05.2012, no such retraction was made by A5. Therefore, the Trial Court appears to have rejected a similar plea raised by the appellant during the arguments. In view of the said findings of the learned Special Judge and also on perusal of the relevant records placed before me, I find that the petitioners are not entitled for interim suspension of sentence in this appeal. Accordingly, these petitions are dismissed.

-sd/-

06/09/2018

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

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

TO

1 THE SPECIAL JUDGE
PRINCIPAL SPECIAL COURT UNDER
EC & NDPS ACT, CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INTELLIGENCE OFFICER,
DIRECTORJ OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT,
CHENNAI-600 017.

C.C. to M/S.M.S.CHARLES Advocate on payment of necessary charges

Order

in
CRL MP.1752 AND 1753 /2018

in
CRL A.157 & 461 /2017

Date :06/09/2018

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