

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Nineteenth day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice P. KALAIYARASAN

CRIMINAL MISCELLANEOUS PETITION Nos.9622 & 6923 of 2017

IN CRL A.Nos.463 & 464 /2017

Y.V.NAGARAJ

[PETITIONER
IN CRL.MP.NOS.9622 &9623/2017]

Vs

STATE BY INTELLIGENCE OFFICER [RESPONDENT IN BOTH THE PETITIONS]
NARCOTICS CONTROL BUREAU,
CHENNAI ZONE, CHENNAI.
(N.C.B.F.NO.48/1/3/95-NCB/MDS)
(N.C.B.F.NO.48/1/3/94-NCB/MDS)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal Nos. 463 & 464/2017 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence imposed on the petitioner herein by the learned Special Judge, I Additional Special court for NDPS Act cases, Chennai - 600104, made in C.C.No.418 of 1995 dated 27.07.2017, convicting the Appellant/Accused herein for the allelged offences under section 8(c) read with section 22(b), 8(c) read with 23(b) and 8(c) read with section 29 of the NDPS Act and sentencing him to undergo 10 years each and to pay a fine of Rs.One lakh for each offences and in default to undergo two years for each offences and the sentences to run concurrently and enlarge him on bail pending disposal of eh above Appeal on the file of this Hon'ble court and thus render justice.[CRL.MP.NO.9622 /2017]

[II]suspend the sentence imposed on the petitioner herein by the learned Special Judge, I Additional Special court for NDPS Act cases, Chennai - 600104, made in C.C.No.36 of 1995 dated 27.07.2017, convicting the Appellant/Accused herein for the allelged offences under section 8(c) READ WITH SECTION 29, 8(C) READ WITH 20(b) (ii) (B), 8(C) read with 23(b), 8(C) read with section 25 of the NDPS Act and sentencing him to undergo 10 years R1 each and to pay a fine of Rs.One lakh for each offences and in default to undergo two years for oeach offences and the sentencessto orun concurrently and enlarge him on bail pending disposal of eh above Appeal on the file of this Hon'ble court and thus render justice.[CRL.MP.NO.9623/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Criminal Appeal Nos. 463 & 464/2017 on the file of the High Court and upon hearing the arguments of MR.B.KUMAR SENIOR COUNSEL FOR M/S.R.RAJAN Advocate for the petitioner and of MR.N.P.KUMAR SPECIAL PUBLIC PROSECUTOR FOR NCB CASES on behalf of the Respondent the court made the following order:-

Heard both sides.

2.These two petitions filed by the same convict / appellant, seeking to suspend the sentence in two Appeals, are taken up together and common order is passed as the offences in two cases relate to psychotropic substance.

3.Crl.A.No.463 of 2017 is against the conviction and sentence passed in C.C.No.418 of 1995, dated 27.07.2017, on the file of the I Additional Special Court under NDPS Act cases. Crl.A.No.464 of 2017 is against the conviction and sentence passed by the same Court in C.C.No.36 of 1995 on the same day.

4.The trial Court, in C.C.No.418 of 1995, convicted the petitioner/ accused and sentenced to undergo 10 years RI and to pay a fine of Rs.1,00,000/-, in default to undergo 2 years imprisonment for each of the offences under Section 8[c] r/w 22 [b], 8[c] r/w 23[b] and 8[c] r/w 29 of NDPS Act, 1985.

5.The trial Court, in C.C.No.36 of 1995, convicted the petitioner/ accused and sentenced to undergo 10 years RI and to pay a fine of Rs.1,00,000/-, in default to undergo 2 years imprisonment for each of the offences under Section 8[c] r/w 29, 8 [c] r/w 20[b][ii][B], 8[c] r/w 23[b] and 8[c] r/w 25 of NDPS Act, 1985.

6.In the first case in a consignment of clear bulbs exported by M/s.K.J.Exports of Shastri Nagar, Madras, a quantity of 20,34,000 Methaqualone tablets was seized by the authorities in the Kingdom of Swaziland. The appellant/A-2 along with other accused Venugopal, floated a fictitious company in the name and style of M/s.K.J.Exports, stored the tablets in the premises in Kotturpuram, concealed and packed the tablets for exports. The test of samples at South Africa and at Madras confirmed the presence of Methaqualone, a psychotropic substance falling under NDPS Act, 1985.

7.In the second case, the officers of NCB, on information, having seized incriminating documents, indicating the involvement in organized trafficking of Hashish and Mandrax, made investigation and found 9 accused in the case with, known and unknown persons, based in India and abroad entered into criminal conspiracy at various cities in India and in foreign countries like United

Kingdom, Israel, Dubai and South Africa to do illegal acts by floating fictitious companies, for the purpose of illegal export of Hashish and transported the same from Ahmedabad to Madras by road. Through the conspiracy, the petitioner/appellant/A-2 floating a fictitious company in the name of M/s.K.J.Exports stored the same in the rented premises in Kotturpuram and the petitioner/appellant along with 5 other accused, concealed and packed the same in vacuum flasks, which were procured by A3 and A4 and caused arrangements for the transportation and illegal export of Hashish.

8.Thus, in both the cases, 20,34,000 Methaqualone tablets and 2918kgs of Hashish are involved.

9.The State also preferred three Criminal Appeals, two for enhancement of sentence to the accused and one against the acquittal of A5 and A6 in C.C.No.36 of 1995.

10.The learned Senior Counsel appearing for the petitioner/appellant argued that there is no incriminating material, except the chemical examination report and no person regarding seizure and chemical examination has been examined; that even documents including chemical examination Report marked cannot be taken as proved, in view of the absence of presumption clause under Section 66 of the Act; that contraband had also not been produced before the Court; that the conviction cannot be based on the basis of the statement recorded from the accused under Section 67 of the Act and therefore, the prosecution has not established the charges as against the petitioner/appellant.

11.It is further argued that occurrence took place in 1994 and till 2009, when amendment was brought in, the purity test is must and only the weight of material alone is to be taken to calculate as to whether, it is commercial quantity or not. In this case, purity test was not conducted and therefore, the contraband involved, is to be construed as in-between quantity and therefore, the sentence already undergone i.e. 2 years 9 months will be suffice and considering these aspects, the sentence imposed on the petitioner/appellant in two cases in C.C.No.418 of 1995 and C.C.No.36 of 1995 are to be suspended.

12.The learned Special Public Prosecutor appearing for the Department vehemently argued that the petitioner/appellant floated fictitious company and sent huge quantities of Methaqualone and Hashish to foreign countries by concealing in the bulbs and vacuum flasks. Documents relating to seizure and chemical examination report and connected documents have been marked only as per the order of the Court, by filing petition. The accused challenged the said order and the order of the trial Court was upheld. Only in the appeal, it is to be decided, whether the documents have been proved or not. It is now well settled that the voluntary confession statement before the Department official is admissible and the conviction can be based on such statement. As far as

psychotropic substance Hashish is concerned, it is natural one and purity test is not necessary. He also contended that sentence cannot be suspended as per Section 32A of the Act.

13.It is well settled that the Court has got power to suspend the sentence, subject to Section 37 of the Act. In a case of commercial quantity, sentence can be suspended, only when the Court is satisfied that there are reasonable grounds, for believing that the accused is not guilty of such offence and that, he is not likely to commit any offence, while on bail.

14.If the quantity is not commercial quantity, there is no impediment in suspending the sentence. The moot question to be decided in these cases is whether the quantity recovered is commercial quantity or not and the same is to be decided, only in the appeal. As per the judgment of the Hon'ble Supreme Court, *KANHAIYALAL Vs UNION OF INDIA* reported in [2008]4 SCC 668, it has been held that the statements made under Section 67 of the Act is not hit under Article 20[3] of the Constitution of India and conviction can be maintained solely on the basis of such confession. As already pointed out, the quantity of the contraband, namely, Methaqualone and Hashish are huge in quantity.

15.This Court perused the judgments of the trial Court and is not convinced to suspend the sentence. Hence, both the petitions Crl.M.P.No.9622 of 2017 and Crl.M.P.No.9623 of 2017 for suspension of sentence are dismissed.

-sd/-

19/04/2018

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

TRUE COPY

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

TO

1 THE 1 ADDITIONAL SPECIAL COURT
UNDER NDPS ACT CASES, CHENNAI-600104

2 THE SPECIAL PUBLIC PROSECUTOR
FPR NDPS CASES, HIGH COURT, MADRAS

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAAL, CHENNAI

4 STATE BY INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU, CHENNAI ZONE,
CHENNAI. (N.C.B.F.NO.48/1/3/95-NCB/MDS)

+1 C.C. to M/S.R.RAJAN Advocate on payment of necessary charges
SR.NO. 7902

Order

in
CRL MP.NOS.9622 & 9623/2017

in
CRL A.Nos.463 & 464/2017

Date :19/04/2018

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RD 25/04/2018