

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirteenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.16759 of 2018

IN CRL.A.NO.457 OF 2017

RAMESHWAR

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

THE INTELLIGENCE OFFICER,
DIRECTORATE 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 No.457 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the Learned Special Judge, I Additional Special Court Under NDPS Act, Chennai in CC.No.42 of 2012 dt.4.2.2017 and release the petitioner on bail till the disposal of the appeal in CA.No.457 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.457 of 2017 on the file of the High Court and upon hearing the arguments of 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 petitioner/appellant was arrayed as first accused in C.C.No.42 of 2012 on the file of the learned Special Judge, I Additional Special Court Under NDPS Act, Chennai and was convicted under Section 8(c) r/w. 29, 21(C) and 28 of NDPS Act, and was sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo six months rigorous imprisonment vide impugned order dated 04.02.2017. The Trial Court ordered the sentences to run concurrently and also granted set-off under section 428 Cr.P.C. Now, the petitioner prays 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 accused on 11.05.2012, Chennai, for which, he 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 petitioner/appellant submitted that he is innocent and the case has been falsely foisted against him by the respondent police and he was arrested by the respondent on 11.05.2012 and is 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 petitioner and therefore, he cannot be charged for the possession and seeks suspension of sentence.

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

5 Per contra, Mr.N.P.Kumar, Special Public Prosecutor (Crl.Side) appearing for the respondent submitted that the petitioner/ accused along with other accused, knowingly involved himself in the illicit transaction and further he has admitted his 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 Sections 42 and 50 are duly complied with, without any violation. The learned Government Advocate (Crl.Side) further submitted 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.

6 Heard both sides and perused the records.

7 On appreciation and assessment of the evidence on record, the learned Special Judge found that the petitioner/appellant is guilty u/s.8(c) r/w.29, 21(C) & 28 and accordingly convicted him 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 in appeal cases. The petitioner/appellant has to satisfy this Court that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8 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 petitioner/appellant that the mandatory provisions under section 50 has not been complied with stands negatived for the purpose of determination of this petition.

9 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. In view of the settled 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/appellant, does not hold good.

10 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 petitioner is not entitled for interim suspension of sentence in this appeal. Accordingly, this petition is dismissed.

-sd/-
सत्यमेव जयते
13/12/2018

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 SPECIAL JUDGE,
I ADDITIONAL SPECIAL COURT
UNDER NDPS ACT, CHENNAI-600 104.

2 THE INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT,
CHENNAI 600 017.

3 THE SPECIAL PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON,
PUZHAL, CHENNAI

+1 C.C. to M/S.M.S.CHARLES Advocate on payment of necessary
charges SR.NO. 24128

Order

in
CRL MP.16759/2018

IN CRL.A.NO.457 OF 2017

Date :13/12/2018

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