



BAIL SLIP

Prakash, Appellant/Accused No.3, S/o. Kumar is released on vide court order dated 16.02.2010, M.Periyakaruppan, Appellant/Accused No.1, S/o. Mayathevar is released on vide court order dated 22.02.2010 Jeya Sankar, Appellant/Accused No.2, S/o. Veluchamy is released on vide court order dated 23.02.2010 all three petitions made in MP(MD)No.1 of 2010 in CRL A(MD).30 of 2010, MP(MD)No.1 of 2010, in CRL A(MD).47 of 2010, MP(MD)No.1 of 2010, in CRL A(MD).52 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)Nos.30, 47 and 52 of 2010

Prakash	... Appellant/Accused No.3 in Crl.A.(MD)No.30 of 2010
M.Periyakaruppan	... Appellant/Accused No.1 in Crl.A.(MD)No.47 of 2010
Jeya Sankar	... Appellant/Accused No.2 in Crl.A.(MD)No.52 of 2010

Vs.

State by The Inspector of Police, NIB - CID, Theni District. Crime Nos.83,79,81/2002	... Respondent/Complainant in all Crl.As
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Common Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to set aside the judgment and conviction passed by the learned Special District and Sessions Judge, (For NDPS Act Cases) Madurai in C.C.No.532 of 2002, dated 05.02.2010.

For Appellant (in Crl.A.(MD)No.30 of 2010)	: Mr.S.Velpandian
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For Appellant (in Crl.A.(MD)No.47 of 2010)	: Mr.B.Chandramohan
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For Appellant
(in Crl.A. (MD)No.52 of 2010)

: Mr.Jegadeeshpandian

For Respondent
(in all Crl.As)

: Mr.A.Robinson

Government Advocate (Crl. Side)

C O M M O N J U D G M E N T

The appellants were accused in a case arising under the Narcotic Drugs and Psychotropic Substances Act in C.C.No.532 of 2002, on the file of the learned Special District and Sessions Court (for NDPS Cases), Madurai. By judgment dated 05.02.2010, the appellants were convicted for the offence under Section 8(c) r/w 20 (b)(xi)(b) of Narcotic Drugs and Psychotropic Substances Act and sentenced to three years rigorous imprisonment and levied with fine. Questioning the same, these appeals have been filed.

2.When the appeals were taken up for hearing, the learned counsel appearing for the appellants submitted that having regard to the evidence on record, they would not challenge the conviction imposed on them but would only plead for leniency in the matter of punishment.

3.The appellants' counsel submitted that the occurrence dates back to 2002. Admittedly, the appellants were not in possession of commercial quantity of Ganja. The learned Government Advocate (Crl. Side) would initially contend that at least A1 was found possession of commercial quantity of Ganja. But then, even according to the prosecution A1 was only having 20 Kg of Ganja. The expression 'commercial quantity' has been defined in Section 2(vii)(a) of Narcotic Drugs and Psychotropic Substances Act as follows:-

""Commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;"

4.In the Gazette notification, 20 Kg of Ganja has been mentioned but then possession of quantity of greater than what has been specified in the Government notification alone would qualify as commercial quantity. Since in this case only 20 Kg of Ganja is involved, it has to be taken only as a intermediate quantity not as a commercial quantity. Of course, it is above small quantity. The appellants' counsel would also submit that for the last 17 years and more the appellants have not come under the adverse notice of the respondent. In other words, they have not involved themselves in any case under the Narcotic Drugs and Psychotropic Substances Act .



5. Therefore, these three mitigating factors namely., (i) lapse of 17 years from the date of occurrence, (ii) the non involvement of the appellants in any case arising under the Narcotic Drugs and Psychotropic Substances Act and (iii) non possession of commercial quantity, are sufficient for this Court to modify and reduce the sentence. A1 had spent about 124 days in prison A2 and A3 had spent about 72 days in prison. Taking note of all these aspects, even while sustaining the conviction imposed on the appellants the sentence of imprisonment is modified and reduced to the period already undergone by them. These criminal appeals are partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To:

1. The Special District and Sessions
Judge, (For NDPS Act Cases),
Madurai.
2. The Inspector of Police,
NIB - CID, Theni District.
3. The Superintendent, Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.B.CHANDRA MOHAN, Advocate Sr. No. 79583

Crl.A.(MD)Nos.30, 47 and 52 of 2010
02.08.2019

DB (CO)
TR (20.08.2019) 3P 8C