



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Fifth day of August Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.376 of 2020
IN
CRL A(MD) No.32 of 2020

KARTHIKEYAN

... PETITIONER/APPELLANT/
ACCUSED No.2

Vs

THE STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
N.I.B.C.I.D, TUTICORIN.
CRIME NO.34/2018

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence of imprisonment imposed by the 1st Additional Special Court for NDPS Act Cases, Madurai in C.C.No.57/2019 dated 19/11/2019 and enlarge the petitioner /appellant on bail, pending disposal of this appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.T.INDRACHITHU, Advocate for the petitioner and of Mr.K.DINEH BABU, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

2. It is seen that the petitioner has been convicted by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.57 of 2019 for the offence under Section 8(c) r/w 20(b) (ii) (C) of NDPS Act r/w 34 of I.P.C. and 29 (1) of NDPS Act and was sentenced to undergo 12 years rigorous imprisonment and to pay compensation of Rs.1,00,000/- (Rupees One Lakh only), in default to undergo 2 years simple imprisonment, by the judgment dated 19.11.2019.

3. As against the said conviction and sentence, the petitioner has preferred an appeal in CrI.A (MD)No.32 of 2020. Along with the appeal, he has filed the present application for suspension of sentence pending disposal of the said appeal.



4. On the side of the petitioner, it is stated that the petitioner was arrayed as A2, in this case. The Inspector of Police, SIPCOT, viz., Sampath was not examined as a witness. P.W.2, the Inspector of Police, NIBCID, viz., Malarkodi has stated that she received an information from SIPCOT Inspector of Police, viz., Sampath, but, in the F.I.R., it is stated that the search was a suo-motu one and that the prosecution has failed to prove whether the building was sealed after the recovery process. The seizure mahazar Ex.P.2 did not disclose any witness. Form - 91 did not disclose that the material objects were sealed by the NIBCID. P.W.1, the Village Administrative Officer alleged to have been standing there at the time of search has admitted in her cross-examination that she has not fixed her official seal in any of the document prepared at the place of occurrence, including the sample packets.

5. On the side of the petitioner, it is further stated that the consent letter was not proved by the prosecution. No recovery was made on the basis of the confession statement. Section 27 of the Indian Evidence Act clearly insist that the material object should be recovered on the basis of the confession statement. The confession statement is not genuine and the petitioner was impleaded in the case only on the basis of the confession statement. No rental receipts were filed. Observation Mahazar and sketch were not prepared. Properties were returned by the trial Court on 04.08.2018. There is no evidence as to who was having the custody in the interregnum period from 04.08.2018 till 06.08.2018. It is stated that the petitioner is in custody for the past one year and prayed the sentence imposed on the petitioner to be suspended.

6. On the side of the prosecution, it is stated that on the basis of the complaint lodged by the defacto complainant / Inspector of Police a case in Crime No.34 of 2018 was registered. The Inspector of Police was informed over phone that Narcotic substance in several gunny bags were available in the Shipping Company by name Nici Impex, located on the 5th street, Gandhi Nagar, Tuticorin. On the basis of that information, the Deputy Superintendent of Police, Thoothukudi conveyed the message to the Inspector of Police, NIBCID and she formed a team of police with the village administrative officer, entered the spot and they found the petitioner and the petitioner gave a consent letter in the presence of witnesses, the copy of the same was served upon him and the search was conducted. During the search, seven gunny bags with dark green colour substance were found and the substance was found to be "Charas", the gunny bags was given identification marks 1 to 7 and the contraband was 466.400 Kg in weight and samples were taken out from each gunny bags. The statement of the petitioner was recorded and the petitioner was arrested. 6 witnesses [P.W.1 to P.W.6] were examined and 21 material objects [M.O.1 to M.O.21] and 11 documents [Ex.P1 to Ex.P11] were marked and the prosecution has proved the



7. On the side of the prosecution, it is further stated that youngsters and the society were affected due to the act of the petitioner and all the procedures under Sections 42, 50 and 57 of NDPS Act were strictly complied with by the authorities. The confession of the petitioner was marked as Ex.P3. If the sentence is suspended, there is a chance for the petitioner to abscond and prayed the petition to be dismissed.

8. It is seen that the properties were seized in the presence of the petitioner, whether the petitioner was present on the scene of occurrence, whether the petitioner gave a consent letter, whether the petitioner gave a confession statement, whether the statement was valid are to be decided only at the time of deciding the criminal appeal. As of now, the offence against the petitioner is grievous in nature, there is no reasonable grounds to suspend the sentence against the petitioner at this juncture.

9. Hence, this Petition is dismissed.

sd/-
05/08/2020

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/08/2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE I ADDITIONAL SPECIAL COURT FOR
NDPS ACT CASES, MADURAI.
- 2.THE DEPUTY SUPERINTENDENT OF POLICE,
N.I.B.C.I.D, TUTICORIN.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.376 of 2020
IN
CRL A (MD) No.32 of 2020
Date :05/08/2020

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<https://hcservices.courts.gov.in/hcservices/2020/3P/5C>