



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

Tuesday, the Twenty Eighth day of July Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.3518 of 2020
IN
CRL A(MD) No.50 of 2020

1 RAJESHKANNAN
2 MANIKANDAN

...APPELLANTS/ ACCUSED NO.2,3

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
OTHAKADAI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.97 OF 2018.

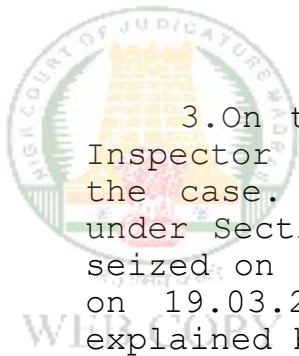
... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Principal Special Court for EC and NDPS Act Cases, Madurai passed in C.C.No.247 of 2019 dated 31.12.2019 pending disposal of the Criminal Appeal.

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

This petition has been filed to suspend the sentence imposed by the Principal Special Court for EC & NDPS Act Cases, Madurai in C.C.No.247 of 2019 dated 31.12.2019, till the disposal of the appeal.

2.The case against the petitioners is that the petitioners and 8 others were in possession of 150 kgs of kanja, which is a commercial quantity. The petitioners are accused nos.2 and 3 in the case. The petitioners and two others were convicted under Section 8 (c) r/w. 20(b)(ii)(c) of NDPS Act r/w. 34 of IPC and were sentenced to undergo rigorous imprisonment of 10 years each and to pay a fine of Rs.1,00,000/- each, in default to undergo simple imprisonment for 6 months each. Aggrieved by the same, the petitioners preferred the Criminal revision case along with the present petition.



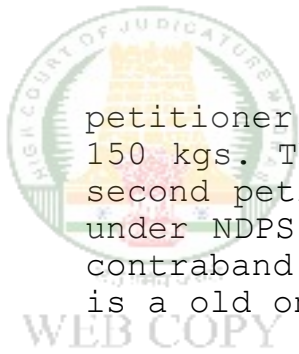
3. On the side of the petitioners, it is stated that P.W.1 the Inspector of Police, Umachikulam, has no jurisdiction to register the case. The trial Court failed to consider the discrepancies under Section 42 of NDPS Act. The property was alleged to have been seized on 17.02.2018 but the property was produced before the Court on 19.03.2018. There was a delay of 1½ months, which was not explained by the prosecution. The Deputy Superintendent of Police is said to have accompanied the party. But he failed to inform to his superior Officer under Section 57 of NDPS Act. P.W.1 has deposed that he received information and called the Village Administrative Officer. He failed to inform the jurisdictional police station. The reason for not informing the jurisdictional police station was not explained by P.W.1.

4. It is stated that P.W.2 has admitted that there are alteration in the seizure mahazer. The Village Administrative Officer is not a competent person under Section 50 of NDPS Act to participate in the raid. The prosecution failed to affix seal in the sample packet at the time of seizure. P.W.1 has admitted that he did not follow the procedure, while taking samples. The consent letter was not signed by the accused at the time of arrest. The consent letter was not valid under Section 50 of NDPS Act. There are much more grounds for the petitioner to succeed in the appeal and he prayed for suspension of sentence till the disposal of the appeal.

5. On the side of the prosecution, it is stated that out of 10, only 4 accused were arrested on the spot and six others escaped from the place. Totally 150 kgs of kanja in 68 Nylon gunny bags was seized from the accused. The Inspector of Police, Umachikulam with the special report produced the accused 1 to 4 with the contraband. The respondent collected samples from each pocket. The first accused voluntarily gave confession statement in the presence of the witness and A1 to A4 were remanded to judicial custody. Total weight of contraband is 150 kgs, which is a commercial quantity under Section 37 of NDPS Act. All the mandatory provisions under Sections 42, 50 and 57 were scrupulously followed during the seizure and the trial Court has correctly convicted the accused A1 to A4. The grounds for appeal are vague and unsustainable.

6. It is admitted that sentence of one of the co-accused was suspended. It is stated that the first petitioner is having two previous cases, in which one is under Section 302 of IPC and another is of prohibition offence. There are four previous cases against the second petitioner. One among the cases is under NDPS Act and the learned Additional Public Prosecutor objected to grant suspension of sentence to the petitioners.

7. It is seen that out of 10 accused involved in the offence, only A1 to A4 were convicted by the trial Court. It is stated that the sentence against A4 was already suspended. It is seen that the



petitioner is in custody for 1½ years. The quantity of contraband is 150 kgs. The first petitioner was having two previous cases and the second petitioner was having four previous cases. One among case is under NDPS Act. The argument of the petitioner that the quantity of contraband involved in the previous case is small and the case also is a old one, which cannot be considered.

8.Considering the nature of the offence and also considering the previous cases against the petitioners, this Court is not inclined to suspend the sentence imposed on the petitioners. Hence, this petition is dismissed.

sd/-
28/07/2020

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

TO

1. THE PRINCIPAL SPECIAL JUDGE
FOR EC AND NDPS ACT CASES, MADURAI.
2. THE SUPERINTENDENT,CENTRAL PRISON,
MADURAI.
3. THE INSPECTOR OF POLICE
OTHAKADAI POLICE STATION, MADURAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3518 of 2020
IN
CRL A(MD) No.50 of 2020
Date :28/07/2020

MS/VR/SAR-3/30.07.2020/3P.5C