



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

Friday, the Fourth day of September Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.4292 of 2020

IN

CRL A(MD) No.50 of 2020

1 RAJESHKANNAN
2 MANIKANDAN

... APPELLANTS/ACCUSED Nos.2,3

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
OTHAKADAI POLICE STATION,
MADURAI DISTRICT.
IN 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 2018 dated 31.12.2019 pending disposal of the above 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.K.MANIMEGALAI, Advocate for the petitioners 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 the petitioners are in custody for the past 2½ years. There is no previous case against the first petitioner and there are two previous cases against the second petitioner. They are not similar in nature. The co-accused was already released on bail. Only on presumption, the Special Court has convicted the petitioners. There is no bar to release the petitioners on bail under Section 35 of NDPS Act. The provisions under Section 42(2) of NDPS Act were not followed by the prosecution. P.W.1 has failed to send information and report to the Superiors. The concerned Deputy Superintendent of Police who was Superior to P.W.1, was not examined as witness. P.W.1 has no power to conduct the seizure proceedings.

4. It is stated that the jurisdictional Investigating Officer did not accompany P.W.1 during the seizure proceedings. The proceedings under Section 52 of NDPS Act were not followed during the seizure proceedings. There was 1½ months delay in producing the contraband before the Court. There are much more grounds for the petitioners to succeed in the appeal and it is 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 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. Already this Court has dismissed the earlier two petitions filed in Crl.M.P. (MD) Nos.3518 and 4292 of 2020 by the petitioners. The present petition is a third petition. There is no change of circumstances to suspend the sentence and the learned Additional Public Prosecutor objected to grant suspension of sentence to the petitioners.

7. It is seen that the quantity of contraband is 150 kgs, which is commercial in nature. The first petitioner was having two previous cases. One among case is under NDPS Act and the other is under Section 302 of IPC. The second petitioner was having four previous cases which are serious in nature. The argument of the



petitioners that the quantity of contraband involved in the previous case is small and the case also is a old case pending trial, cannot be considered at this stage.

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

sd/-
04/09/2020

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

TO

- 1.THE PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI.
- 2.THE SUPERINTENDET,
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.4292 of 2020
IN
CRL A(MD) No.50 of 2020
Date :04/09/2020

Mrn
MS/AKM/SAR-II (08.09.2020) 3P 5C