



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Sixth day of October Two Thousand and Twenty

PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP(MD) No.4948 of 2020

IN

CRL A(MD) No.65 of 2020

GOVINDAN

... PETITIONER/APPELLANT

Vs

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

... 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 on the Petitioner in C.C.No.247 of 2018 dated 31-12-2019 passed by the learned Special Court for NDPS Act, Madurai and enlarge the Petitioner on bail, pending disposal of the above CRL A(MD) No.65 of 2020.

Prayer in CRL A(MD) No.65 of 2020:

To call for the records and set aside the order of conviction and sentence passed by the Principal Special Court for EC & NDPS Act cases, Madurai in CC No.247 of 2018 dated 31.12.2019 and allow this appeal and acquit the appellant/accused from the charge leveled against him.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of Mrs.S.BHARATHI, Government Advocate on behalf of the Respondent, the Court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner in C.C.No.247 of 2018, dated 31.12.2019 passed by the Special Court for NDPS Act, Madurai and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.



2. The case against the petitioner is that on 17.02.2018, at 15.00 hours, the petitioner and 9 others were found in possession of 150 Kg of Ganja. Hence, a case, under Section 8 (c) r/w. Sections 20 (b)(ii) (C) and 29 (1) of NDPS Act, was registered against them. After trial, A1 to A4 were convicted and were sentenced to undergo 10 years rigorous imprisonment each and to pay a fine of Rs.1,00,000/- each in default to undergo simple imprisonment for further period of six months each. The petitioner herein is A1 in the case. The petitioner filed a Criminal Appeal against the order of conviction. Along with appeal the petitioner filed this petition, for suspension of sentence till the disposal of the appeal.

3. On the side of the petitioner, it is stated that out of the total number of 10 accused six were acquitted and only four accused were convicted by the Special Court. Conditions under Section 50 of NDPS Act were violated. The petitioner was not forwarded to any Magistrate or any Gazetted Government officer and the respondent themselves conducted search. Procedures under Section 68 of NDPS Act also was violated. The prosecution failed to prepare observation mahazar and rough sketch. Instead of getting separate consent letter from each of the accused, the prosecution has produced a single consent letter for all the accused, which is unknown to law. A4 was already granted suspension of sentence. The petitioner herein is 61 years old, having kidney problem and he is in custody for the past 10 months. There is discrepancy regarding the quantity of Ganja seized by the police. All the witnesses examined were only police officials. No independent witness was examined and there are much more arguable points for arguments in the main appeal and prayed the sentence to be suspended till the disposal of the appeal.

4. On the side of the prosecution, it is stated that the total quantity of contraband is 150 Kg, which is a commercial quantity. All the procedures, specified under Sections 42, 50 and 57 of NDPS Act, were scrupulously followed during the seizure. 4 witnesses [P.W.1 to P.W.4] were examined, 10 exhibits [Ex.P1 to Ex.P10] were marked and 138 material objects [M.O.1 to M.O.138] were marked on the side of the prosecution. The prosecution has proved the case beyond all reasonable doubts. Already the suspension of sentence petition filed on behalf of A2 and A3 were dismissed by this Court and the earlier petition filed by this petitioner in Crl.M.P.(MD) No.1117 of 2020 was dismissed on 09.06.2020 and another petition in Crl.M.P.(MD)No.3825 of 2020 was also dismissed on 07.08.2020. This petition is the third petition, seeking suspension of sentence and prayed for the dismissal of the petition.

5. Heard the learned counsel on either side and perused the materials available on record.



6. It is seen that this is the third petition filed by the petitioner, seeking suspension of sentence. Already the petitions filed by A2 and A3 were dismissed by this Court. The offence is grave in nature. There is no change of circumstances. In view of the above, this Court is not inclined to suspend the sentence at present stage. Hence, this Criminal Miscellaneous Petition is dismissed.

sd/-
06/10/2020

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

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE PRESIDING OFFICER,
PRINCIPAL SPECIAL COURT
FOR EC & 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.4948 of 2020 IN
CRL A(MD) No.65 of 2020
Date :06/10/2020

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SRS/ SMA/SAR-IV/ 09.10.2020/ 3P/5C
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