



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Second day of September Two Thousand Twenty

One

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.9931 of 2018

IN CRL.A.No.430 of 2018

DEVARAJ

[PETITIONER/APPELLANT/ACCUSED NO.2]

Vs

STATE BY

THE INSPECTOR OF POLICE,
T-9, PATTABIRAM POLICE STATION,
CHENNAI.

CRIME NO. 160/2016

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed against the petitioner in C.C.No. 59/2016 on the file of the Learned Princiapl Special Court Under NDPS Act, Chennai dated 04.06.2018 and enlarge the petitioner on bail pending disposal of the said Crl.A.No.430/2018 on the file of this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for M/S.D.MARIO JOHNSON, Advocate for the Petitioner and of M/S.R.VINOTH RAJA, Government Advocate on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed against the petitioner in C.C.No.59 of 2016, on the file of the Principle Special Court under NDPS Act, Chennai, dated 04.06.2018 and enlarge the petitioner on bail pending disposal of the said Crl.A.No.430 of 2018.



2.The learned counsel for the petitioner submitted that the second accused in C.C.No.59 of 2016/appellant in the above appeal is the petitioner and he seeks bail on the ground that he is in custody for more than 3½ years and same is substantial period of sentence and relied upon the decision reported in (2000) 8 SCC 437 [Dadu alias Tulsidas Vs. State of Maharashtra, wherein, the Hon'ble Apex Court has categorically held that in respect of cases under NDPS Act, the relief of suspension of sentence and bail can be granted by the Appellate Court only if the twin test laid down as per Section 37 of the NDPS Act are satisfied.

3.The case of the prosecution is that on 18.03.2016, the investigation officer/PW1/Sub-Inspector of Police, has received information over phone from the informer that someone selling Ganja near the Bus stop at Hindu College and assured that he will identify the person and the said intimation was recorded in the General Diary. After obtaining permission from the then Inspector of Police/PW5 viz., Mughesrao, PW1, PW2 and one Ponnurangam, who are the Head Constables of the respondent police station, went to the place of occurrence at 09.00 a.m., and the informer identified the person and enquired him. However, he has not given proper reply and on suspicious, the respondent police made a search after complying all the formalities and found 1,200 kgs of Ganja in a carry bag which was carried by him. Following which, the contraband was seized and the accused was arrested and produced before the respondent police station at about 12.00 pm. Thereafter, a case was registered in by T-9 Pattabiram Police Station, Chennai, in Crime No.160 of 2016, for the offence under Section 8(c) read with Section 20(b)(ii)(B) & 29 of NDPS Act on the same day.

4.Based upon the evidence of the prosecution witnesses supported by medical version and prosecution exhibits, the learned Principal Special Judge for NDPS Act, Chennai, had convicted the accused under Section 8(C) read with Section 20(b)(ii)(B) of NDPS Act and sentenced him to undergo five years Rigorous Imprisonment and pay a fine of Rs.50,000/- in default to undergo one year Rigorous Imprisonment.

5.The learned Government Advocate (Crl. Side) appearing for the respondent would contend that in respect of the case arising under NDPS Act, the petitioner/accused is entitled for suspension of sentence only when if he satisfied the twin ingredients of Section 37 of NDPS Act.

6.In the objection, the respondent police has apprehended that if the sentence awarded by the Trial Court is suspended, the accused will flee away from justice and also there is every possibility to abscond and it will be very difficult to secure him.



7. In the decision reported in 2019 (2) SCC 466 [State of Punjab Vs. Rakesh Kumar], the Hon'ble Apex Court has observed as under:-

"Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8, 21 and 22 should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. Since the action of the accused-respondents amounting to prima facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.

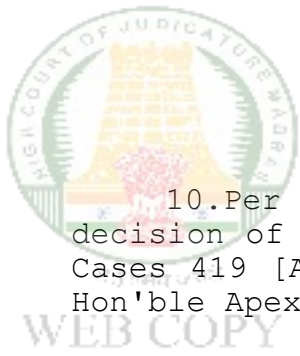
For administration of justice, the accused approached the High Court for suspension of sentence and while granting relief, High Court commenting on merit of the case which is not proper and more so when appeal against conviction was pending."

8. In the decision reported in 2015 (4) MLJ (Cri) (SC) 486 [Baldev Singh Vs. State of Haryana], the Hon'ble Apex Court has held as under:-

"The evidence on record amply establishes physical possession of the contraband by the appellant. The appellant being the driver of the vehicle by all probabilities must have been aware of the contents of the bags transported in the trolley attached to the tractor. Once the physical possession of the contraband by the accused has been proved, Section 35 of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband and since the burden is not discharged, there is no infirmity in convicting the appellant-accused."

9. In the above Baldev Singh case, the Hon'ble Apex Court has also observed as follows:-

"In his statement under Section 313 Cr.P.C., no plea has been taken that the appellant was not in conscious possession of the contraband. The appellant has only pleaded that he being falsely implicated and that a false case has been foisted against him in the police station. In his statement under Section 313 Cr.P.C., the appellant had not stated anything as to why would the police foist the false case against the appellant. It is to be noted that huge quantity of poppy straw was recovered from the possession of the appellant. Admittedly, the police officials had no previous enmity with the appellant. It is not possible to accept the contention of the appellant that he is being falsely implicated as it is highly improbable that such a huge quantity has been arranged by the police officials in order to falsely implicate the appellant."



10. Per contra, learned counsel for the petitioner relied upon a decision of the Hon'ble Apex Court reported in (2002) 7 Supreme Court Cases 419 [Avtar Singh and Others Vs. State of Punjab], wherein, the Hon'ble Apex Court has held as follows:-

"A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but the fact remains that in the course of examination under Section 313 Cr.P.C., not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle."

11. After perusing the evidence of PW3/Scientific Officer, PW2/Grade-1 Police Constable and also Ex.P5/FIR, it is seen that recovery of the contraband from the possession of A2 is made out as held by the learned Principal Special Judge for NDPS Act, Chennai, and hence, this Court is not inclined to grant suspension of sentence to the accused for the present. Accordingly, this Criminal Miscellaneous Petition, seeking suspension of sentence stands dismissed for the present.

-sd/-
22/09/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SPECIAL COURT
UNDER NDPS ACT, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
T-9, PATTABIRAM POLICE STATION,
CHENNAI.



4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.D.MARIO JOHNSON Advocate on payment of necessary charges

Order

in
CRL MP.9931/2018
in
CRL.A.No430/2018

Date :22/09/2021

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RW 08/10/2021