



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

Thursday, the Twenty Third day of December Two Thousand and
Twenty One

WEB COPY

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.7870 of 2021
in
Crl.A.(MD)No.408 of 2021

PERUMAL

... PETITIONER/ APPELLANT

Vs

THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
MADURAI.

... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed against the petitioner in C.C.No.31/2019 dated 28.07.2021 on the file of the Additional District Judge cum 1st Additional Special Court for NDPS Act Cases, Madurai and enlarge the petitioner on bail.

Prayer in Crl.A.(MD)No.408 of 2021:

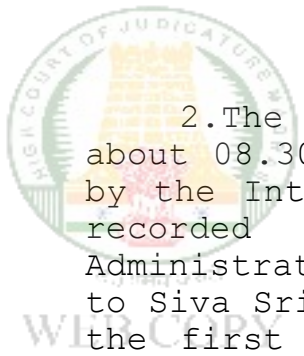
To call for the records relating to the judgment dated 28.07.2021 passed in C.C.No.31 of 2019 dated 28.07.2021 on the file of Additional District Judge cum 1st Additional Special Court for NDPS Act Cases, Madurai and set aside the judgment and conviction.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.K.SAMIDURAI, Advocate for the petitioner and of Mr.C.ARUL VADIVEL @ SEKAR, Special Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved On : 08.12.2021

Delivered on : 23.12.2021

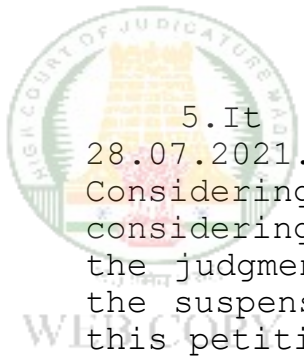
This petition has been filed to suspend the sentence passed by the Additional District Judge cum 1st Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.31 of 2019,, dated 28.07.2021 and to enlarge the petitioner on bail, pending the disposal of the Criminal Appeal.



2.The case against the petitioner is that on 03.05.2018, at about 08.30 a.m., a secret information was received from a informer by the Intelligence Officer, Narcotics Control Bureau, Madurai, he recorded the same and arranged a Team and with Village Administrative Officer, Theni and two independent witnesses, he went to Siva Sri Medicals, Gandhiji Road, Theni, where, they intercepted the first accused - Perumal, who was in-charge of the Siva Sri Medicals, who has stored 238 boxes of Becalm tablets containing 0.5 mg Alprazolam tablets, from the first floor of Sivasri Medicals, in two boxes and in another box, there was 97 bottles of K-COD cough syrup. Totally 1,07,100 number of Tablets with a weight of 10.71 Kgs was seized by the respondent. A case in NCB, F.No.48/1/08/2018/NCB/MDU, was registered against the petitioner, under Section 8(c), r/w. Section 22(c) of NDPS r/w. Section 34 of I.P.C., and Sections 27-A, 28, 29 of NDPS Act. The case was taken on file as C.C.No.31 of 2019 on the file of the First Additional Special Court for NDPS Act Cases, Madurai. The Special Court found the petitioner and other accused were found guilty under Section 8 (c), r/w. Section 22(c) of NDPS r/w. Section 34 of I.P.C., and Sections 28, 29 of the NDPS Act. and sentenced them to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each, in default, to undergo a further period of one year rigorous imprisonment each. The Special court found the petitioner and other accused not guilty under Section 27-A of NDPS. Against the conviction and sentence imposed by the Special Court, the petitioner / A1 filed a criminal appeal in Crl.A.(MD) No.408 of 2021. Along with the appeal, he has filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that the petitioner is in custody for the past 3 ½ years. The fine amount was paid. P.W.4 is the owner of the Medical shop. The petitioner is only an employee and he is not aware of the availability of contraband, in the occurrence place. The evidence of P.W.4 is untrustworthy. Individual witnesses were not examined by the prosecution. The procedures under Section 50 of NDPS Act were not followed properly. The other employees in the Medical Shop were not impleaded either as accused or as witnesses. The recovery and arrest was not proved. Almost 1/3rd of the punishment period is over and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that all the procedures under the NDPS Act were properly followed by the respondent. Only when recovery is from the body of the accused, the procedure under Section 50 is to be followed. In this case, the procedures under Section 50 of NDPS Act are properly followed by the officials. The applicant has no licence to store the contraband. The room in the upstairs was under the control of the petitioner. The prosecution has examined 6 witness and marked 80 documents and 19 material objects and has proved the case beyond all reasonable doubt. The petitioner has failed to prove the case and the petition to be dismissed.



5.It is seen that the judgment is a recent one, ie. on 28.07.2021. The offence against the petitioner is serious in nature. Considering the quantity of the contraband (ie. 10.71 kgs) and considering the nature of offence and also considering the fact that the judgment is a recent one, this Court is not inclined to grant the suspension of sentence to the petitioner at this stage. Hence, this petition is dismissed.

sd/-
23/12/2021

/ TRUE COPY /

/ /2021
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 ADDITIONAL DISTRICT JUDGE CUM
1ST ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.

2 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU, MADURAI.

3 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-9732[I] dated 23/12/2021)

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-9767[I] dated 27/12/2021)

ORDER
IN
CRL MP(MD) No.7870 of 2021 in
Crl.A.(MD)No.408 of 2021
Date :23/12/2021

LS
MS/JC/SAR-1/29.12.2021/3P.7C