



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

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

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.8541 of 2021
and
CRL A(MD)No.434 of 2021

1 MUNIYASAMY @ PADAM MUNIYASAMY

2 VALIVIDUMURUGAN

(BOTH THE APPELLANTS ARE NOW
CONFINED AT CENTRAL PRISON, TRICHY)

...PETITIONERS/APPELLANTS/ACCUSED NOS.1 & 2

Vs

STATE REP BY,
THE INSPECTOR OF POLICE,
MANGALAMEDU POLICE STATION,
PERAMBALUR.

(CRIME NO. 203 OF 2019)

... RESPONDENT/RESPONDENT/COMPLAINANT

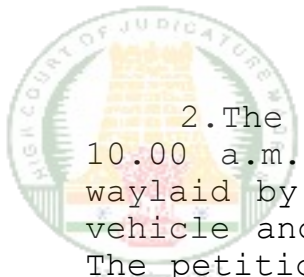
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the Sentence imposed on the petitioners in C.C.No.138 of 2019 on the file of the Learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act Cases, Pudukkottai on 21.09.2021 and enlarge the petitioners on bail.

PRAYER IN CRL A(MD)No.434 of 2021:

To take this Appeal on file and call for the entire records in connection with the judgment of the Learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act cases, Pudukkottai in C.C.No. 138/2019 dated 21.09.2021 and set aside the conviction and sentence imposed on the appellants.

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.RAMAMURTHY, Advocate for the petitioner and of MR.R.M.ANBUNITHI, 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 learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act Cases, Pudukkottai, in C.C.No.138 of 2019 dated 21.09.2021, till the disposal of the appeal.



2.The case against the petitioners is that on 13.07.2019 at 10.00 a.m., when a car bearing registration No.TN-06-C-0033 was waylaid by the Special Police, the petitioners refused to stop the vehicle and drove the vehicle with an intention to hit the police. The petitioners fired a shot in the air and stopped the vehicle and found out 120kgs of ganja in seven white plastic bags. A case in Crime No.203 of 2019 under Sections 186, 97, 307 of IPC and Sections 8(C) r/w. 20(b)(ii)(C) and 25 of NDPS Act was registered against the petitioners. The case was taken on file as C.C.No.138 of 2019 on the file of the learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act Cases, Pudukottai. After trial, the trial Court found the petitioners guilty and convicted the petitioners and sentenced them to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo three months simple imprisonment for the offence under Section 307 of IPC and sentenced them to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- (Rupees one Lakh only) in default to undergo six months simple imprisonment for the offence under Section 8(c) r/w. 20(b)(ii)(C) of 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) in default to undergo six months simple imprisonment for the offence under Section 25 of NDPS Act. Against the conviction and sentence imposed by the trial Court, the petitioners have filed a criminal appeal in Crl.A.(MD)No.434 of 2021 and along with the appeal, they filed this petition for suspension of sentence.

3.On the side of the petitioners, it is stated that there was no materials to prove the offence against the petitioners. The prosecution failed to establish that the contraband was seized from the accused. Though P.W.1 is empowered to arrest the accused, it was P.W.6 who arrested the accused. The seizure was made only after the arrest. The seizure mahazer did not explain from whom and when the contraband was seized. The owner of the car was not examined. The contraband was found in the dicky of the car. The occurrence is said to have taken place at the toll gate but the cctv footage was not produced. The workers of the toll gate turned hostile. There is no material evidence to implead the accused. There is no evidence to prove the fire shot by the police. The mandatory provisions were not followed. There was no evidence that the petitioners were travelling in the car. There was a delay of 24 hours in registering the FIR. There is no previous case against the petitioners. The petitioners are in custody for the past two years 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 prosecution has examined 16 witness and marked 19 documents and two material objects and proved the case beyond all reasonable doubts. The petitioners transported the commercial quantity of contraband and they also tried to hit the car against the police. The offence



5.It is seen that the judgment is a recent one dated 21.09.2021. The offence against the petitioner is serious in nature. Considering the quantity of the contraband is 170 kgs and considering the nature of offence and considering that the judgment is recent one, this Court is not inclined to grant the suspension of sentence to the petitioners at this stage. Hence, this petition is dismissed.

sd/-
03/12/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Mrn

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 AND
SESSIONS JUDGE AND SPECIAL JUDGE FOR EC AND
NDPS ACT CASES, PUDUKOTTAI.
- 2 THE INSPECTOR OF POLICE,
MANGALAMEDU POLICE STATION, PERAMBALUR.
- 3 THE SUPERINTEDENT,
CENTRAL PRISON,
TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.8541 of 2021
in
CRL A(MD)No.434 of 2021
Date :03/12/2021

PKP/JM/SAR-4/07.12.2021/3P/5C