



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

Tuesday, the Nineteenth day of January Two Thousand and Twenty One

PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP(MD) Nos.7770 and 7772 of 2020

IN

CRL A(MD) No.50 of 2020

MANIKANDAN

... PETITIONER/APPELLANT  
(in CRL MP(MD) No.7770/2020)

RAJESHKANNAN

... PETITIONER/APPELLANT  
(in CRL MP(MD) No.7772/2020)

Vs

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

... RESPONDENT/RESPONDENT  
(in both the petitions)

**Prayer in CRL MP(MD) Nos.7770&7772 of 2020:**

Petitions filed praying that in the circumstances stated therein and in the petitions filed therewith the High Court may 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 enlarged on bail, pending disposal of the above Criminal Appeal.

**Prayer in CRL A(MD) No.50 of 2020:**

Criminal Appeal filed may be pleased to call for the records in C.C.No.247 of 2018 relating to the judgment dated 31.12.2019 passed by the Principal Special Court for EC & N.D.P.S. Act Cases, Madurai and to set aside the judgment of the conviction on the appellant/accused.

**Order :** These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.S.MAHENDRAPATHY, Advocate for the petitioner in both the petitions and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the Court made the following order:-

These petitions have been filed to suspend the sentence imposed by the learned Judge, Principal Special Court for EC & NDPS Act



cases, Madurai in C.C.No.247 of 2018 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 for 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 from 31.12.2019. It is stated that there is no previous case pending against the petitioners. The co accused was already released on bail. Only on presumption, the trial 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 a 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 procedures 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 has 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 witnesses 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 seen that there are four cases pending against the petitioners. One among the list of cases is under NDPS Act. Already this Court has dismissed three petitions filed by the petitioner for



suspend the sentence imposed upon the petitioners. The argument of the petitioners is that the quantity of contraband involved in the previous cases is lesser than the quantity of other cases, which are pending for trial cannot be considered, at this stage.

7. 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, these petitions are dismissed.

sd/-  
19/01/2021

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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 JUDGE,  
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) Nos.7770&7772/2020 IN  
CRL A(MD) No.50/2020  
Date :19/01/2021

MRN

<https://hccases.eco.in/SdR/Hccservices/SdR/CO/SdR-11/03.02.2021/3P/5C>