



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fifth day of July Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice D. BHARATHA CHAKRAVARTHY

CRIMINAL MISCELLANEOUS PETITION No.5347 of 2022

IN CRL.A.NO.437/2022

MALAISAMY

[PETITIONER/APPELLANT]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
NIB-CID, VILLUPURAM
(CRIME NO.51/2017)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.437/2022 on the file of the High Court, the High Court will be pleased to Suspend the Sentence imposed on the petitioner in Special Case No.1/2019 passed by the Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram by a Judgment dated 05.04.2022 and enlarge the petitioner on bail pending disposal of the above CRL.A.NO.437/2022. (CRL.MP.NO.5347/2022)

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.437/2022 on the file of the High Court and upon hearing the arguments of M/S.K.BALASUBRAMANIAM Advocate for the petitioner and of MR.S.VINOTH KUMAR, Govt.Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The learned Counsel for the petitioner submits that there is a contradiction in recovery of the contraband as to who was the informant. The fact, that P.W.2 was the Home Guard working under P.W.1, itself is burked by the prosecution which came into light during the trial. As far as the confession is concerned, even as per the confession witnesses and confirmation by P.W.2, recovery was made



in the Police Station, whereas, as per the prosecution, the recovery was made at the place of occurrence. The prosecution did not investigate relating to the ownership of the vehicle from which the contraband was seized and again the owner of the land in which the Ganja is said to have been recovered was not at all examined by the prosecution. There is a material contradiction between P.Ws.1 and 2 regarding the fact as to whether P.W.1 saw the contraband or not. According to P.W.2, he did not see the contraband and he went by the words of P.W.1, whereas, P.W.1 says, to the contrary, that P.W.2 also saw the contraband.

2. The learned Counsel would further submit that the procedure, laid down, under Section 50 of the N.D.P.S Act, has not been followed, which is admitted in the cross-examination of P.W.1. He would also submit that the letter, authorising P.W.5 to take a survey, was also not produced before the Court by the prosecution and there is 60 days delay in conducting the further investigation. It may be seen that in this case, the entire case rests on the recovery and the mahazar witness, who is P.W.4, has turned hostile and did not support the case of the prosecution. Citing all the above, the learned Counsel would submit that the petitioner has got more than a prima facie case to satisfy the conditions for grant of bail under Section 37 of the Act even in respect of the commercial quantity and prays that the petitioner be enlarged on bail.

3. Per contra, the learned Government Advocate (Crl. Side) would submit that all the grounds raised before this Court have been argued in detail in the Trial Court and have been answered by the Trial Court in its judgment itself. He would submit that the Trial Court has considered the fact that contraband was seized at a public place and the following the procedure, under Section 50 of the Act, was not mandatory. In this case, the recovery has been duly proved by the prosecution as huge quantity of 27 kgs of Ganja was recovered from the Car. Therefore, it was not necessary to establish the ownership of the vehicle or the owner of the land need not be examined in this case. The contradiction between P.Ws.1 and 2, as portrayed by the learned Counsel for the petitioner, is minor in nature and the instant case is recovery from the travel bag and the zip of the bag can be opened and closed and therefore, in the background of this case, the evidence of P.Ws.1 and 2 cannot be said to be contradictory. He would submit that the other grounds raised by the petitioner are also relating to minor contradictions and discrepancies which are not fatal to the case of the prosecution. He would also submit that the petitioner has not proven a prima facie case and for grant of bail, the Trial Court has rightly convicted the petitioner. Hence, the learned Government Advocate (Crl. Side) prays for dismissal of the application for suspension of sentence.



4. I have considered the rival submissions made on behalf of either side and perused the material records of the case. As rightly contested by the learned Government Advocate (Crl. Side), it is seen that the grounds raised in this appeal were all raised before the Trial Court and the Trial Court has dealt with these allegations and answered the points. Prima facie, this Court does not want to go into each and every allegation raised in this suspension of sentence petition and answer the same prematurely even before the consideration of the appeal before this Court on merits. Suffice it to say, on a cumulative reading of the evidence on record and the judgment of the Trial Court, this Court is unable to come to the conclusion that the petitioner/accused has satisfied the condition of Section 37 of the Act and therefore, is not entitled for suspension of sentence so as to enlarge him on bail and therefore, I am of the view that the petitioner is not entitled for bail as the quantity is commercial quantity and accordingly, the petition is dismissed.

5. However, considering the fact that the accused is in jail, the Registry is directed to prepare the typed set of papers and post the main appeal for final hearing on 23.08.2022 under the caption "Accused in jail cases".

-sd/-

05/07/2022

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 SPECIAL COURT FOR TRIAL OF
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
ACT CASES, VILLUPURAM.

2 THE INSPECTOR OF POLICE,
NIB-CID, VILLUPURAM.

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



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

WEB COPY

C.C. to M/S K.BALASUBRAMANIAM Advocate on payment of necessary charges

Order
in
CRL MP.5347/2022
in
CRL.A.437/2022
Date :05/07/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

CSK 08/07/2022