



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Twentieth day of September Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.7776 of 2022
in
CRL A(MD)No.434 of 2021

1 MUNIYASAMY @ PADAM MUNIYASAMY

2 VALIVIDUMURUGAN

... PETITIONERS/APPELLANTS

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
MANGALAMEDU POLICE STATION,
PERAMBALUR.
CR.NO.203/2019

... 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 on the petitioners in C.C.No.138/2019 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 in CRL A (MD)No.34 of 2021.

PRAYER IN CRL A(MD)No.34 OF 2021:

Pleased 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.V.RAMAMURTHY, Advocate for the petitioner and of MR.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in CC.No.138 of 2019, dated

<https://www.mhc.tn.gov.in/judis>



21/09/2021 by the Additional District and Sessions Judge, Pudukkottai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2. The case of the prosecution in brief:-

The de-facto complainant was assigned a job to arrest one Kalimuthu @ Vellai Kali. When a secrete enquiry was undertaken, he was informed that the above said Kalimuthu @ Vellai Kali is roaming around Perambalur area with Muniasamy @ Padam Muniasamy. To apprehend him on 13/07/2019 at about 10.00 am, they were on surveillance near Trichy-Samayapuram Tollgate. At that time, they received a secrete information about the above said Muniasamy @ Padam Muniasamy travelling in a Car bearing registration No.TN-06-C-0033 along with a person from Perambalur to Chennai. So they intervened in Thirumandurai Toll Gate at about 12.30 noon. They spotted the above said vehicle. When they tried to apprehend and inspect the vehicle, the driver of the vehicle namely Muniasamy @ Padam Muniasamy dashed the vehicle with an intention to kill the police team. To safe guard and as a right of private defence, the de-facto complainant fired one round with his pistol. They tried to escape from that place, But they were apprehended. At that time, they were found in possession of 170 kgs of ganja, which was kept in the dicky portion. On the basis of the above said occurrence, they were taken to Mangalamedu Police station and also handed over 9-MM pistol. Upon the above said occurrence, the case has been registered.

3.After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.138 of 2019. On the side of the prosecution, to prove the guilt of the accused, 16 witnesses have been examined and 19 documents marked, apart from 2 MOs. On the side of the defence, no oral and documentary evidence was recorded.

4.At the conclusion of the trial, the trial court found that the accused were found guilty and sentenced them to undergo 7 years RI and to pay a fine of Rs.5,000/- with default clause for the offence under section 307 IPC; to undergo 10 years R/I and to pay a fine of 1,00,000/- with default clause for the offence under section 20(b)(ii)(C) of NDPS Act; and to undergo 10 years R/I and to pay a fine of Rs.1,00,000/- with default clause for the offence under section 25 of the NDPS Act. Challenging the conviction and sentence, both the accused preferred this appeal. Pending appeal, this petition has been filed seeking suspension of sentence on so many grounds.

5.The earlier application that was filed by the petitioners was dismissed, on 03/12/2021 finding that the offences are serious in nature and the contraband involved is 171 kgs; the judgment is of the recent origin; after a lapse of 9 months, this petition came to



be filed. After that, another application was filed in C. No.3160 of 2022 and that was also came to be dismissed, on 09/03/2022. This is the third application in line.

6.The learned counsel appearing for the petitioners would straightaway draw the attention of this court to the averments made in the FIR. According to him, reading of the FIR itself shows that the arrest has been made before the seizure and there is a delay in filing the complaint and section 43 of the NDPS Act has been violated; No independent witness has spoken in favour of the prosecution; The prosecution has failed to establish the effect that from whom, the above said contraband has been seized; Since the possession is not proved beyond reasonable doubt, section 37 of the NDPS Act will not come into play; The CCTV footages that are available in the place of occurrence have not been recovered and produced before the trial court; The court cannot presume as if, it is happened as spoken by the official witnesses; None of the independent witness has spoken about the seizure of the contraband. So according to him, the possession is not proved and the case itself has been decided without taking into account all the basic principles.

7.Per contra, the learned Additional Public Prosecutor would submit that on the spot itself along with the contraband, these two accused persons have been arrested and the contraband was also produced before the concerned court. When possession has been proved, section 37 of the NDPS Act came into operation and that was not complied by the petitioners.

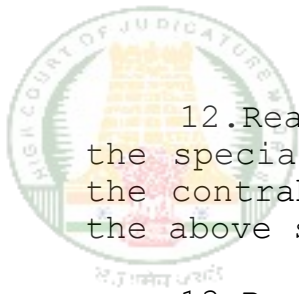
8.Heard both sides and perused the materials available on record.

9.For suspending the sentence of imprisonment, bar under section 32A of the NDPS Act must be taken into account.

10.Section 32A of the NPDS reads as follows:-

"32A. No suspension, remission or commutation in any sentence awarded under this Act.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted."

11.But a rigour of provision has been explained by the Hon'ble Supreme court in the case of Dadu alias Tulsidas Vs. State of Maharashtra [2000 CrI.L.J 4619 (SC)] and it is declared as unconstitutional law.



12. Reading of the judgment and the entire records show that the special team was on duty not to check up the transportation of the contraband, but it was assigned with specific duty to apprehend the above said Kalimuthu @ Vellai Kali.

13. Reading of the FIR shows that when the police team tried to nab the petitioners, they tried to escape by speeding the vehicle, attempting to commit murder upon the police team. At that time, they were apprehended. It has been stated that they have arrested on the spot itself. Since the cognizance offence on the spot by trying to kill the police team has been committed by the accused, they have been arrested and there is no bar. The arrest can be referred only to the alleged attempt of murder and not with regard to the possession of the contraband. The occurrence itself has been proved even by the staff, who were available in the Tollgate Booth. Even though, they were not aware of the seizure of the contraband, they have been spoken clearly about the firing incident. So *prima facie*, it is seen that the occurrence has happened. So the argument on the side of the petitioners stating that no such occurrence took place is rejected.

14. With regard to the violation of section 43 of the NDPS Act, as mentioned above, the first para of the discussion will answer this argument. So this argument is also not acceptable.

15. The petitioners are having bad antecedent. When that argument was advanced by the learned Additional Public Prosecutor, a strong objection has been made by the petitioners to the effect that no such charge was made against the petitioners. No doubt, whether section 307 IPC will be attracted in the facts and circumstances of the case, is a matter for consideration in the appeal.

16. No doubt that the particulars of the previous cases were not brought during the course of trial. But when huge quantity of the contraband has been recovered from the vehicle, in which the petitioners travelled is sufficient enough to draw the presumption. So the contention that no recovery was made from the petitioners cannot be accepted. A joint possession or a conscious possession principle can be adopted.

17. It is not the case of the petitioners before the trial court that without the knowledge of transportation of the contraband, they travelled in the vehicle. Actually, the first petitioner is the driver of the vehicle. So this contention also cannot be accepted and these are not sufficient enough to suspend the sentence imposed upon them. So, I find absolutely no merit in this petition. Accordingly, this miscellaneous petition is liable to be dismissed.

18. In the result, this miscellaneous petition is **dismissed**. But however, considering the fact that the petitioners are in custody ever since from the date of judgment, the Registry is directed to



call for the entire records from the concerned trial court and prepare the typed set of papers for disposing the main appeal.

19. With the above said direction to the Registry, this petition stands **dismissed**.

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sd/-
20/09/2022

/09/2022

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

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 SUPERINTENDENT
CENTRAL PRISON,
TIRUCHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Copy to
THE SECTION OFFICER,
CRIMINAL RECORDS
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.7776 of 2022
in
CRL A(MD) No.434 of 2021
Date :20/09/2022

er
PKP/GB/SAR-2/23.09.2022/5P/6C