



CRL.M.P.(MD)No.10361 of 2022

CRL.M.P. (MD)No.10361 of 2022
in
CRL.A. (MD)No.534 of 2022

G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed upon the petitioner in CC No.138 of 2020, dated 25/07/2022 by the I Additional District Judge for NDPS Act cases, Madurai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 29/02/2022 at about 12.00 noon, the accused person was found in possession of 22 kgs of ganja in two travel bags near old Railway Station, Theni. On the basis of the above occurrence, the case was registered.

3.During the course of the trial process, on the side of the prosecution, 4 witnesses were examined and 14 documents were marked, apart from 8 material objects.

4.At the conclusion of the trial court found that the charges under section 8(c) r/w 20(b)(ii)(C) of NDPS Act stands proved against the appellant and accordingly, convicted and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.1,00,000/- in default to undergo 1 years Rigorous Imprisonment.



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5.Now challenging the above said conviction and sentence, appeal has been preferred. Pending appeal, this petition has been preferred seeking suspension of sentence.

6.During the course of argument, the learned counsel appearing for the petitioner would submit that the mandatory provisions under sections 42(2), 50, 52(A) and 57 of the NDPS Act has not been properly followed, but they have been violated. The place of occurrence has not stated either in the complaint or during the course of investigation; Even the seizure mahazar bears the crime number, which creates doubt with regard to the manner of the occurrence itself; He has also contended that there are material contradictions between PW1 and PW2 and they have also admitted that the seizure mahazar bears crime number; The sample was alleged to have taken at 2.15 pm; The time of the information that was received was not properly recorded and also stated. According to the petitioner, these things were not properly taken care by the trial court.

7.For supporting the above said contention, he would rely upon the following passages from the prosecution witnesses:-



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(i)PW1 during the course of the cross examination has stated that he has not mentioned the specific place of occurrence in the chief examination; similarly he has also relied upon his evidence with regard to the omission of the place in Ex.P1. In Ex.P1, they have not mentioned that the accused was carrying two bags and the evidence of PW2 with regard to the time of lifting of sample. He has stated that the sample was taken between 13.00 pm and 14.00 pm, but the FIR was registered at 3.30 pm. He has mentioned the crime number in the seizure mahazar and there is omission to mention the time of sampling in the container and the evidence of PW2 over the place of occurrence and the evidence of PW4, with regard to receiving of the secret information, with regard to the above said occurrence and its non recording and omission on the side of the prosecution witnessed has specifically mentioned the place of occurrence during the courts of their statement.

8.Per contra, the learned Additional Public Prosecutor would submit that it is a case of conviction and section 37 of the NDPS Act has not been complied by the petitioner. Apart from that, he would submit that the petitioner was convicted for the similar offences in crime Nos.13 of 2019 and 149 of 2014 and 140 of 2015. So according to the learned Additional Public Prosecutor, the petitioner is a habitual offender dealing with the



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contraband. So no question of suspension of sentence arises. So even before going into the merits, the contention raised by the petitioner, it is seen that the petitioner is a habitual offender convicted twice for having possession the contraband. So it is seen that he is the habitual offender. So the mandatory provision contemplated under section 37 of the NDPS Act has not been properly satisfied.

9. With regard to the many of the contention that has been advanced by the petitioner are all the matters for consideration at the time of arguing the appeal. It is settled proposition of law that violation of the procedural aspects, unless it has to be established to cause prejudice to the accused; these things whether it caused prejudice is a matter for consideration in the appeal. With regard to the non-recording of the information, the trial court itself has made an observation to initiate action against PW2 and PW3. We need not bother about the direction. Section 37 of the Act has not been properly complied, the petitioner is not entitled for suspension of sentence.



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10.In the result, this criminal miscellaneous petition fails and the same is dismissed. Since the appeal is admitted, the Registry is directed to call for the records from the concerned trial court and prepare the typed set of papers.

28.10.2022

Index : Yes/No
Internet : Yes/No
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