



WEB COPY



Crl.M.P(MD)No.12111 of 2022

Crl.M.P(MD)No.12111 of 2022
in Crl.A(MD)No.629 of 2022

G. ILANGO VAN J:

This petition is filed by the petitioner to suspend the sentence passed in C.C.No.279 of 2021, dated 18.08.2022, on the file of the Sessions Judge, Principal Special Court for EC and NDPS Act Cases, Madurai.

2.The case of prosecution in brief:

On the basis of secret information that was furnished by the Police informer, a Police team went to the place of occurrence, viz., Vazhaithoppu, Munusamy Tea Stall, near the Railway Gate, at about 08.00AM on 21.11.2020. At that time, three persons were spotted and identified by the Police informer. All the three persons were apprehended in the spot itself. On enquiry, they revealed their name as Subash Chandra Bose @ Bose, Meenakshi Sundaram and Sakthivel respectively. On the basis of the statement, 15 kgs of Ganja each from the accused persons have been recovered on the spot itself.



Crl.M.P(MD)No.12111 of 2022

WEB COPY

3.On the basis of above said occurrence, a case was registered under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act and all the accused persons were taken into custody. After completing the investigation, a final report against 8 persons was filed, stating that in pursuance of conspiracy that hatched between them, A4, A5 produced the contraband from Andrapradesh, weighing 30 kgs, through A6 to A8, they divided the same into each 15 kgs, who in turn, handed over to A1 to A3 which was stored in the house of first accused.

4.On the side of prosecution, 5 witnesses have been examined, 20 documents have been marked, apart from 6 material objects and on the side of accused, three documents were marked. At the conclusion of trial, the trial Court came to the conclusion that the offence against A1 to A3 proved beyond all reasonable doubts and A4 to A8 were acquitted. Thereby, A1 to A3 were convicted and sentenced to undergo rigorous imprisonment each for 10 years and to pay a fine of Rs.1 lakh each, in default sentenced to undergo 6 months simple imprisonment, for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.



Crl.M.P(MD)No.12111 of 2022

WEB COPY

5.Challenging the above said conviction and sentence, this appeal has been preferred. Pending the appeal, this petitioner/A3 viz., Sakthivel has preferred this petition, seeking suspension of sentence, on the ground that the place of occurrence has not been properly mentioned in the FIR or during the course of evidence or in the Judgment. As per the case of prosecution, no recovery was made out from this petitioner, which is a violation as per Section 54 of NDPS Act and the petitioner is not having any bad antecedents.

6.Per contra, the learned Additional Public Prosecutor would submit that on the spot itself, this petitioner was apprehended and from the co-accused/A1,A2 each 15kgs of Ganja were recovered, who is also involved in the above said illegal trade of Ganja and conscious possession can be attributed against this petitioner.

7.For the purpose of supporting his argument, the learned counsel for the petitioner has referred the events mentioned in the FIR, recovery mahazar etc. No doubt, the recovery is made from A1 and A2. But this petitioner was also accompanying the above said accused. From



Crl.M.P(MD)No.12111 of 2022

the investigation, it was found that this petitioner was also actively involved in the Ganja trading activities. Only on that ground, the petitioner was convicted along with the co-accused. With regard to violation of statutory provisions, the trial Court came to the conclusion that it does not affect the prosecution case.

8.Now the question arises for consideration is whether this petitioner's presence along with A1, A2 at the time of above said recovery, which is sufficient enough for imputing the conscious possession, is a matter for consideration in the appeal.

9.Reading of the Judgment of the trial Court shows that except the non-explanation for his presence along with A1, A2, no other incriminating material has been placed before this Court. No doubt, the petitioner was also present and accompanying A1, A2 at the time of above said alleged occurrence and recovery. Mere non explanation on the part of the petitioner to have accompanied A1 and A2 may not be sufficient enough to show that there was criminal conspiracy between all the accused persons. A4 to A8 have been acquitted for lack of evidence.



Crl.M.P(MD)No.12111 of 2022

WEB COPY

10.This matter was originally reserved for orders and on going through the records, this court entertained a doubt with regard to the complicity and involvement of the petitioner in the above said offence. So the learned Additional Public Prosecutor was required to clarify the same. He would submit that there is no proper explanation for the petitioner for having be present in company of the co-accused and from whom, the above said contraband has been recovered and even the cross examination of the witnesses has been undertaken by all the accused together, there is no separate contention on the part of the petitioner that without knowing about the above said carrying of the contraband of the co-accused, he accompanied him.

11.It is also submitted by the learned Additional Public Prosecutor that the petitioner is having bad antecedent and he is also involved in previous similar offence. So according to him, this is sufficient enough to say that the possession of the co-accused can be construed as joint possession of this petitioner also. So this is a matter for consideration in the main appeal.



Crl.M.P(MD)No.12111 of 2022

WEB COPY

12.In the light of the antecedent of the petitioner, he is not entitled for suspension of sentence. If he is released on bail, there is no guarantee that he will not commit the similar offence in future.

13.In the result, this criminal miscellaneous petition is **dismissed .**

01.12.2022

Index:Yes/No

Internet:Yes/No

pnm



WEB COPY



Crl.M.P(MD)No.12111 of 2022

G.ILANGOVAN, J.

PNM

Crl.M.P(MD)No.12111 of 2022
in Crl.A(MD)No.629 of 2022

22.11.2022