



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

Friday, the Second day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)No.12131 of 2022
in
CRL.A.(MD)No.229 of 2022

1 HARISHRAM @ HARISH @ PRAKASH

2 RAGHAV @ RAGHAVAN @ DEVA @ DEVASUDHAN ... PETITIONERS

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
Q BRANCH CID,
TRICHY
IN CRIME NO.2/2017.

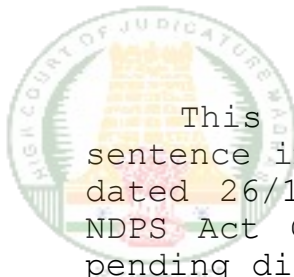
... RESPONDENT/COMPLAINANT

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 of Imprisonment imposed by the Learned Additional District and Sessions Judge(Special Court for EC and NDPS Act Cases),Pudukottai in CC No.66/2017 dt.26/10/2021 against these petitioners and enlarge them on bail pending disposal of the above said Criminal Appeal.

PRAYER IN CRL A(MD)No.229 OF 2022:

To call for records and setaside the judgment and conviction dated 26/10/2021 passed in C.C.No.66 of 2017 by the Learned Additional District & Sessions Judge(Spl.Court for EC/NDPS Act Cases) Pudukkottai under section 14A(b) of Foreigners (Amendment) Act 2004 to undergo Rigorous Imprisonment for 4 years and to pay fine of Rs.10,000/- each in default to undergo simple imprisonment for the period of 3 months and for offence punishable under section 294(b) of IPC to undergo Rigorous Imprisonment for 2 months and for offence punishable under section 353 of IPC to undergo Rigorous Imprisonment for 1 year and for ofence punishable under section 506 (ii) of IPC to undergo Rigorous Imprisonment for 3 years and acquit the appellants from all charges.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.WILLIAM CHRISTOPHER.J, Advocate for the petitioner, and of M/S.S.RAVI, Additional Public Prosecutor for the Respondent, the court made the following order:-



This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special CC No.66 of 2017, dated 26/10/2021 by the Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukkottai and enlarge the petitioners on bail pending disposal of the criminal appeal.

WEB COPY

2.The case of the prosecution in brief:-

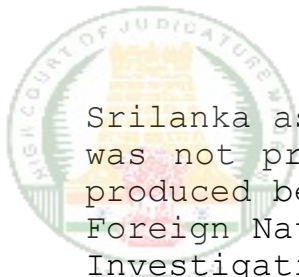
On 27/05/2017 at about 6.00 pm, when the police team of the de-facto complainant were on routine duty, they found three persons in a suspicious manner. When the police team enquired, they tried to assault them and also criminal intimidated. They were apprehended. On the basis of the confession statement of the first accused, 2 kgs of ganja and other packing materials were recovered from the Car bearing registration No.TN-45-BK-6334. During the course preliminary enquiry, it was found that the first accused, for the purpose of opening a Bank account created documents as if he is an Indian citizen. A1 to A3 are Srilankan citizens. The above said registration certificate in respect of the above said vehicle was also obtained by forging the documents. On the basis of the above said occurrence, FIR was registered. Investigation was undertaken. During the course of the investigation, it was found that all the accused persons are involved in ganja Trading and indulged in creating forged documents for the purpose of opening the Bank account, getting registration certificate of the vehicle, etc.

3.At the trial stage, on the side of the prosecution, 22 witnesses have been examined and 22 documents marked, apart from 23 material objects. On the side of the accused, no oral or documentary evidence was adduced.

4.At the conclusion of the trial, the trial court found the petitioners/A2 and A3 are guilty and sentenced them to undergo 4 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 14A(b) of Foreigners (Amendment Act) 2004; for the offence under section 294(b) IPC, they were sentenced to under two months R/I; and for the offence under section 353 IPC, they were directed to undergo one year R/I and for the offence under section 506(ii) IPC, they were sentenced to undergo three years RI.

5.Challenging the above said sentence, appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed by the petitioners seeking suspension of sentence.

6.The learned counsel appearing for the petitioners has made an elaborate argument with regard to the merit of the case. According to him, no proper investigation was undertaken to find out the correct nationality of the petitioners. The person, who has given the certificate is not the authorised person as per Foreigners Act 1946. Such a certificate and no investigation was undertaken to know whether these petitioners are refugees in the particular refugees camp. Now, it has been contended that they came from



Srilanka as refugees and got themselves registered as refugees at was not properly investigated and no documentary evidence has been produced before the trial court to show that the petitioners are the Foreign National and that was also admitted even by PW22, who is the Investigating Officer.

WEB COPY

7. Per contra, the learned Additional Public Prosecutor would submit that A1 is not a refugee and he is a proclaimed offender in Srilanka. Even as per the evidence of PW20, all the accused persons joined together and tried to assault the police team.

8. In reply to the above said submission, the learned counsel appearing for the petitioners would again submit that PW19 has not made any spot enquiry in the same village; PW22 has also stated that the competent person as mentioned has not properly enquired.

9. The learned Additional Public Prosecutor again would submit that the accused persons illegally entered into Indian soil and indulged in the above said commission of offence and red-corner notice was also received. So according to him, if the petitioners are released on bail, there is every likelihood of absconding and possibility of committing similar nature of offence.

10. With regard to the argument that the prosecution failed to prove that the accused belonged to Srilankan citizen, even though it is a matter, which is exclusively within the knowledge of the petitioners, they tried to take advantage of non availability of the document to show the citizenship. If really the accused persons registered as refugees in the refugees camp, they would have given their address and registration number of ID, etc. But no such documents are forthcoming. Even at the time of argument, no information was furnished to the effect that they are registered themselves as refugees in a particular camp.

11. In the absence of any stringent proof to show that the petitioners are registered refugees, then as rightly contended by the learned Additional Public Prosecutor, if they released on bail, there is every possibility of absconding. So this is not a fittest case to exercise the power to suspend the sentence.

12. In the result, this criminal miscellaneous petition is dismissed.

sd/-

02/12/2022

/ TRUE COPY /

/12/2022

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



TO

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR EC -NDPS ACT CASES,
PUDUKOTTAI.
- 2 THE INSPECTOR OF POLICE
Q-BRANCH CID,
TRICHY.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
PUZHAL, CHENNAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL.M.P. (MD) No.12131 of 2022
in

CRL.A. (MD) No.229 of 2022

Date :02/12/2022

RK/MMS/SAR-1 (23/12/2022) 4P/5C