



WEB COPY



Crl.M.P.No.755 of 2023 in Crl.A.No.282 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2023

PRONOUNCED ON : 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.755 of 2023

in

Crl.A.No.282 of 2021

Somu Muthiah

... Petitioner

Vs.

The State, represented by
The Inspector of Police,
NIBCID, Coimbatore
(crime No.202 of 2019)

... Respondent

PRAYER: Criminal Appeal filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment imposed in C.C.No.40 of 2020 on the file of the Special Court for NDPS Coimbatore, pending disposal of the Criminal Appeal No.282 of 2021 on the file of this Court.

1 of 6



Crl.M.P.No.755 of 2023 in Crl.A.No.282 of 2021

For Petitioner : Mr. V.K. Sathyamoorthy
for Mr. S.Jayaprakash

For Respondent : Mr. C.E.Pratap,
Government Advocate (crl.side)

ORDER

The petitioner, who is the sole accused in C.C.No.40 of 2020 on the file of the Special Court under EC Act/ NDPS Act, Coimbatore, seeks suspension of his sentence of imprisonment.

2. Trial Court, by judgment dated 24.03.2021, convicted the petitioner for the offence under Section 8(c) r/w. 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act 1985 and sentenced him to undergo ten years of Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for six months.

3. Challenging the conviction and sentence slapped by the Trial Court, the petitioner is before this Court.



CrI.M.P.No.755 of 2023 in CrI.A.No.282 of 2021

WEB COPY

4. The learned counsel for the petitioner submitted that the petitioner is convicted for the offence under Section 8(c) r/w.20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substance Act 1985 with 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-, in default, 6 months Rigorous Imprisonment. Now, the petitioner is in jail from 24.12.2019. In this case, there is a clear violation of rules framed for NIB officers by the NCB Board with regard to the procedure of contraband seized by the police officials. Further, the confession recorded by the Police Officer is inadmissible as per the decision of the Apex Court in Toofan's Case. Further, there is a doubt about the place of occurrence. The prosecution failed to establish with regard to the recovery of the articles and the safe custody of the said articles from 24.12.2019 to 06.01.2020 and there is a fair chance of success in the appeal. Hence, pleaded to suspend the sentence of imprisonment imposed in C.C.No.40 of 2020 on the file of the Special Court for NDPS , Coimbatore, pending disposal of this Criminal Appeal.



Crl.M.P.No.755 of 2023 in Crl.A.No.282 of 2021

WEB COPY

5. When the matter is taken up, the learned Government Advocate (crl. side) vehemently opposed to suspend the sentence imposed by the Trial Court on the ground that the prosecution established the charge against the accused with sufficient evidence. From the accused 24.000 grams of Ganjas have been recovered and its being serious nature of offence and the charge has been proved beyond reasonable doubt. The trial Court, based upon the evidence, convicted the accused and there is no ground to suspend the sentence till the disposal of the appeal.

6. I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the impugned order and the materials on record.

7. The prosecution case is that on 24.12.2019 at about 12.35 hours at the back gate entrance of the railway station, Good shed road, Coimbatore, the accused was found to be in unlawful possession of 24.000 kgms of ganja, which was seized and the case has been registered against him in



Crl.M.P.No.755 of 2023 in Crl.A.No.282 of 2021

WEB COPY

Crime No.202 of 2019 for the offence under Section 8(c) r/w. 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act. After investigation, final report has been filed and the evidence has been produced. The Trial Court, found the charge against the accused is proved and convicted the sentence as stated above. This is the third application for suspending the sentence. I find no change of circumstances to suspend the sentence imposed upon the accused and no merit in this suspension petition and hence, it is liable to be dismissed.

8. Accordingly, this Criminal Miscellaneous Petition is dismissed.

13.02.2023

mrp

To

1. The Special Court under EC Act/ NDPS Act, Coimbatore.
2. The Inspector of Police, NIBCID, Coimbatore
3. The Public Prosecutor, High Court of Madras, Chennai.

5 of 6



WEB COPY



Crl.M.P.No.755 of 2023 in Crl.A.No.282 of 2021

V.SIVAGNANAM, J.,

mrp

Pre-delivery order in
Crl.M.P.No.755 of 2023 in
Crl.A.No.282 of 2021

13.02.2023