



Crl.M.P.No.2957 of 2023 in Crl.A.No.202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.2957 of 2023

in

Crl.A.No.202 of 2023

1. Pandian
2. Kathiresan
3. Manimaran
4. Theivam

... Petitioners

/vs/

State, represented by
the Inspector of Police,
S-5, Pallavaram Police Station,
Chennai

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389 (1) of Cr.P.C., to suspend the sentence imposed in CC.No.74 of 2018, dated 20.09.2022 by the I Additional Special Court under EC and NDPS Act, Chennai and enlarge the petitioner on bail.

For Petitioners ... Mr. R.C.Paul Kanagaraj

For Respondent ... Mr. A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner in C.C.No.74 of 2018, dated



20.09.2022 passed by I Additional Special Court under EC and NDPS Act,
Chennai.

2. The petitioners are A1 to A4 in C.C.No.74 of 2018. The trial court, by its judgment dated 20.09.2022 convicted and sentenced the petitioners/A1 to A4 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1 to A4	U/s. 8(c) r/w.20(b) (ii)(C) of NDPS Act	Each to undergo 10 years RI and each to pay a fine of Rs.1,00,000/- in default, each to undergo RI for six months. Total fine amount Rs.4,00,000/-

The fine amount is not paid before the trial court.

3. Aggrieved over the judgment of conviction and sentence imposed by the trial court, the petitioners have preferred the present criminal appeal along with the instant miscellaneous petition, seeking suspension of sentence and bail till the disposal of the appeal.

4. The learned counsel for the petitioners submitted that the judgment



of the trial court is contrary to law, weight of evidence and probabilities of the case. The respondent police prosecuted the petitioner/accused for the offence under section 8(c) r/w.20(b), (ii), (C) of NDPS Act, 1985 in C.C.No.74 of 2018 on the file of I Additional Special Court under EC and NDPS Act, Chennai. After trial, all are found guilty for the offence under section 8(c) r/w.20(b) (ii)(C) of NDPS Act and they were convicted and sentenced by the trial court as stated above. As per the prosecution case, on 6.7.2015 the petitioners were found in possession of 28 Kgs of Ganja in two bags and the police took samples from the Ganja in two bags, each weighing 50 grams. But the analysis report Ex.P.9 reflect that only one sample seized from one Pandian/A1 and Kathiresan/A2 has been forwarded to chemical analysis and the same was reported positive. With regard to other persons A3 and A4, they have not obtained any chemical analysis report as to whether the samples obtained from another bag is Ganja or not. So the seizure of Ganja under suspicious circumstances create doubt against the genuineness of the prosecution case. Further, the learned counsel contended that as per the averment in FIR, the petitioners/accused were arrested on 6.7.2015 and the contraband had been seized by the police at 11 a.m., but in the seizure mahazar Ex.P.6, it is mentioned that the contraband was seized on 6.7.2015 at 13 hours. This material contradiction goes to the route of the



prosecution case and arose suspicion in the genuineness of the prosecution case. Hence, there is arguable point in favour of the petitioners and the petitioners are having every chance to succeed in the appeal. Thus, he prayed for suspension of sentence imposed on the petitioners till the disposal of the appeal.

5. When the matter is taken up for hearing the learned Additional Public Prosecutor appearing for the respondent objected for suspension of sentence and bail.

6. Considered the arguments of both sides and perused the impugned order and entire material evidence placed on record.

7. On perusal of records, the fact reveals that the petitioners are accused in C.C.No.74 of 2018 on the file of I Addl. Special Court under EC and NDPS Act, Chennai. The respondent police prosecuted the petitioners/accused for having committed the offence punishable under section 8(c) r/w.20(b) (ii)(C) of NDPS Act. Before the trial court, the prosecution examined 6 witnesses and marked 12 documents, besides marking 4 material objects. After considering the evidence, the trial court



found the petitioners guilty and convicted and sentenced them as stated above. Perusal of records would further reveal that the fine amount of Rs.1,00,000/- imposed on each of the petitioners was not yet paid. As contended by the learned counsel for the petitioners, though the respondent police at the time of seizing the contraband from the accused persons, taken two samples, they have forwarded only one sample and got chemical analysis report Ex.P.9, but with regard to another sample, there is no chemical analysis report to prove that whether the contraband seized from them is ganja or not. Further, on perusal of the FIR Ex.P.10 and seizure Mahazar Ex.P.6, there is a material contradiction with regard to seizure of the contraband from the accused persons. In the FIR, it is recorded by the respondent police that the contraband has been seized and the accused were arrested at about 11 a.m. on 06.07.2015, but in the seizure mahazar, Ex.P.6, it is mentioned as though the contraband has been seized from the accused persons on 06.07.2015 at 13.00 hours. So this material contradiction has to be considered in detail and requires re-appraisal of factual aspects. In the circumstances, there is arguable point in favour of the petitioners. Further, the Revision is not likely to be taken up in the near future and the petitioners are in judicial custody from 20.09.2022. In such view of the matter, this Court is of the view that the petitioners are entitled to the relief of suspension



of sentence and bail.

WEB COPY 8. Accordingly, the relief of suspension of sentence and bail is granted to the petitioners on the following conditions:

- (i) The petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) each along with two sureties, each for a like sum, to the satisfaction of the I Additional Special Court under EC & NDPS Act, Chennai.
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the above said Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;
- (iii) Each of the petitioners shall pay the fine imposed by the trial court within one month from the date of receipt of a copy of this order.
- (iv) petitioners shall appear before the trial Court as and when required.

14.03.2023

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WEB COPY To

- 1.The I Addl. Special Court under EC & NDPS Act, Chennai.
- 2.The Inspector of Police,
S-5, Pallavaram Police Station,
Chennai.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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