



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.MP.NO.2779 OF 2023

IN

CRL.A.NO.437 OF 2022

Malaisamy

... Petitioner

Vs.

State represented by
Inspector of Police
NIB-CID
Villupuram.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C., to suspend the sentence imposed on the petitioner in Special Case No.1 of 2019 passed by the Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram, by a judgment dated 05.04.2022 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner ... Mr.R.C.Paul Kanagaraj

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



WEB COPY



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed in Special Case No.1 of 2019 by the learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram, by judgment dated 05.04.2022 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

2.The Trial Court, by its judgment dated 05.04.2022 in Special Case No.1 of 2019 convicted and sentenced the petitioner / A1 as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	8(c) read with 20(b)(ii)(c) of NDPS Act	Ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) and in default thereof to further undergo Rigorous Imprisonment for a period of one year
The period of detention already undergone by A1 from 23.08.2017 to 12.10.2017 during the course of investigation shall be set off against the sentence of imprisonment imposed upon him.		



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

3.The petitioner, who is the first accused in Special Case No.1 of 2019, aggrieved over the judgment of conviction and sentence imposed on him, has filed the present Criminal Appeal along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and to enlarge him on bail.

4.The learned counsel for the petitioner submitted that the petitioner is the first accused in Crime No.51 of 2017 on the file of the respondent police for the illegal possession of 9 Kgs of Ganja. After completion of trial, the Trial Court based upon the evidence, found the petitioner guilty of the offence under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act and convicted and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) and in default thereof, to further undergo Rigorous Imprisonment for a period of one year.

5.The learned counsel for the petitioner submitted that in this case, there are many contradictions that in the Seizure Mahazar – Ex.P2 (3 Travel Bags) it is recorded that the contraband has been recovered from



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

the bush. But the evidence on the side of the prosecution is totally contrary to the Seizure Mahazar. The Inspector of Police, Panruti Police Station – P.W.1 in his evidence stated that based on the secret information, he went to the scene of occurrence, conducted search and arrested the accused and recorded his confession statement. Though the accused agreed to show the place where he kept the Ganja during his confession, he did not identify the place where he hide the contraband. But the Seizure Officer says that the contraband has been seized from the accused in the presence of the P.W.4-Village Assistant Kathavarayan and P.W.3–Village Administrative Officer Ezhilventhan. He also stated that P.W.1 has recovered the contraband from the accused. These evidences are totally contrary to the Seizure Mahazar - Ex.P2.

6.The learned counsel for the petitioner submitted that there are arguable points in favour of the petitioner in the Criminal Appeal. Further, the petitioner earlier filed a petition for suspension of sentence in Crl.M.P.No.5347 of 2022 and the same was dismissed by this Court on 05.07.2022. Subsequently, he filed another petition for suspension of sentence in Crl.M.P.No.12 of 2023 and the same was also dismissed by



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

this Court on 04.01.2023. The petitioner is in judicial custody from 05.04.2022 onwards.

7.The learned Additional Public Prosecutor for the respondent objected to suspend the sentence and reiterate that the quantity of contraband involved in this case is a commercial quantity. He has also admitted that the petitioner is in prison from 05.04.2022.

8.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused the entire materials available on record.

9.On perusal of the records, the fact reveals that the petitioner is the first accused in Crime No.51 of 2017 on the file of the respondent police for illegal possession of 9 Kgs of Ganja. After completion of trial, the Trial Court found the petitioner guilty of the offence under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act and convicted and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) and in default thereof, to further



undergo Rigorous Imprisonment for a period of one year. Further, there are many contradictions that in the Seizure Mahazar, it is recorded that the contraband has been recovered from the bush. But the evidence on the side of the prosecution is totally contrary to the Seizure Mahazar. The Inspector of Police, Panruti Police Station – P.W.1 in his evidence stated that though the accused agreed to show the place where he placed the Ganja, he did not identify the place where he exactly hide the contraband. But the Seizure Officer says that the contraband has been seized from the accused in the presence of the P.W.4-Village Assistant Kathavarayan and P.W.3–Village Administrative Officer Ezhilventhan. He also stated that P.W.1 has recovered the contraband from the accused. These evidences are totally contrary to the Seizure Mahazar - Ex.P2. Further, on perusal of the evidence of P.W.1 and P.W.3 and Ex.P2 – Seizure Mahazar, it is noticed that P.W.1 and P.W.3 stated that the contraband has been seized from the accused. But, in Ex.P2, it is mentioned that the contraband has been seized at Melkavarapattu Main Road, Near Angalamman Temple.

10.The petitioner has raised substantial grounds in the Criminal Appeal which require detailed appraisal. Further, the Criminal



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

Appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

11. Accordingly, till the disposal of the Criminal Appeal, the suspension of sentence and bail are granted, on the following conditions:-

- (i) The petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/-(Rupees Twenty Five thousand only) along with two sureties each for a like sum to the satisfaction of the Trial Court;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;
- (iii) The petitioner shall appear before the trial Court as and when required.



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

WEB COPY

12.The Criminal Miscellaneous Petition is ordered accordingly.

26.04.2023

(2/2)

TK

To

- 1.The Special Court for Trial of Narcotic Drugs
and Psychotropic Substances Act Cases
Villupuram.
- 2.The Inspector of Police
NIB-CID
Villupuram.
- 3.The Public Prosecutor
High Court of Madras.



WEB COPY



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022



WEB COPY



CRL.MP.NO.2779 OF 2023 IN CRL.A.NO.437 OF 2022

V.SIVAGNANAM, J.

TK

CRL.MP.NO.2779 OF 2023
IN CRL.A.NO.437 OF 2022

26.04.2023

(2/2)