

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.2846 of 2023
in
Crl.A.No.190 of 2023

1. Arunpandi
2. Vignesh

... Petitioners

Vs.

State Rep. by the Inspector of Police,
Inspector of Police,
M4, Redhills Police Station,
Chennai 600 052
(Cr.No.3789/2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C. to suspend the sentence imposed in C.C.No.32 of 2021 passed by the Principal Special Court under E.C and NDPS Act, Chennai dated 13.02.2023.

For Petitioners : Mr.S.Karthikeyan
for Mr.V.Kannan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This petition is filed seeking to suspend the sentence imposed in C.C.No.32 of 2021 passed by the Principal Special Court under EC and NDPS Act, Chennai dated 13.02.2023.

2.The Trial Court, by judgment dated 13.02.2023 passed in C.C.No.32 of 2021 and sentenced the petitioners as extracted hereunder.

Rank of the accused	Conviction under Section	Sentence
A2 and A3	8(c) r/w.20(b)(ii) (C) of the NDPS Act	The accused shall undergo Rigorous Imprisonment for 12 years each and to pay a fine of Rs.1,20,000/- each, in default, to undergo Rigorous Imprisonment for 6 months.

Rank of the accused	Conviction under Section	Sentence
A2 and A3	8(c) r/w 29(1) of the NDPS Act	The accused shall undergo Rigorous Imprisonment for 5 years each and to pay a fine of Rs.50,000/- each, in default, to undergo Rigorous Imprisonment for 6 months.
A2	8(c) r/w 25 of the NDPS Act	The accused shall undergo Rigorous Imprisonment for 12 years and to pay a fine of Rs.1,20,000/- , in default, to undergo Rigorous Imprisonment for 6 months.

3.Challenging the judgment of conviction and sentence, the petitioners preferred the present Criminal Appeal along with the instant petition, seeking to suspend the sentence of imprisonment.

4.The learned counsel for the petitioner submitted that the respondent-Police prosecuted the accused in this case along with the other 5 accused persons. After the trial, the trial Court found not guilty on A1, A4, A6 and A7 and acquitted from the charges and convicted A2 and A3 for the

offences under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act. Further, he contended that the respondent-Police, on 18.08.2020, while seizing the alleged Ganja, they also seized onions in the vehicle, but it is not brought in the seizure mahazar prepared by the police and during the cross examination, it is stated that the said onions were destroyed at the Police Station, it creates a doubt and there is an arguable point in the Criminal Appeal in seeking to suspend the sentence and grant bail to the petitioners.

5.The learned Additional Public Prosecutor submitted that the respondent-Police, while intercepting the vehicle No.TN-64-P-1042, found 8 bags of Ganja and arrested the petitioners. After investigation, they filed the charge sheet against 7 persons. With regard to A5, Nakka Banu Prakash, the case has been split up as C.C.No.158 of 2023, which is now pending. With regard to the accused A1, A4, A6 and A7, they were acquitted and since A2 and A3 were found guilty by the trial Court, they were sentenced to imprisonment. He further submitted that the petitioner/A2 is involved in other offences, which are as follows:

<i>S.No.</i>	<i>P.S.Cr.No.</i>	<i>Section of Law</i>	<i>Stage</i>
1	Thideer Nagar P.S Cr.No.361 of 2016	U/s.75 C.P.Act	Disposed
2	Thideer Nagar P.S Cr.No.129 of 2010	U/s.379 I.P.C	
3	Thideer Nagar P.S Cr.No.555 of 2016	U/s.75 C.P.Act	Disposed
4	Vilakkuthoon P.S Cr.No.96 of 2020	U/s.75 C.P.Act	Disposed

The petitioner/A3 is also involved in various offences of similar nature,
which are as follows:

<i>S.No.</i>	<i>P.S.Cr.No.</i>	<i>Section of Law</i>	<i>Stage</i>
1	Thideer Nagar P.S Cr.No.77 of 2020	U/s.75 C.P.Act	Disposed
2	Thilagar Thidal P.S Cr.No.462 of 2020	U/s.269 I.P.C	
3	Thilagar Thidal P.S Cr.No.544 of	U/s.151 Cr.P.C	

<i>S.No.</i>	<i>P.S.Cr.No.</i>	<i>Section of Law</i>	<i>Stage</i>
	2018		

Therefore, he opposed to grant suspension of sentence.

6.The learned counsel for the petitioners contended that all the previous case details furnished by the learned Additional Public Prosecutor are not similar type of offences and it involves Section 75 C.P.Act , Section 269 I.P.C and Section 151 Cr.P.C. Therefore, it will not affect in granting bail to the petitioners

7.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and perused the impugned judgment and the materials on record.

8.On perusal of the records, it reveals that the petitioners are A2 and A3 in C.C.No.32 of 2021 on the file of the Principal Special Court under E.C and NDPS Act, Chennai. The respondent-Police prosecuted the

petitioners and other accused for having committed punishable offences under Section 8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act. Pending trial, the trial Court had split up the case against A5 and taken on file in C.C.No.158 of 2023 and with regard to the other accused, conducted a trial. After Trial, the trial Court found A1, A4, A6 and A7 not guilty and acquitted from the charges and found A2 and A3 guilty for which, charges were framed and they were convicted.

9.It is seen from the records that the cross examination of P.W1-Mr.M.V.Arunkumar, Duty Officer, who has seized the contraband in the vehicle and prepared the Mahazar, but in the Mahazar marked before the trial Court as Ex.P4 and Ex.P11, the fact that the onion seized along with the vehicle, which were destroyed in the police station was not brought into Mahazar-Ex.P4 and P11, which is an arguable point in favour of the petitioners. The details furnished by the Additional Public Prosecutor is concerned with Section 75 C.P.Act and Section 379 I.P.C and there is no offence under the NDPS Act. There is also no material to show that the

petitioners are having previous bad antecedents and involved narcotics offence. The petitioners are still in judicial custody from 18.08.2020.

10. Considering the nature of the offence, evidence and the judgment of the trial Court and also the fact the petitioners are under incarceration from 18.08.2020, this Court is of the view that the petitioners are entitled to the relief of suspension of sentence and bail.

11. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners *shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Principal NDPS Court, Chennai.*

(ii) The petitioners and their sureties shall affix their photographs and Left Thumb Impression in the surety bond and the concerned Court may

obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) The petitioners shall appear before the Trial Court, **on first working day of every month.**

09.03.2023
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To

1. The Principal NDPS Court, Chennai
2. The Superintendent, Central Prison, Puzhal.
3. The Public Prosecutor, High Court of Madras, Chennai.
4. The Inspector of Police, M4, Redhills Police Station,
Chennai 600 052

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V.SIVAGNANAM, J.,

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