



*Crl.M.P.No.6169 of 2023
in Crl.A.No.495 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.6169 of 2023
in
Crl.A.No.495 of 2023

R.Karthick

... Petitioner

Vs.

State by
Inspector of Police,
NIBCID, Chennai.
Crime No.19 of 2019

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed by the learned Principal Special Judge, EC & NDPS Court, Chennai in C.C.No.109 of 2019 by judgment dated 15.11.2022 and to enlarge the petitioner on bail.

For Petitioner : Mr.T.Shanmuga Boopathy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Principal Special Judge, EC & NDPS Court, Chennai by judgment dated 15.11.2022 made in C.C.No.109 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in C.C.No.109 of 2019 by judgment dated 15.11.2022 for the offence under Section 8(c) r/w. 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act] and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo six months rigorous imprisonment. Against which, the present appeal is filed along with suspension of sentence.

3.The petitioner was apprehended and arrested on the allegation that he was carrying and transporting 5 kgs of ganja from the State of Andhra



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Pradesh to Thoothukudi. On 25.02.2019 at about 7.30 a.m, while he was proceeding to Thoothukudi, on prior information from the informer, the petitioner was identified. When the petitioner was questioned, he is said to have produced a bag containing 5 kgs of ganja. Threafter, the petitioner is said to have arrested at about 8.30 a.m. and on compliance of Section 50(A) of NDPS Act, mahazars were prepared, the petitioner was produced before the 5th respondent on the same day at about 11.00 a.m. and thereafter, FIR/Ex.P7 came to be registered.

4.The primary contention of the learned counsel for the petitioner is that in Ex.P4/Arrest Intimation, Crime No.19 of 2019 is mentioned which may not be correct since according to the prosecution the case itself came to be registered at 11.00 a.m. but Ex.P4 was prepared at 8.30 a.m. He would submit that in this case it was projected as though the petitioner travelled in bus through Cauvery Travels from Andhra Pradesh but no evidence was produced to show that the said fact has been verified. He further submitted that though two persons shown as private persons who refused to participate in the search and recovery proceedings, except for mentioning their name no



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other particulars and details were given. He would also submit that in the confession it is recorded that the petitioner travelled from Andhra Pradesh by train and hence, the case of the prosecution becomes doubtful. He further submitted that in this case the mother of the petitioner was examined as D.W.1, the petitioner examined himself as D.W.2 and Ex.D1/Arrest memo was marked through P.W.5/Investigating Officer by confront and confirm with regard to the time of arrest. P.W.5 admits that in the arrest memo, mobile number of D.W.1/mother of the petitioner had been given but the evidence of D.W.1 is that the mobile number does not belong to her. These factors have not been considered by the Trial Court. Further, the Trial Court had not adverted to Ex.P4 and Ex.D1 and no reason was given for the same. He further submitted that the petitioner had no bad antecedents.

5.Learned Additional Public Prosecutor vehemently opposed the contention of the learned counsel for the petitioner by referring to paragraph 3 of the judgment wherein the Trial Court referred to Ex.P1, Ex.P2, Ex.P4, Ex.P5 and Ex.P8 wherein the place of occurrence i.e. Koyambedu bus stand



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main gate was recorded. He would submit that the contention of accused that Crime number is mentioned in the arrest memo is only a minor discrepancy and will not affect the case of the prosecution and further in the judgment, it is stated that though crime number found in arrest, the explanation given by the prosecution is that through phone they got the crime number and it was written in arrest memo, there is a possibility of getting next crime number through phone and hence, that could not be the ground for defence that in police station document was prepared wantonly to foist the case against the petitioner. Hence, he prayed for dismissal of this petition.

6.The learned counsel for the petitioner replied stating that P.W.1 in his evidence had never stated about receipt of phone message and also about the crime number details, in such circumstances, the Trial Court giving its own finding is not proper.

7.Considering the submissions made and on perusal of the materials, it is seen that admittedly in this case Ex.P4/Arrest Intimation Memo crime



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number was recorded at 8.30 a.m. On 25.02.2019. P.W.1 and P.W.2, the raiding party were unable to give any reason for the same. P.W.5/P.W.5/Investigating Officer had also not given any clarity with regard to the same. It is also found that the petitioner examined himself as D.W.2 and his mother was examined as D.W.1, had given explanation with regard to crime number and mobile number found in Ex.P4 which is not that of D.W.1. Admittedly, in this case Crime number was assigned after registration of FIR/Ex.P7 on 25.02.2019 at 11.30 a.m. Finding that the petitioner was in prison from 15.11.2022 and the petitioner has got no bad antecedents, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Principal Special Judge, EC & NDPS Court, Chennai.



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9.Further, it is seen that the petitioner hails from Thoothukudi and hence, the petitioner shall appear before the learned Judicial Magistrate No.I, Tiruchendur every Monday at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

10.Accordingly, this Miscellaneous Petition is ordered.

27.11.2023

cse

Note: Issue order copy on 27.11.2023

To

- 1.The Inspector of Police,
NIBCID, Chennai.
- 2.The Principal Special Judge,
EC & NDPS Court, Chennai



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M. NIRMAL KUMAR, J.

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3.The Judicial Magistrate No.I,
Tiruchendur.

4.The Superintendent,
Central Prison Puzhal,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

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