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Crl.M.P.No.5910 of 2023 in Crl.A.No.477 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.5910 of 2023

in

Crl.A.No.477 of 2023

1. Gurunathan
2. Kunjalovaraju

... Petitioners

/vs/

The Inspector of Police,
represented by State NIB CID,
Kancheepuram

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 374(2) of Cr.P.C., to suspend the sentence imposed on the petitioners in C.C.No.58 of 2020 by the II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, by his judgment dated 31.03.2023 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

For Petitioners ... Mr. C. Rajan

For Respondent ... Mr. R. Vinoth Raja
Govt. Advocate (crl.side)

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioners in C.C.No.58 of 2020, dated 31.03.2023 passed by the II Additional Special Court for Exclusive Trial of



Cases under NDPS Act, Chennai.

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2. The petitioners are A1 and A2 in C.C.No.58 of 2020. The trial court, by its judgment dated 31.03.2023, convicted and sentenced the petitioners/A1 and A2 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	U/s. 8(c) r/w.29(1) of NDPS Act	To undergo RI for a period of one year
	u/s.8(c) r/w. 20 (b) (ii) (C) of NDPS Act	to undergo RI for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default in payment of fine, to undergo RI for a period of six months.
A2	U/s. 8(c) r/w.29(1) of NDPS Act	To undergo RI for a period of one year
	u/s.8(c) r/w. 20 (b) (ii) (C) of NDPS Act	to undergo RI for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default in payment of fine, to undergo RI for a period of six months.

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.

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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 petitioners/A1 and A2 for the offence under sections 8(c) r/w.29(1) and 8(c) r/w.20(b) (ii) (C) of NDPS Act. After trial, they were found guilty for the offence under sections 8(c) r/w.29(1) and 8(c) r/w.20(b) (ii) (C) of NDPS Act and they were convicted and sentenced by the trial court as stated above. He further submitted that on 10.02.2020, the respondent police arrested the petitioners and the contraband were recovered from them under seizure Mahazar, and they produced the contraband before the Judicial Magistrate Court on 10.02.2020, but it was returned to respondent police and thereafter, they have produced the same before the trial court only on 18.02.2020 and during the said intermittent period, no evidence or document was produced by the prosecution to prove the safe custody of contraband. In the circumstances, a strong suspicion arise about the genuineness of the contraband seized and there is every chance of substitution in the contraband which has been produced before the court and the same may be forwarded to chemical analysis. So the seizure of Ganja under suspicious circumstances create



doubt against the genuineness of the prosecution case. He further contended that with regard to information furnished to the accused for search, admittedly, the accused persons are native of Andhrapradesh and they only knew Telugu and did not know Tamil. Though it is stated that the contents of search, have been translated, it is doubtful whether it is correctly translated and explained in the language known to them or not.

5. It is his further contention that in the seizure mahazar, they have specifically stated that under item 3, they seized 23 empty covers, in which, the contraband was brought by the accused persons, but it was not produced before the trial court and not exhibited as material object. In the circumstances, citing various contradictions in the prosecution case, the charges against the accused were not proved beyond reasonable doubt. These material contradictions 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.

6. The learned Additional Public Prosecutor appearing for the



respondent objected for suspension of sentence and bail stating that the seized contraband were kept under safe custody and there is no reason to raise any doubt in that regard. However, he fairly conceded that 23 covers, in which the contraband was seized from the accused persons, though recovered as Item No.3 under the seizure mahazar, were not produced before the trial court. He further submitted that the trial court, after considering the evidence and materials, found the petitioners guilty and convicted and sentenced them as stated above, hence, there is no ground to suspend the sentence imposed on the petitioners. Thus, he seeks for dismissal of this petition.

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

8. On perusal of impugned judgment and other documents, it is noticed and not disputed that in the seizure mahazar, under item 3, the respondent police seized 23 empty covers in which, the contraband were allegedly taken by the petitioners/accused, but it was not produced before the trial court. Further, admittedly though the contraband has been seized on before the Judicial Magistrate on 10.02.2020 itself, immediately it was



handed over to the police for getting safe custody and thereafter it was produced before the Court on 18.02.2020. In the in-between days, whether the contraband was kept by the respondent police under safe custody is not known and not evidenced before the trial court. Admittedly, there is no safe room for keeping the contraband seized from the accused persons. In the circumstances, I find there is a good case for the appellant to argue. Further, the appeal is not likely to be taken up in the near future and the petitioners are in judicial custody from 10.02.2022. 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.

9. 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.25,000/-(Rupees twenty five thousand only) each along with two sureties, each for a like sum, to the satisfaction of the II Additional Special Court for Exclusive Trial of Cases under the 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



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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 on the first working day of every month at 10.30 a.m., until further orders.

14.06.2023

msr

To

- 1.The II Addl. Special Court for Exclusive Trial of Cases
under NDPS Act, Chennai.
- 2.The Inspector of Police,
NIB CID,
Kancheepuram
3. The Superintendent of Prison,
Central Prison, Puzhal-1, Chennai.
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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