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Crl.M.P.No.13992 of 2023
in Crl.A.No.837 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

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

Crl.M.P.No.13992 of 2023

in

Crl.A.No.837 of 2023

Irulayi

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
NIB-CID, Chennai.
(Crime No.99 of 2019)

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C to suspend the sentence imposed on the petitioner by order dated 24.07.2023 in C.C.No.2 of 2021 on the file of Principal Special Court under EC & NDPS Act, Chennai and release the petitioner on bail till the disposal of the above Crl.A.No.837 of 2023.

For Petitioner : Mr.O.Chembulingam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment imposed by



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the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai by judgment dated 24.07.2023 made in C.C.No.2 of 2021 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.

2. The petitioner/appellant herein is the accused in C.C.No.2 of 2021 on the file of the Principal Special Court under EC & NDPS Act, Chennai. She was found guilty for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act and she has been convicted and sentenced as under:

Petitioner /Accused	Conviction	Sentence
Petitioner/Accused	8(c) r/w 20(b)(ii)(B) of NDPS Act	To undergo five years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default to undergo six months rigorous imprisonment.
Total fine imposed against the petitioner/Accused is Rs.50,000/-		

3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.837 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The case of the prosecution is that on 15.10.2019, at about 7.00 hours, P.W.1/Inspector of Police, NIBCID, Chennai received an information from the



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informant that about 8.00 hours, one lady who known to him is going to sell Ganja nearby B-Block, Annai Sathya Nagar, Chennai. P.W.1 reduced the said information into writings in Ex.P1 and submitted the same to the Superior Deputy Superintendent of Police, NIBCID, Chennai. After getting permission from his superior, P.W.1 proceeded to the place along with P.W.2/Head Constable and one Grace Mary/L.W.3, Sweeper with NDPS Kit. On identification of the informant, they intercepted one lady, who was holding white colour polythene gunny bag in her hand. After P.W.1 introduced himself by showing identity card conducted enquiry. One Kumar and Karna, who were present, called for independent witnesses for search. Since they refused to be the independent witnesses, search was conducted in the presence of P.W.2/Head Constable and the said Grace Mary in compliance to Section 50 of the NDPS Act. The search notice marked as Ex.P2. During the search, the petitioner produced a white colour polythene gunny bag in which, the contraband Ganja weighing around 2 kgs. was found. Two samples each weighing 50 gms. were lifted for chemical examination, which were marked as S1 and S2. The signature of the accused, witnesses were obtained on the labels and the remaining contraband of 1.900 kgs. of Ganja was tied in the same bag with jute thread and NIB seal affixed and a label was pasted on Ex.P1. The seizure mahazar marked as Ex.P3. Arrest Intimation marked as Ex.P4 and



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Inspection Memo marked as Ex.P5. Exs.P3 to P5 were signed by the accused.

The accused gave voluntary confession. Thereafter, the accused was brought to the station, arrest memo prepared and a case in Crime No.99 of 2019 under Section 8(c) r/w 20(b)(ii)B) of NDPS Act registered. The F.I.R./Ex.P7 prepared, the same was sent to the concerned Magistrate Court. Form-91 marked as Ex.P8. The samples were sent to lab analysis. The Lab Report marked as Ex.P9. Thereafter, on transfer of P.W.1, Mrs.Geetha/P.W.3 completed the investigation and filed charge sheet before the trial Court.

5. During trial, P.W.1 to P.W.3 examined and marked 9 documents as Exs.P1 to P9 and marked material objects as M.O.1 to M.O.3. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the petitioner was convicted as stated above, against which, the present appeal has been filed.

6. The contention of the petitioner is that in this case P.W.1/Inspector of Police, NIBCID on receipt of information, visited the scene of occurrence along with P.W.2/Head Constable and one Grace Mary with NDPS kit. In this case, the specific contention according to P.W.1 is, a lady is about to sell contraband Ganja in Annai Sathya Nagar, Chennai. That is the reason Mrs.Grace Mary had



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been along with P.W.1. But strangely, the said Grace Mary has not been examined as a witness. He further submitted that in the charge sheet, 6 witnesses have been listed to be examined but only 3 of them have been examined as witnesses in this case. No independent witnesses for search, seizure, and arrest have been made in this case. The trial Court proceeded on a premise that all the documents have been acknowledged and signed by the accused, failing to look into the fact that the accused is illiterate and only left thumb impression is available in all the documents, i.e., Exs.P2 to P5. In support of his contention, he relied upon the judgment of this Court in *Crl.A.No.405 of 2005* in the case of *Mary Vs. State*, wherein this Court held that when a lady was searched with the help of woman constable and she was not examined and no reason given by the prosecution for non examination would be fatal to the case of the prosecution. On this score alone the petitioner is entitled for bail.

7. Learned counsel further submitted that the glossary over the difference in weight of the seizure of contraband is not proper. In paragraph 10 of the trial Court judgment, the Court admits that the prosecution seized 2 kgs. of Ganja, of which, two samples of 50 gms each were taken. Remaining 1.900 kgs. were seized in bulk and the same was weighed before the Court during trial and only



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1.138 kgs. of contraband was available. Almost 800 gms of Ganja was missing.

The trial Court's finding that signature of the witnesses and accused present in the label and seal will not be sufficient. He further submitted that P.W.1 in his evidence admitted that plastic container is weighing more than 100 gms. If that is further taken into consideration, the contraband seized is 1 kg or less, which is a bailable offence. Hence, on this score, the petitioner has fair chance of success in this appeal. Thus, he prayed for suspension of substantive sentence of imprisonment imposed on the petitioner till the disposal of the appeal.

8. Learned Additional Public Prosecutor appearing for the respondent-Police opposes the same and submits that in this case on specific information P.W.1/Inspector of Police, NIBCID has visited the scene of occurrence along with P.W.2/Head Constable and one Grace Mary. On the identification of the informant, the petitioner was intercepted and after disclosing the identity and following all the formalities, search was conducted. From her, white colour polythene gunny bag was seized, in which 2 kgs of Ganja was found. The same was seized by way of Mahazar and two samples were taken and sent for chemical examination, which proved that the contraband is Ganja. On the same day, seized contraband were sent to the Court along with the accused. The trial Court on the evidence of P.W.1 to P.W.3 and materials had rightly convicted



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the petitioner. Further submitted that the points raised by the petitioner herein are already raised during trial and the trial Court had given answer to the points raised. The petitioner being Ganja paddler cannot be shown any leniency when the trial Court convicted her. He fairly submitted that the petitioner has got no bad antecedents.

9. Considering the facts and circumstances and on perusal of the materials, this Court finds that in this case there is a clear violation in the manner of search and seizure following Section 50 of the NDPS Act. Further the petitioner being illiterate, the trial Court giving a finding that all the documents signed by the petitioner could not be proper. The trial Court admitted that there is a shortage of 800 grams of Ganja, which has been seized and produced during the trial and the explanation given is not proper. Finding *prima-facie* case in favour of the petitioner and taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing and also considering the antecedents of the petitioner, this Court is inclined to suspend the substantive sentence of imprisonment alone till the disposal of the appeal.



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10. 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 she 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 learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai.

11. Further, the petitioner is directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders. In case, the petitioner is unable to appear on the specified day, she is entitled to file a petition under section 317 of the Code of Criminal Procedure, 1973 and the Learned Principal Special Judge shall decide the same on its own merits and as per law.

Accordingly, this Criminal Miscellaneous Petition is ordered.

16.10.2023

Index: Yes/No
Internet : Yes/No
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To
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- 1.The Inspector of Police,
NIB-CID, Chennai.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Superintendent,
Central Prison,
Special Prison for Women,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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