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*Crl.M.P.No.14936 of 2023
in Crl.A.No.876 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.14936 of 2023
in
Crl.A.No.876 of 2023

Lakshmi

... Petitioner

Vs.

State By,
The Inspector of Police,
J11, Kannagi Nagar Police Station,
Chennai
(Crime No.434/2019)

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence in the Judgment dated 18.07.2023 in C.C.No.157 of 2019 passed by the Court of learned Principal Special Judge, Principal Special Court of under EC & NDPS Act and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.M.S.Ramesh
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, Principal Special Court under EC & NDPS Act, Chennai by an order dated 18.07.2023 in C.C.No.157 of 2019 and enlarge the petitioner on bail pending disposal of the appeal.

2.The petitioner who is the accused in C.C.No.157 of 2019 was convicted by the Trial Court and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.50,000/- for the offence under section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and in default of payment of fine thereof to undergo further period of six months rigorous imprisonment, by a judgment dated 18.07.2023.

3. The gist of the prosecution is that on 18.08.2019 at about 14.35 hours, PW1, Sub-Inspector of Police, J11 Kannagi Nagar Police Station received information that one person namely Lakshmi of Theni District was



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travelling in 102K bus and she is to alight at Ezhil Nagar and she was going to sell ganja, packed in Polythene packets nearby to Tsunami Housing Colony Canal between 3.30 pm and 6.00 pm. This information was reduced to writing and submitted to his superior viz., Inspector of Police and got permission and proceeded to the spot along with PW2, Woman Police Constable and PW3, Grade I Police Constable with NDPS Kits. On identification by the informant, PW1 intercepted the suspected person, who got down from 102K bus and enquired the suspected person. PW1 informed her that if he wanted to be searched before a Gazetted Officer or a Judicial Magistrate and her rights under section 50 of the Act. Since no public was forthcoming to witness the search, PW1 requested PW2 Woman Police Constable and PW3, Grade I Police Constable to be the witnesses for the said search. At that time of search, the petitioner took a wooden handle bag and produced before the PW1, in which 3.200 kgs of Ganja found and he took two samples weighing 50 grams each and packed them separately in polythene cover and sealed it and marked as S1 and S2 and sent for chemical analysis. The balance of 3.100 kgs was packed, sealed, labelled and marked as P1. Thereafter, seizure mahazar Ex.P3 was prepared. After



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completion of seizure, the petitioner was arrested and voluntary confession was recorded. The inspection memo was marked as Ex.P4. Thereafter, the petitioner was taken to the Police Station along with the seized properties. Section 57 report submitted to PW4, the superior viz., the Inspector of Police. PW1 produced the petitioner along with the properties to PW4 who in turn, registered an FIR Ex.P8. PW4 produced the petitioner before the learned Judicial Magistrate, Alandur for remand along with the property. The learned Magistrate remanded the accused and ordered to produce the property before the Special Court. PW4 submitted the case property along with requisition to send the sample for chemical analysis. The Chemical Examiner received the sample and after completion of chemical analysis, confirmed that the sample sent to her is Ganja. On completion of investigation, charge sheet filed. During the trial, PW1 to PW4 examined, Ex.P1 to Ex.P9 marked and M.O.1 to M.O.3 were produced and marked.

4. The contention of the petitioner is that the specific case of the prosecution is that, PW1 received information from the informer that the petitioner was travelling in the bus 102k and she alighted from the bus at



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Ezhil Nagar to sell Ganja and having 3.200 kgs of Ganja, no independent witness examined in this case. He further submitted that the condition of section 50 of the Act violated in this case which is fatal to the case of the prosecution. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Kerala High Court in the case of ***Baburaj vs. State of kerala*** reported in ***CDJ 2021 Ker HC 923***. He further submitted that to prove whether the petitioner was travelling in the bus, neither the bus conductor was examined nor travel ticket was produced. He further submitted that the reason given by the trial court in the impugned judgment is not proper and hence, prayed for allowing this petition.

5. The learned Public Prosecutor submitted that in this case, PW1 received information from a informer that the petitioner will travel in the bus 102K and she will alight at Ezhil Nagar to sell Ganja. As per the information, PW1 along with PW2 and PW3 went to the scene of occurrence. The informant identified the petitioner and thereafter, the petitioner was intercepted enquired and on search, she was found with the possession of 3.200 kgs of Ganja and out of which, two packets weighing



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50gms each has been sent for chemical analysis and the balance 3.100kgs of Ganja were packed, sealed and marked as P1. Section 57 report recorded. In this case, all the statutory conditions have been complied with. The trial court considered all these aspects and convicted the petitioner. He would fairly submitted that the petitioner has no antecedents.

6. Considering the facts and submissions, this Court finds force in petitioner submission for violation of section 50 of the NDPS Act which is a statutory compliance. Further, this Court finds arguable points in favour of the petitioner. The seized contraband is an intermediary quantity. The petitioner is a lady without bad antecedents.

7. In view of the same, 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



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a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Special Judge for EC & NDPS Act Cases, Chennai.

9. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if she 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.

16.10.2023

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Note: Issue order copy on 18.10.2023



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M. NIRMAL KUMAR, J.

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To

1.The Principal Special Judge, Principal Special Court of under EC &
NDPS Act

2.The Public Prosecutor,
High Court, Madras.

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