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*Crl.M.P.No.16681 of 2023
in Crl.A.No.643 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

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

Crl.M.P.No.16681 of 2023
in
Crl.A.No.643 of 2023

Aandi
S/o.Karuppan

... Petitioner/A-1

Vs.

The State rep. by
The Inspector of Police,
NIB CID,
Villupuram & District.
Crime No.12 of 2021.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 28.04.2023 passed in Spl.Case.No.05 of 2021 on the file of Special Court for trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.V.Gunasekar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/A1, seeking suspension of sentence of imprisonment imposed by the learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram by judgment dated 28.04.2023 made in Spl.Case.No.05 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 in Spl.Case.No.5 of 2021 was convicted by the Trial Court by judgment dated 28.04.2023 and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo three months rigorous imprisonment for offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act. Against which, the petitioner has filed Crl.A.No.643 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.The case of the prosecution is that there are totally three accused in this case. A1 is related to A2 and A3, who are husband and wife residing at Malaiyarasampattu. All the accused have conspired together and cultivated



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ganja in between the cassava plants in the land of A3 and harvested the same and used to sell the same through A1. On 26.02.2021, on the secret information, the respondent police gone there. On identification of the informant the accused were identified. Initially, they reached Dhurur village of A1 and on questioning A1, he produced a white colour sack bag containing 2.100 kgs. of ganja and also admitted the same. On his arrest, he gave a confession thereafter he was taken to the village of A2 and A3. From them 23.400 kgs of Ganja was seized and recovered. In this case, PW1 to PW5 are the police party, who had gone to the village of A1 to A3. PW6 and PW7 are the Village Administrative Officer and Village Assistant of Dhurur Village, in whose presence A1 was searched and contraband was seized. The contraband seized was produced before PW14, who confirmed through a report/Ex.P23 that the contraband seized was ganja. Thereafter, on completion of investigation, charge sheet filed and trial Court convicted the petitioner and other accused as stated above.

4. During trial, on the side of prosecution PW1 to PW17 examined and marked Exs.P1 to P23 and marked material object M.O.I to M.O.VI. On the side of the defence, one witness DW1 examined and no documents marked.



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On conclusion of the trial, the trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for petitioner is that there are inter se contradiction between PW1 to PW5, who are police parties gone to the scene of occurrence. PW1 in his evidence admits that PW6/VAO and PW7/Village Assistant were present near the house of A1 when they reached there. Thereafter A1 was called out and he was questioned, about possession of ganja, who admitted the same and produced the contraband. Thereafter, samples were taken. Further, PW1 not entered into the house of A1, made any further search to confirm about the availability of any other contraband inside the house. Thus in this case there is a clear violation of Section 42 of NDPS Act. He further submitted that after the completion of search a report has to be submitted by the raiding officer to his superior about what had happened during the search, seizure. This report not submitted. He further submitted that the evidence of PW6 and PW7 are contrary to the evidence of PW1, wherein they state that they were standing at the borders of the village and after arrival of police team they followed in two wheeler thereafter reached the house of A1. Thus the presence of PW6 and PW7 is highly



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doubtful in the manner in which they narrated about the search and seizure.

PW4 and PW5 are giving contra evidence about entering the house, conducting the search. Thus the prosecution story of search and seizure becomes highly doubtful.

5.1.Further submitted that A1 is short of hearing which is not seriously disputed. In such circumstances what is written and how signature obtained in the documents as projected by the prosecution is highly doubtful. He further submitted that the petitioner has go no bad antecedents and he is convicted for two years. Due to Section 32-A of NDPS Act the sentence could not be suspended. Hence he is in confinement. He further submitted that the petitioner is in confinement during investigation from 27.02.2021 to 24.06.2021, i.e., 115 days. Thereafter from 30.05.2022 to 23.06.2022 and now from the date of judgment, i.e., 28.04.2023. In total, he is in confinement for nearly 139 days. The petitioner hail from Malaiyarasampattu society and got three daughters, out of which, two son-in-laws are no more and the petitioner is engaged in agricultural activities in supporting his widow daughters and grand children. Further submits that prosecution attempted to project the case as though the petitioner is related to other two accused and in conspiracy with them had committed offence. The Trial Court



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finding is that the prosecution failed to prove any conspiracy and acquitted the petitioner for charge under Section 29 of NDPS Act. He further submitted that in this case A2 acquitted though she is the wife of A3. Further, the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.Learned Additional Public Prosecutor filed his counter and submitted that in this case after receiving the secret information, PW1 informed to his superior. After getting permission, PW1 and his team PW2 to PW5 along with secret informant gone to the village of the petitioner. On the way, he informed PW6 and PW7, VAO and Village Assistant to be present near the house of A1 and all joined together called A1 out and questioned him, who voluntarily produced the bag containing ganja, samples taken thereafter all the statutory provisions followed. Samples were sent to Forensic Lab. PW14 given a report/Ex.P23 confirming that seized articles are ganja. In this case, search, seizure, recovery and contraband proved to be Narcotics Ganja. The Trial Court considering all these aspects rightly convicted the petitioner as stated above. Hence, prays for dismissal of the petition.



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7.Considering the submissions made and on perusal of the material, it is seen that the petitioner was convicted for offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-. The petitioner has got no bad antecedents and he is in confinement for nearly 139 days. The manner in which seizure and search conducted in this case as spoken to by PW1 to PW5 are in contradictions, PW6 and PW7 state that they were waiting near the borders of the village and thereafter they followed PW1 and his team in their motor bike. But the categorical evidence of PW1 is that PW6 and PW7 waited near the house of A1 and thereafter they conducted search and seizure. PW1 not entering into the house of A1 conducting further search is not proper. On the other hand PW4 and PW5 state that PW1 entered into the house of A1 and conducted search. Hence, the constitution of the team members and their presence together is highly doubtful. Likewise all the witnesses PW1 to PW7 present together at the time of search and seizure is also doubtful. In this case, compliance of Section 42 of NDPS Act, which is a mandatory appears not followed. In view of the same, the judgment of the Trial Court needs reconsideration. Further taking note of the fact that there



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are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner/accused.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner/A1 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 learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram.

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 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.



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10. Accordingly, this Criminal Miscellaneous Petition is ordered.

09.11.2023

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To

1. The Inspector of Police,
NIB CID,
Villupuram & District.
2. The Special Judge,
Special Court for Trial of Narcotic Drugs
and Psychotropic Substances Act Cases,
Villupuram.
3. The Superintendent,
Central Prison,
Cuddalore.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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