



*Crl.M.P.No.16893 of 2023
in Crl.A.No.1174 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

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

Crl.M.P.No.16893 of 2023
in
Crl.A.No.1174 of 2023

Thulasi

... Petitioner

Vs.

State by
The Inspector of Police,
NIBCID, Chennai.
Crime No.38 of 2019

... Respondent

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 14.09.2023 in C.C.No.132 of 2019 on the file of the Principal Special Court under EC & NDPS Act, Chennai and release the petitioner on bail till the disposal of the above criminal appeal.



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For Petitioner : Mr.O.Chembulingam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

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 order dated 14.09.2023 made in C.C.No.132 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.132 of 2019 by judgment dated 14.09.2023 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.50,000/-, in default to undergo six months rigorous imprisonment. Against which, the present appeal is filed along with suspension of sentence.



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3.On 02.04.2019 at about 11.00 a.m., P.W.1 along with P.W.2/Head Constable, L.W.3 and L.W.4/Mrs.Grace Mary, Sweeper, with NDPS Kit reached the spot. On identification by the informant, the petitioner is said to have been identified, enquired, searched and thereafter, the petitioner is said to have produced a gunny bag containing 1.200 kgs of ganja. After confirming that the contraband is ganja and taking samples, the petitioner was arrested and produced before the respondent police and case was registered.

4.The contention of the learned counsel for the petitioner is that the petitioner was produced before the learned XXIII Metropolitan Magistrate on 02.04.2019, the other documents namely information under Section 42 of NDPS Act, Section 50 compliance report, Section 57 NDPS Act report and FIR were sent to the Special Court on 09.04.2019 but the contraband has been produced only on 24.04.2019. He would submit that from the information it is seen that the petitioner's name and age clearly recorded, for



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this reason one Mrs.Grace Mary accompanied the Police Party since the accused is a lady, but the said Mrs.Grace Mary though cited as L.W.4, not examined as witness which is fatal to the case of the prosecution. He further submitted that the Head Constabale Mr.V.Varadharajan, who had taken the samples for chemical examination not examined as witness. Further, though the seizure took place in a public place no independent witnesses examined and no reason given for non-examination. In support of his contention, the learned counsel for the petitioner relied upon the decisions of this Court in the cases of Mathi alias Mathiyalan vs. State reported in 2010 (2) Drugs Cases (Narcotics) 90 and Karnam Thakka Babu vs. State rep. By Inspector of Police, Koyambedu Police Station, Chennai reported in 2013 (2) MWN (Cr.) 184.

5.Learned Additional Public Prosecutor vehemently opposed the contention of the learned counsel for the petitioner as regards non-examination of L.W.4/Grace Mary, referred to the judgment of the Trial Court at Page 13 wherein P.W.1 had clearly stated that the accused had voluntarily produced the gunny bag containing the contraband. Further,



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with regard to non-examination of the Head Constable Mr.V.Varadharajan who took the samples for chemical examination, he would submit that in the case of Mathi alias Mathiyalagan vs. State, there is no seal but in this case, P.W.3, Deputy Director, Forensic Science Department confirmed that there is a seal of the respondent police in the samples, therefore, the citation referred to by the learned counsel for the petitioner is not helpful. Hence, he prayed for dismissal of this petition.

6.Considering the submissions made and on perusal of the materials, admittedly in this case the petitioner was arrested on 02.04.2019 and produced before the learned XXIII Metropolitan Magistrate, Saidapet. The relevant documents were produced before the Special Court on 09.04.2019 but Form 91 it is recorded contraband produced by the respondent police only on 24.04.2019 and 'B' Property Number assigned. It is also seen that in the judgment, the Trial Court recorded that the report/Ex.P8 marked through P.W.4 but the same not recorded in the deposition of P.W.1 but the Lower Court gives justification that in the adjudication order, the same is recorded, hence it has to be construed that Ex.P8 has been marked through P.W.1



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which may not be proper. It is seen that no independent witnesses examined and no reason was given for the same. Further, non-examination of L.W.4/Grace Mary and the Head Constable Mr.V.Varadharajan causes doubt in the Search, Seizure and production of contraband for test, the manner in which the Trial Court had come to the conclusion not acceptable, hence, this Court is of the opinion that the judgment of the Trial Court needs re-consideration. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

7. 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 Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.

8. 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



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disposal of the appeal and if she is not able to appear before the Trial Court on that day, she 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 her absence as directed by the Trial Court.

9. Accordingly, this Miscellaneous Petition is ordered.

16.11.2023

cse

Note: Issue order copy on 17.11.2023

To

1. The Inspector of Police,
NIBCID, Chennai.
2. The Principal Special Judge,
Principal Special Court under
EC & NDPS Act, Chennai
3. The Superintendent,
Central Prison Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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