



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Second day of February Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.623 of 2023
in
CRL A(MD) No.622 of 2022

SUNDARTHEVAR

... PETITIONER/APPELLANT/ACCUSED NO.2

Vs

State Rep.by
THE INSPECTOR OF POLICE
NIB-CID,
THENI DISTRICT.
CR.NO.205/2017

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner / appellant / accused no.2 namely Sundarthevar, S/o.Paraman passed by the learned I Additional Special Court for NDPS Act Cases, Madurai in C.C.No.1 of 2019 dated 06.09.2022 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

Prayer in CRL A(MD).622/2022 :

To call for the records in C.C.No.1 of 2019 dated 06.09.2022 on the file of the Learned I-Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.JEGADEESH PANDIAN.M., Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in C.C.No.1 of 2019, dated 06/09/2022 by the I Additional Special Court for NDPS Act cases, Madurai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 05/12/2017, at about 14.00 hours, on the Sivraj Nagar Road opposite to Theni Bus Stand, the accused persons were found transporting 10 kgs of ganja in an



3. On the basis of the above said occurrence, the is registered. After completing the formalities of investigation, final report was filed for the offences punishable under section 8(c) r/w 20(b)(ii)(B) of NDPS Act and it was taken on file in CC No.1 of 2019 by the trial court.

4. On the side of the prosecution, 3 witnesses were examined and 11 documents marked, apart from that 4 materials objects marked. On the side of the accused, neither oral evidence nor documentary has been adduced.

5. At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo 5 years Rigorous Imprisonment and imposed a fine of Rs.50,000/- with default clause for the offence under section 8(c) r/w 20(b)(ii)(B) of NDPS Act. Challenging the above said conviction and sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed seeking suspension of sentence.

6. Heard both sides.

7. The learned counsel for the petitioner would submit that the earlier application, that was filed by the petitioner was dismissed by this court, on 01/11/2022 making an observation that the judgment is of the recent origin and he can revive the application after reasonable time; After a gap of two months, this petition came to be filed by the petitioner and he has also filed a receipt for the payment of fine amount, which was imposed upon him by the trial court.

8. With regard to the merits, he would submit that only based upon the statement of the co-accused, this petitioner has arrayed as an accused; No document has been produced by the prosecution to show the ownership of the vehicle, in which the above said contraband alleged to have been transported by this petitioner along with the co-accused.

9. Per contra, the learned Additional Public Prosecutor would submit that in the place of the occurrence, the accused were in possession of 10 kgs of ganja and transporting the same through an Auto bearing registration No. TN-60-F-8169; Since the petitioner was apprehended along with the contraband, no indulgence can be shown.

10. Perusal of the documents and the evidence shows that A1 namely Kathir Raja was transporting the ganja in the vehicle, in which this petitioner is the driver. Whether this petitioner also connived with A1 to transport the ganja is a matter for consideration in the main appeal. The petitioner has to give the explanation for driving the above said vehicle, which contained the contraband. Whether proper explanation has been offered by the



petitioner or not is a matter for consideration in the main. Further, no bad antecedent is also reported against this petitioner.

11. Considering the above facts and circumstances of the case and also considering the fact that it will take time to hear the main appeal for disposal, I am inclined to enlarge the petitioner on bail, by suspending the substantive part of sentence. Accordingly, the suspension of sentence petition is **allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) the petitioner is directed to be enlarged on bail on condition that the petitioner 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 I Additional Special Court for NDPS Act Cases, Madurai; and

(ii) on further condition that the petitioner shall appear before the said Court once in a week i.e., on the first working day of every week at 10.30 am pending appeal.

sd/-

02/02/2023

/ TRUE COPY /

02/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE I ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES, MADURAI.

2 THE INSPECTOR OF POLICE, NIB-CID, THENI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-1730[I] dated 02/02/2023)

ORDER IN

CRL MP(MD) No.623 of 2023
in

CRL A(MD) No.622 of 2022

Date :02/02/2023