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CRL MP(MD)



23

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

Friday, the Seventeenth day of March Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL MP(MD) No.1160 of 2023
in
CRL A(MD) No.434 of 2021

1 MUNIYASAMY @ PADAM MUNIYASAMY

2.VALIVIDUMURUGAN

...Petitioners / Appellants

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
MANGALAMEDU POLICE STATION,
PERAMBALUR,
CRIME NO.203 OF 2019.

... Respondent / Respondent

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence by granting bail in C.C.No.138 of 2019 dated 21.09.2021 on the file of learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act Cases, Pudukottai pending disposal of the above Criminal.

Prayer in CRL A(MD) No.434 of 2021:

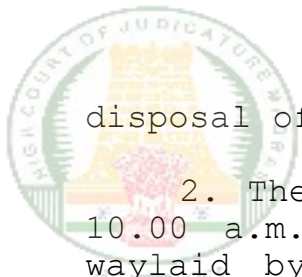
To take this Appeal on file and call for the entire records in connection with the judgment of the Learned Additional District and Sessions Judge and Special Judge for EC and NDPS Act Cases, Pudukottai in C.C.No.138 of 2019 dated 21.09.2021 and set aside the conviction and sentence imposed on the appellants.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for M/S.PRABHU.K, Advocate for the petitioners and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor, on behalf of the Respondent the court made the following order:-

RESERVED ON	14.03.2023
PRONOUNCED ON	17.03.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in C.C.No.138 of 2019, dated 21.09.2021, on the file of the learned Additional District and Sessions Court and Special Judge for EC and NDPS Act Cases, Pudukottai, till the

<https://www.mca.gov.in/judicial>



disposal of this Criminal Appeal.

2. The case of the prosecution is that on 13.07.2019 at about 10.00 a.m., when a car bearing Registration No.TN-06-C-0033 was waylaid by the Special Police, the accused refused to stop the vehicle and drove the vehicle with an intention to hit the police and that the Special Police fired a shot in the air and stopped the vehicle and they have found 170kgs of Ganja, which was kept in the dikky portion and hence, FIR came to be registered in Crime No.203 of 2019 for the offences under Sections 186, 97 and 307 IPC and Sections 8(c), 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 on the file of Mangalamedu Police Station, Perambalur.

3. After completing the investigation, charge sheet came to be filed and the case was taken on file in C.C.No.138 of 2019.

4. During trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16, exhibited 19 documents as Ex.P.1 to Ex.P.19 and marked 2 material objects as M.O.1 and M.O.2. The accused have adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 21.09.2021 finding the petitioners/accused guilty for the offences under Section 307 IPC and Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act and sentenced them to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo 3 months Simple Imprisonment for the offence under Section 307 IPC, to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- each, in default, to undergo 6 months Simple Imprisonment for the offences under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act and to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- each, in default, to undergo 6 months Simple Imprisonment for the offence under Section 25 of NDPS Act and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused have come forward with the present Criminal Appeal.

6. This is the fourth application filed by the petitioners seeking suspension of sentence. Earlier three applications were ordered to be dismissed, lastly on 20.09.2022.

7. The learned Senior Counsel appearing for the petitioners would contend that the trial Court had failed to frame the charges properly and as a result, it caused great prejudice to the trial of the case, that there is no material at all to show that there was an attempt on the life of P.W.1, that the trial Judge failed to see that P.W.16 is the seizure officer, who is said to have recovered the contraband and his evidence is silent about the recovery of the same and that the evidence of P.W.1 and P.W.16 are highly unreliable and artificial and as such, their evidences should have



been rejected.

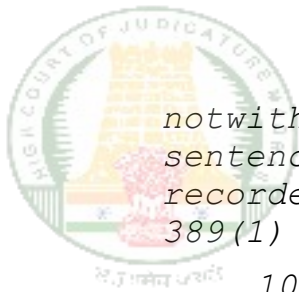
8. The learned Additional Public Prosecutor appearing for the respondent would submit that the Hon'ble Supreme Court has been observing in Catena of cases that there is a difference between grant of bail under Section 439 of Cr.P.C. in pre-trial stage and the suspension of sentence under Section 389 of Cr.P.C. for grant of bail, post conviction and that the power to suspend the sentence under Section 32A is subject to Section 37 of NDPS Act.

9. It is necessary to refer the decision of the Hon'ble Supreme Court in **Narcotic Control Bureau vs. Lokesh Chadha reported in 2021 SCC Online SC 178**,

"9.Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will refer to the decision of a two-Judge Bench of this Court in *Preet Pal Singh v State of Uttar Pradesh*³ where Justice Indira Banerjee, speaking for the Court, observed as follows:

"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P. and Anr.* (supra).

However, in case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail,



notwithstanding an order of conviction, by suspensio sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

10. The principles which must guide the grant of bail in a case under the NDPS Act have been reiterated in several decisions of this Court and we may refer to the decision in *State of Kerala v Rajesh*⁴. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS 3 (2020) 8 SCC 645 4 (2020) 12 SCC 122 Act. On the basis of the material which emerged before the learned Special Judge and which forms the basis of the order of conviction, we are of the view that no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside."

10. As rightly contended by the learned Additional Public Prosecutor, Section 37 is applicable to the appeal cases also.

11. In the case on hand, it is the specific case of the prosecution that the contraband of 170 kgs was recovered from the car, in which the petitioners were travelling.

12. Even assuming that the petitioners are not having any previous cases, since the recovery was allegedly from the car, in which the petitioners were travelling, this Court has no hesitation to hold that the petitioners have miserably failed to satisfy the first condition of Section 37 of NDPS Act.

13. Considering the nature and seriousness of the offence and also the quantum of the contraband involved and the petitioners' failure to satisfy the twin conditions contemplated under Section 37 of NDPS Act, this Court is not inclined to suspend the sentence imposed on the petitioners at this point of time.

14. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
17/03/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



To

1.The Additional District and Sessions Judge
and Special Judge for EC and NDPS Act cases, Pudukottai.

2.The Inspector of Police,
Mangalamedu Police Station,
Perambalur.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Superintendent,
Central Prison, Trichy.

ORDER
IN
CRL MP (MD) No.1160 of 2023
in
CRL A (MD) No.434 of 2021
Date :17/03/2023

ED/CG/SAR- 4(12/04/2023) 5P 5C