



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

Monday, the Third day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.2910 of 2023
in
CRL A(MD)No. 512 OF 2021

RAGU @ RAGUNESH ... PETITIONER/APPELLANT/ ACCUSED (FIRST)

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
Q BRANCH CID, TRICHY
(CRIME NO. 2 OF 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 enlarge the petitioner on bail by suspending the sentence imposed by the learned Additional District and Sessions Judge, Special Court for EC-NDPS Act Cases, Pudukottai, Pudukottai District in S.C.No.66 of 2017 vide his judgment dated 26.10.2021 pending the disposal of the above main criminal appeal.

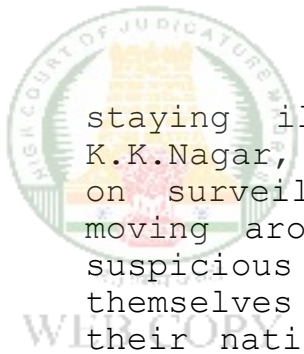
PRAYER CRL A(MD)No. 512 of 2021:

Pleased to call for records relating to the order of conviction in C.C.No. 66 of 2017 passed by Learned Additional District and Sessions Judge/Special Court for EC-NDPS Act Pudukkottai dated 26.10.2021 and allow the appeal and may acquit the appellant.

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.HAJA MOHIDEEN GISTHI.S, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Additional District and Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukottai, in S.C.No.66 of 2017, dated 26.10.2021, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that based on confidential information received on 27.05.2017 that few Sri Lankan Tamils were

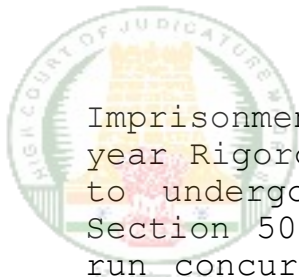


staying illegally without valid documents at Azath 1 in K.K.Nagar, Trichy, the respondent police team went to the spot and on surveillance, noticed that the petitioner/first accused was moving around with the accused 2 and 3 at a vacant site in a suspicious manner, that when the respondent police team introduced themselves and enquired the petitioner and the accused 2 and 3 about their nationality, residential address and antecedents, they gave contradictory and inconsistent replies and suddenly, the petitioner brandished a sickle and threatened to murder the police officials and the second accused took a hockey stick and threatened to do away them, that the petitioner and the other accused had abused the respondent police team by using unparliamentary words and tried to assault them, but the respondent police team overpowered and secured them and on enquiry, it came to light that the petitioner and the other accused are Sri Lankan nationals and residing at K.K.Nagar, Trichy, that when the respondent police team demanded documents pertaining to their nationality and immigration, they admitted that they had no such documents and entered into India by illegal ferry, that the Sub Inspector of Police seized the weapon, sickle and hockey stick under the cover of mahazar in the presence of Revenue officials as independent witnesses and produced the petitioner and the other accused along with the seized properties before 'Q' Branch CID, Trichy for taking appropriate action and on that basis, FIR came to be registered in Crime No.2 of 2017 for the offences under Section 14A of Foreigners (Amendment) Act 2004 and Sections 294(b), 353 and 506(2) IPC and the petitioner and the accused 2 and 3 were apprehended and that thereafter on the basis of the confession statement of the petitioner, 2 kgs of Ganja and other packing materials were recovered from the car bearing Registration No.TN-45-BK-6334 and hence, the case was altered into Section 14 of Foreigners Act, 1946, Sections 294(b), 353, 506(2), 468, 471 and 420 IPC and Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

3. After completing the investigation, charge sheet came to be filed and the same was taken on file in C.C.No.66 of 2017 on the file of the Special Court for EC & NDPS Act Cases, Pudukottai.

4. During trial, the prosecution has examined 22 witnesses as P.W.1 to P.W.22, exhibited 27 documents as Ex.P.1 to Ex.P.27 and marked 23 material objects as M.O.1 to M.O.23. The accused have adduced neither oral nor documentary evidence.

5. The learned Special Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 26.10.2021 finding the petitioner/accused guilty for the offences under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and for the offences under Sections 294(b), 353 and 506(2) IPC and sentenced him to undergo 4 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, to undergo 2 months Rigorous



Imprisonment for the offence under Section 294(b) IPC, to 1 year Rigorous Imprisonment for the offence under Section 353 IPC and to undergo 3 years Rigorous Imprisonment for the offence under Section 506(2) IPC and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the first accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. No doubt, the petitioner's earlier three applications for similar relief for suspension of sentence were ordered to be dismissed, lastly, vide order dated 15.09.2022.

7. The learned counsel appearing for the petitioner would submit that the petitioner has become Indian National and he is having all the documents to prove his citizenship and that the petitioner is married and is having two children and all of them are now living in Trichy.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner did not appear before the trial Court from 25.04.2019 to 06.08.2021 and not co-operated for speedy trial, that the petitioner had appeared before the trial Court only on 23.08.2021 and that during the absence of the petitioner for trial, a case has been registered against him in Sri Lanka Dharamapuram Police Station in Crime No.B/1514/2019 for smuggling of Ganja in Sri Lanka by illicit means and seized CIPLX-5629 Lorry with 135 kgs of Ganja and he was remanded to judicial custody and later released on bail. He would further submit that the petitioner went to Sri Lanka by illegal ferry and subsequently returned to India with the help of illegal ferry and that since the petitioner is a Sri Lankan National, if he released on bail, he would abscond and he may escape to Sri Lanka or some other foreign countries.

9. As rightly contended by the learned Additional Public Prosecutor, though the petitioner has been alleging that he has become Indian National, he has not offered any reason or explanation for his long absence between the period 25.04.2019 and 06.08.2021. More importantly during that period, another case came to be registered against the petitioner for smuggling Ganja in Sri Lanka and at that time, 135 kgs of Ganja along with CIPLX-5629 Lorry were seized.

10. Considering the above facts and circumstances and also the facts that the petitioner had remained absconding for more than 2 years and that he is having another case registered for the offence under NDPS Act and also taking note of the objection of the prosecution that the petitioner if released on bail, he would abscond and travel to foreign countries, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of



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

sd/-
03/04/2023

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WEB COPY

/04/2023

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

CSM

TO

- 1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE/ SPECIAL COURT FOR EC-NDPS ACT,
PUDUKKOTTAI.
- 2 THE INSPECTOR OF POLICE
Q BRANCH CID, TRICHY
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAI, CHENNAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.HAJA MOHIDEEN GISTHI, Advocate (SR-5435[I] dated
05/04/2023)

ORDER
IN
CRL MP(MD) No.2910 of 2023
in
CRL A(MD)No. 512 OF 2021
Date :03/04/2023

PKP/CG/SAR-2/19.04.2023/ **4P/6C**