



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

Friday, the Twelfth day of May Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.2552 of 2023
IN
CRL A(MD) No.120 of 2023

1 DHANDAPANI

2 BOSS

... PETITIONERS/APPELLANT

NOW

BOTH ARE CONFINED AT CENTRAL PRISON,
MADURAI.

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT.
IN CRIME NO.54/2011

... 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 sentence imposed by the Learned 1st Additional Special Court for NDPS Act Cases, Madurai Passed in CC No.183/2014 dt.24/11/2022 and enlarge the petitioner on bail pending disposal of the criminal appeal.

PRAYER IN CRL A(MD) No.120 of 2023:-

To call for the records in CC.No.183 of 2014 relating to the judgement dated 24.11.2022 passed by the Learned 1st Additional Special Court for NDPS Act Cases, Madurai and to set aside the judgement of the conviction 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 MS.MUNIYANDI S, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-



RESERVED ON	27.04.2023
PRONOUNCED ON	12.05.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners by the learned Additional District Judge, I Additional Special Court for NDPS Act Cases, Madurai (FAC), in C.C.No.183 of 2014, dated 24.11.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 13.02.2011 at about 17.30 hours, on receipt of secret information, the police party conducted a raid at Periya Kalaiamputhur and that the petitioners/accused 1 and 2 were intercepted and found that they were carrying a bag containing 2 kgs of Ganja each and the police party, after seizing the contraband, arrested the petitioners and on that basis, FIR came to be registered in Crime No.54 of 2011 for the alleged offences under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

3. The respondent police, after completing the investigation, has laid the final report and the same was taken on file in C.C.No.183 of 2014.

4. During trial, the prosecution has examined 4 witnesses as P.W.1 to P.W.4, exhibited 7 documents as Ex.P.1 to Ex.P.7 and marked 4 material objects as M.O.1 to M.O.4. The defence 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 24.11.2022 convicting the petitioners for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced them to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo 1 month Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused 1 and 2 have come forward with the present appeal along with the above application seeking suspension of sentence.

6. The learned counsel appearing for the petitioners would submit that the trial Court has failed to consider the provisions under Section 42(2) of NDPS Act, that P.W.3 would say that the raid was conducted on the basis of the information received from the informant, but there was a contradictory stand that the raid was conducted on the basis of the prohibition of illicit liquor and as such, the raid itself doubtful, that the respondent had taken 50 grams of samples from each bag, but P.W.2 would say that he received 45 grams of Ganja, that no consent letter has been taken from the petitioners and failed to follow the requirements under Section 50 of NDPS Act, that though the respondent police seized the contraband



allegedly from the petitioners on 13.02.2021, but the as produced with huge delay and that there was no reason or explanation for the delay.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that when the police party were patrolling around at Chinnakkadai Street, Periya Kalaiamputhur stopped two persons, who were attempting to run away from that place, that the police party caught hold them and on search, they have found 4 kgs of Ganja in 2 gunny bags (2 kgs each), that Section 42 of NDPS Act cannot have any application to the facts of the case, that Section 50 of NDPS Act needs to be complied mandatorily only in the case of secret information and that the learned trial Judge, upon considering the evidence available on record, has rightly convicted the petitioners.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would further submit that the first petitioner is having 5 previous cases for similar offence and the second petitioner is not having any previous cases.

9. Considering the above facts and circumstances of the case and also the fact that the first petitioner is having 5 previous cases, this Court is not inclined to suspend the sentence imposed on the first petitioner. **Accordingly, this Criminal Miscellaneous Petition is dismissed as against the first petitioner concerned.**

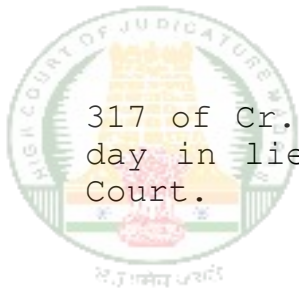
10. Considering the above facts and circumstances of the case and also the quantum of punishment imposed and also the fact that the second petitioner is not having any previous cases as stated by the learned Government Advocate (Criminal Side), this Court is inclined to suspend the sentence imposed on the second petitioner.

11. **In the result, this Criminal Miscellaneous Petition is allowed as against the second petitioner concerned.** Accordingly, the relief of suspension of sentence and bail is granted to the second petitioner on the following conditions:-

(i) The second petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Additional District Judge / Principal Special Court for EC & NDPS Act Cases, Madurai;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The second petitioner shall appear before the concerned Court on all working days at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section



317 of Cr.P.C. and shall appear before the trial Court on _____ day in lieu of the date of his absence, as directed by the trial Court.

sd/-
12/05/2023

WEB COPY

/ TRUE COPY /

12/05/2023

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

CSM

TO

- 1 THE ADDITIONAL DISTRICT JUDGE /
PRINCIPAL SPECIAL COURT FOR EC & NDPS ACT CASES,
MADURAI.
- 2 THE 1ST ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES,
MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE INSPECTOR OF POLICE,
PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.MUNIYANDI, Advocate (SR-7385[I] dated 12/05/2023)

ORDER
IN
CRL MP(MD) No.2552 of 2023
IN
CRL A(MD) No.120 of 2023
Date :12/05/2023

NA/VR/SAR- /12.05.2023/4P/7C