



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

Wednesday, the Fifth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.2813 of 2023
IN
CRL A(MD) No.132 of 2023

AMARESAN

... APPELLANT/PETITIONER

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
NIB CID, THENI,
THENI DISTRICT.
(CRIME NO.128 OF 2016)

... RESPONDENT/COMPLAINANT

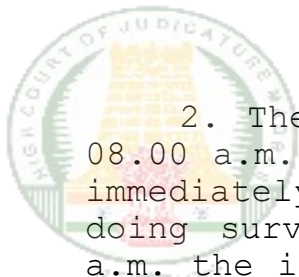
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence in the judgment dated 11.01.2023 passed in CC.No.313 of 2016 on the file of the IInd Additional Special Court for NDPS Act Cases, Madurai and enlarge the petitioner on bail disposal of the criminal appeal.

PRAYER IN CRL A(MD) No.132 of 2023:-

To call for the records and set aside the order passed by the Hon`ble IInd Additional Special Court for NDPS Act Cases, Madurai in C.C.No.313 of 2016 dated 11.01.2023 and allow this criminal Appeal.

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.PRABAKARAN.K, Advocate for the petitioner and of M/S.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondents 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 Judge, II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.313 of 2016, dated 11.01.2023, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 10.08.2016 at 08.00 a.m., the respondent police received a secret information and immediately formed a team and went to Cumbum Kombai Road and were doing surveillance near Oothukkadu Bus Stop, that at about 10.10 a.m. the informant identified a person and that the said person was stopped and after searching, recovered 1.200 kgs of Ganja and on that basis, FIR came to be registered in Crime No.128 of 2016 for the offences under Sections 8(c) r/w 20(b) (ii) (B) of NDPS Act.

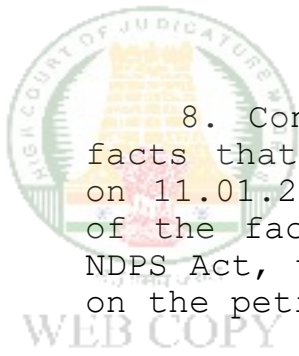
3. The respondent police, after completing the investigation, has filed the final report and the same was taken on file in C.C.No.313 of 2016 on the file of the II Additional Special Court for NDPS Act Cases, Madurai.

4. During trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3, exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 3 material objects as M.O.1 to M.O.3. The accused has 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 11.01.2023 convicting the petitioner/sole accused for the offence under Sections 8(c) r/w 20 (b) (ii) (B) of NDPS Act and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo 1 month Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that there are contradictions between the evidence of P.W.2 and P.W.3 with regard to the secret information received, that Ex.P.6-information does not contain the name of the petitioner, that the report under Section 57 of NDPS Act does not contain the signature of P.W.3-Inspector of Police and the same was admitted by P.W.3 in his evidence and that therefore Section 57 of NDPS Act has not been duly complied. He would further submit that the respondent police has failed to explain the delay in producing the sample to the concerned Court and whether the sample was kept in safe custody and that the alleged offence against the petitioner has not proved beyond reasonable doubt.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the Special Court has passed the impugned judgment only on 11.01.2023, that the petitioner is having 13 previous cases under NDPS Act, that the petitioner is a habitual offender under NDPS Act and that if the petitioner's sentence is suspended and released on bail, he would involve in the transportation of Ganja again.



8. Considering the above facts and circumstances and the facts that the impugned judgment of the conviction was passed only on 11.01.2023 and the period of incarceration and also taking note of the fact that the petitioner is having 13 previous cases under NDPS Act, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-
05/04/2023

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/04/2023

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

CSM

TO

- 1 THE 2ND ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.
- 2 THE INSPECTOR OF POLICE
NIB CID, THENI,
THENI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.2813 of 2023
IN
CRL A(MD) No.132 of 2023
Date :05/04/2023

NA/SSS/SAR-3/12.04.2023/3P/4C