



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

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

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5637 of 2023
in
CRL A(MD)No.547 of 2021

J.GOWTHAM ... PETITIONER/APPELLANT/ACCUSED NO.1

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
NIB CID, MADURAI DISTRICT.
CR.NO.12/2018

... 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.1 by the Learned I Additional Special Court for NDPS Act Cases Madurai in CC No.406/2018 dt 29.10.2021 and enlarge the Petitioner on bail pending disposal of the criminal Appeal

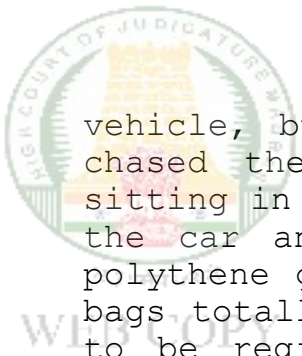
PRAYER in CRL A(MD)No.547 of 2021:

To call for the records and set aside the conviction and sentence passed in C.C.No.406 of 2018 dated 29.10.2021 on the file of the learned 1st Additional Special Court for NDPS Act cases, Madurai so far as Appellant concerned.

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.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 Judge / Presiding Officer, I Additional Special Court for NDPS Act Cases, Madurai (FAC), in C.C.No.406 of 2018, dated 29.10.2021, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 26.01.2018 at about 06.45 a.m., the respondent police went to Usilampatti to Theni National Highways road between Chettiyarpatti and Kanavai and mounted surveillance and at that time, the petitioner/first accused and the second accused came in a Innova car bearing Registration No.TN-09-BS-2217, that the police party gave signal to stop the



vehicle, but they evaded the police party, that the police party chased the vehicle and intercepted the same and that a person sitting in the front seat fled away and the police party went behind the car and on checking, they found 25 kgs of Ganja each in 4 polythene gunny bags and 26 kgs of Ganja each in 4 polythene gunny bags totally weighing 204 kgs of Ganja and on that basis, FIR came to be registered in Crime No.12 of 2018 for the offences under Sections 8(c) r/w 20(b) (ii) (C) and 25 of NDPS Act.

3. The respondent police, after completing the investigation, has laid the final report and the case was taken on file in C.C.No.406 of 2018.

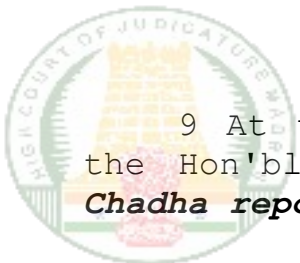
4. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7, exhibited 14 documents as Ex.P.1 to Ex.P.14 and marked 30 material objects as M.O.1 to M.O.30. The defence have adduced neither oral nor documentary evidence.

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 29.10.2021 convicting the accused for the offence under Section 8(c) r/w 20(b) (ii) (C) of NDPS Act and sentenced them to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- each, in default, each to undergo 6 months Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the first accused has come forward with the present Criminal Appeal.

6. No doubt, the petitioner's earlier two applications for the similar relief in CrI.M.P.(MD)Nos.12081 of 2021 and 2279 of 2023 were ordered to be dismissed by this Court vide orders dated 17.02.2022 and 15.02.2023.

7. The learned counsel appearing for the petitioner would submit that the trial Court, except the confession statement of the second accused, did not rely any other material to inflict conviction upon the petitioner, that P.W.1 and P.W.3 are not trustworthy and the evidence is liable to be disbelieved, that there is no corroboration between the evidence of prosecution witnesses and their evidence is totally contradictory, that though the investigating officer procured independent witnesses, but they did not examine them as witnesses before the trial Court and that there was no explanation for the same.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that the respondent police has followed all the procedures as contemplated under the Act, that there is no ground to consider the petition for suspension of sentence, while pending appeal and that therefore the above petition is liable to be dismissed.



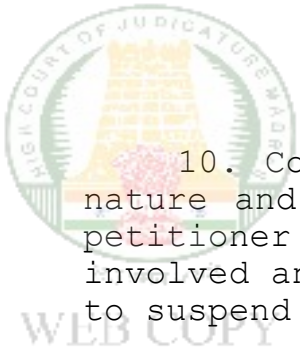
9 At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Narcotic Control Bureau Vs. Lokesh Chadha** reported in 2021 SCC Online SC 178,

"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 Pradesh³ 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 suspension of 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 Rajesh⁴. 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. Considering the above facts and circumstances and also the nature and seriousness of the offence allegedly proved against the petitioner and also taking note of the quantum of contraband involved and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-
17/04/2023

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/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

- 1 THE I ADDITIONAL SPECIAL JUDGE
FOR NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
NIB CID, MADURAI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.5637 of 2023
in
CRL A (MD) No.547 of 2021
Date :17/04/2023

SS/MMS/SAR I/05/05/2023/4P/5C