



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

Monday, the Twentieth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.12201 of 2022
in
CRL A(MD) No.632 of 2022

KATHIR RAJA

... Petitioner / Appellant /
Accused No.1

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
NIB CID,
THENI DISTRICT.
(CRIME NO.205/2017).

... Respondent / Respondent /
Complainant

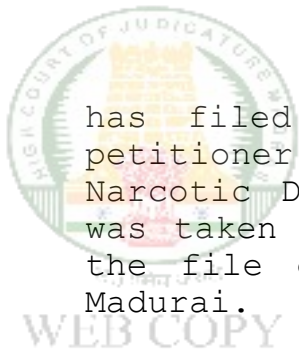
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the I Additional Special Court for NDPS Act Cases, Madurai in CC No.1/2019 vide his judgment dt.6/9/2022.

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.PITCHAI MUTHU 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 passed in C.C.No.1 of 2019, dated 06.09.2022, on the file of the I Additional Special Court for NDPS Act Cases, Madurai, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 05.12.2017, at about 14.00 hours on Shivaji Nagar road opposite to Theni Bus stand, the accused persons were found transporting 10 kgs of Ganja in an auto bearing Registration No.TN-60-F-8169. The respondent police has registered a case in Crime No.205 of 2017 for the offences under Sections 8(c), 20(b)(ii)(B) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985.

<https://www.mhc.tn.gov.in/> This respondent police, after completing the investigation,



has filed the final report against the accused including the petitioner for the offences under Sections 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 and the case was taken on file in C.C.No.1 of 2019 and the same was pending on the file of the I 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 11 documents as Ex.P.1 to Ex.P.11 and marked 4 material objects as M.O.1 to M.O.4. The accused have adduced neither oral nor documentary evidence.

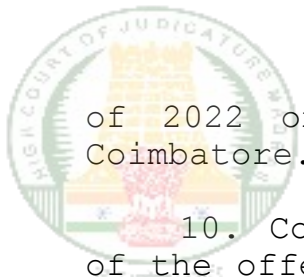
5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 06.09.2022 finding the accused including the petitioner guilty for the offences under Sections 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act and sentenced the petitioner to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.50,000/-, in default, to undergo Simple Imprisonment for 3 months. 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. The learned counsel appearing for the petitioner would submit that there are convincing points in which certainly the petitioner has got fair chances of success in this case and that since the sentence imposed on the second accused has already been suspended by this Court, the petitioner may also be granted the same relief.

7. No doubt, this Court in CrI.M.P.(MD)No.623 of 2023 in CrI.A.(MD)No.622 of 2022 vide order dated 02.02.2023 suspended the sentence imposed on the second accused and granted bail.

8. As rightly contended by the learned Additional Public Prosecutor, it is pertinent to note that this Court has suspended the sentence imposed on the second accused, mainly on the ground that the second accused was the driver of the auto and whether the second accused also connived with the first accused to transport the Ganja is a matter for consideration in the main appeal and that the second accused is not having any bad antecedents.

9. The learned Additional Public Prosecutor appearing for the respondent would strongly contend that the petitioner is the main accused, that he alone had transported 10 kgs of Ganja in the auto driven by the second accused, that the petitioner is having another case registered in Crime No.599 of 2019 on the file of Singanallur Police Station, Coimbatore City for transporting 8 kgs of Ganja and that after completing the investigation in the said case, charge sheet has already been filed and the case is pending in C.C.No.129



of 2022 on the file of the Special Court for NDPS Act, Coimbatore.

10. Considering the above and also the nature and seriousness of the offence allegedly proved against the petitioner and also the facts that the petitioner is having another case for the similar offence and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-
20/03/2023

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/03/2023

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

CSM

To

1.The Additional District Judge,
I Additional Special Court for NDPS Act Cases, Madurai.

2.The Inspector of Police,
NIB CID,
Theni District.

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

4.The Superintendent,
Central Prison, Madurai.

ORDER
IN
CRL MP(MD) No.12201 of 2022
in
CRL A(MD) No.632 of 2022
Date :20/03/2023

ED/BUC/SAR-4 (29/03/2023) 3P 5C