



CRL MP(MD) No.12779 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Fifth day of September Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.12779 of 2023

in

CRL A(MD)No. 798 of 2023

SAIT @ PAKEER MOHAMED

... PETITIONER/ APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
PALANI TOWN POLICE STATION,
DINDIGUL DISTRICT,
CRIME NO.751/2013

... RESPONDENT/RESPONDENT

Criminal Miscellaneous 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 by the learned II Additional Special Court for NDPS act cases, Madurai in CC.No.317/2016 judgment dated 04.08.2023 and enlarge the petitioner on bail pending disposal of the above criminal appeal on the file of this Hon'ble Court.

PRAYER IN CRL A(MD)NO.798 of 2023:

Pleased to call for the records of the Learned IInd Additional Special Court for NDPS Act cases, Madurai in C.C.NO. 317 of 2016 and to set aside the conviction and

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sentence judgment dated 04.08.2023 by acquitting the appellant herein.

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Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RADHAKRISHNAN.G, Advocate for the petitioner and of MR.T.SENTHIL KUMAR, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This petition is filed to suspend the sentence imposed on the petitioner vide C.C.No.317 of 2016 dated 04.08.2023 on the file of the learned II Additional Special Court for NDPS Act cases, Madurai, pending disposal of this Criminal Appeal.

2. The case of the complainant is that on 16.12.2023 at about 18.00 hrs., the respondent police during rounds at Palani Town, RF Road bus stand rountana, at the time after seeing the respondent police, the accused trying to run. Immediately the respondent police enquired about the accused and search his hand bag and found that the accused was carrying 1300 gms of Ganja. Therefore, FIR came to be registered against the petitioner in Crime No.751 of 2013 for the offences under Sections 8(1)(c) r/w 20 (1)(b) of NDPS Act. The respondent police, after completing the investigation, has laid a final report for the offences under Sections 8(1)(c) r/w 20 (1)(b) of NDPS Act and the same was taken cognizance in C.C.No.317 of 2016 on the file of the learned II Additional Special Judge, Special Court for NDPS Act cases,

Madurai

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3. During trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 6 documents as Ex.P.1 to Ex.P.6, and marked 2 material objects as M.O.1 and M.O.2. However, neither a witness was examined nor a document was exhibited on the side of the accused.

4. The learned Special Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, convicted the petitioner/accused for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act sentenced to undergo two months rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to undergo two weeks simple imprisonment. Aggrieved over the same, the petitioner filed present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that the respondent police falsely registered the case against the petitioner. Further he submitted that the respondent police not at all followed Sections 42 and 50 of NDPS Act. Since the respondent was not informed about the right to be searched either before the Gazetted Officer or Magistrate and recovery was not made before any independent witnesses, it shows that seizure was effected only after arrest of the accused. The



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respondent failed to give explanation for the delay in sending the contraband to the Court, since as per the prosecution, on 16.12.2013, the petitioner was arrested and contraband was recovered on the same day, but the respondent sent to the Court on 08.01.2014. The said delay was not at all explained by the respondent. Further, the respondent is violating the mandatory provision under Section 57 of the NDPS Act, P.W.4, the author of the FIR, has not reduced the information said to have received by him into writing and not obtained necessary permission from competent authority to proceed further. The petitioner has no previous antecedents. Now, the petitioner is in judicial custody from 04.08.2023. Hence, he seeks suspension of sentence.

6. The learned Government Advocate (Crl.side) appearing for the respondent would contend that the Trial Court has rightly convicted the petitioner on the basis of the evidence and the petitioner has no prima facie case in this appeal.

7. This Court has carefully considered the submission of learned counsel for the petitioner and also perused the materials available on record.

8. This Court considering the special circumstances of the case that according to the petitioner is that the respondent police not at all followed Sections 42 and 50 of the NPDS Act. Since the respondent was not informed about the right to be searched either before the Gazetted Officer or Magistrate and recovery was not



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made before any independent witnesses and it is also seen that seizure was effected only after the arrest of the accused. Further, the learned counsel for the petitioners pointed out certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. So this Court prima facie satisfied that there are arguable points involved in this Criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is in custody from 04.08.2023 in Central Prison, Madurai, and he has not previous antecedents. Hence, the petitioner is entitled to the relief of grant of suspension of sentence.

9. Accordingly, the relief of suspension of sentence is granted to the petitioners on the following conditions:-

(ii) The 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 learned Judicial Magistrate, Palani;

(iii) 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



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(iv) The petitioner shall appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-
05/09/2023

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05 /09/ 2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SBN
TO

- 1 THE JUDICIAL MAGISTRATE,
PALANI.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
DINDIGUL DISTRICT.
- 3 THE II ADDITIONAL SPECIAL
JUDGE FOR NDPS ACT CASES, MADURAI.
- 4 THE INSPECTOR OF POLICE
PALANI TOWN POLICE STATION,
DINDIGUL DISTRICT,
- 5 THE SUPERINTENDENT
CENTRAL PRISON,
MADURAI.



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6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO
THE SECTION OFFICER,(CALL FOR ORIGINAL RECORDS)
CRIMINAL RECORDS,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

ORDER
IN
CRL MP(MD) No.12779 of 2023
in
CRL A(MD)No. 798 of 2023
Date :05/09/2023

PKP/SAR- /05.09.2023/ 7P/8C

Madurai Bench of Madras High Court is issuing certified
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