



CRL.M.P.(MD)No.14739 of 2022

CRL.M.P. (MD)No.14739 of 2022
in
CRL.A. (MD)No.817 of 2022

G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in CC No.15 of 2021, dated 01/08/2022 by the II Additional Special Court for NDPS Act, cases, Madurai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution in brief:-

On 02/10/2020 at about 7.00 am, the accused persons gathered in the house of A2 and packed 32 kgs of ganja, put in in two pockets, each weighing 16 kgs, transported the same through car bearing registration No.TN-07-AW-0955 which belongs to A1 and other accused persons accompanied and boarded in the car. A5 was given a bike which belongs to A1 for the purpose escorting the above said vehicle for easy transportation of ganja. On the basis of the occurrence, the case was registered and after completing the formalities of investigation, charge sheet was filed under section 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act.



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3. During trial process, on the side of the prosecution to prove the guilt of the accused, 4 witnesses were examined and 12 documents marked, apart from, 4 materials objects marked. On the side of the accused, none was examined and no document was also exhibited.

4. At the conclusion of the trial process, the trial court found the accused persons guilty of the offence under section 8(c) rW 20(b) (ii) (C) of the NDPS Act, convicted and sentenced to undergo 10 years R/I each and imposed a fine of Rs.1,00,000/- with default clause. Challenging the above said sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed by the petitioner, who is arrayed as A4.

5. The learned counsel appearing for the petitioner would submit that no specific overtact has been alleged against this petitioner, since it has been stated that they travelled in the above car, which transported the ganja sections 42 and 50 of the NDPS Act have not been properly complied and followed and this fact was not properly considered by the trial court. It is also submitted that the consent of the co-accused cannot be taken into as consent of this petitioner. Apart from that, he would submit that no previous case is reported against this petitioner. On that ground, he seeks suspension of sentence.



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6.Per contra, the learned Additional Public Prosecutor would submit that the prosecution has established the case against the petitioner beyond all reasonable doubt and this petitioner also one of the occupants of the car, which transported the ganja.

7.As noted above, joint possession and also the overtact against the petitioner is attributed and the contention with regard to the violation of section 42 and 50 of the Act has been considered by the trial court. Section 37 of the Act has not been properly complied for suspending the sentence.

8.With out going to the other aspects, let us take the issue whether section 37 of the NDPS act has been complied by the petitioner.

9.Reading of the entire evidence as well as the judgment of the trial court shows that this petitioner accompanied the other accused persons and this is one of the occupants in the car which transported the ganja. Absolutely, no circumstance is available against the petitioner to say that without knowing the fact he travelled in the above said car. So in the above said circumstances, section 37 of the Act has not been duly complied by the petitioner. There is no guarantee that if



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he is released, he will commit the similar or other offence in future. Further only total contraband is to be taken into account to find out whether it is a commercial quantity or not. It is the specific allegation of the prosecution that 32 kgs of ganja were separated and packed in separate bags measuring 16 kgs each. The aggregate will be the commercial quantity. So I find no merit in this petition to suspend the sentence.

10.In the result, this criminal miscellaneous petition is **dismissed**. Since the records have been received from the trial court, the Registry is directed to prepare typed set papers and list the main case for hearing.

10.01.2023

Index : Yes/No
Internet : Yes/No
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