



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.M.P(MD)No.13854 of 2022
in
Crl.A.(MD)No.308 of 2022

SOLAIYAPPAN

... PETITIONER/APELLANT

Vs

THE INTELLIGENCE OFFICER
NCB, MADURAI,
NCB NO.48/1/03/2019/NCB-MDU.

... RESPONDENT/RESPONDENT

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 of Imprisonment imposed by the Additional District and Sessions Judge/ Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai passed in CC No.119/2019 dt.12.01.2022 and enlarge the Petitioner/Appellant on bail pending disposal of the above said criminal appeal.

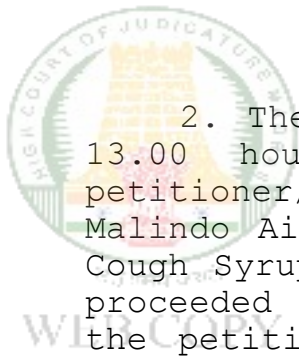
PRAYER IN CRL A(MD) No.308 of 2022:

To call for the records in C.C.No.119 of 2019 relating tot he Judgment dated 12.01.2022 passed by the Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai and to set aside the judgment of the conviction on the appellant/accused.

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.PON KARTHIKEYAN R, Advocate for the petitioner and of M/S.C.ARULVADIVEL @ SEKAR, Special Public Proscutor(NCB cases) on behalf of the Respondent the court made the following order:-

RESERVED ON	15.03.2023
PRONOUNCED ON	20.03.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in C.C.No.119 of 2019, dated 12.01.2022, on the file of the Additional District and Sessions Judge / Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 24.04.2019 at 13.00 hours, NCB Madurai received an information that the petitioner/ accused, who was scheduling to travel Malaysia by Malindo Airflight at 23.25 hours, carrying substantial quantity of Cough Syrup containing narcotic drugs, that the NCB had immediately proceeded to Trichy airport at about 21.30 hours and they stopped the petitioner and detected some suspicious item in his baggage, that on opening the bags of the petitioner, they have found 5 packets wrapped in scotch tape and English newspapers from one bag and 4 similar packets and 5 loose bottles of Eskuf cough syrup from another bag, that on opening the news paper wrapped packets, it was containing 10 bottles of Eskup cough syrup each in 9 packets, that they have found totally 95 bottles of Eskup cough syrup containing Codeine Phosphate and that the contraband was recovered and the petitioner was remanded on 26.04.2019.

3. After completing the investigation, complaint was filed on 17.10.2019 and the case was taken on file in C.C.No.119 of 2019 and the same was pending on the file of the Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai.

4. During trial, the prosecution has examined 5 witnesses as P.W.1 to P.W.5, exhibited 35 documents as Ex.P.1 to Ex.P.35 and marked 10 material objects as M.O.1 to M.O.10. 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 21.01.2022 finding the petitioner guilty for the offences under Sections 8(c) r/w 21(c) of NDPS Act and Sections 8(c) r/w 23(c) r/w 28 of NDPS Act and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 6 months for the offences under Sections 8(c) r/w 21(c) of NDPS Act and to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 6 months for the offences under Sections 8(c) r/w 23(c) r/w 28 of NDPS Act and further ordered that both the sentences of imprisonment to run concurrently. 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 contend that the manner in which search, arrest and seizure effected was not proved by the prosecution, that the mandatory provisions of the NDPS Act was not complied with by the respondent, that the evidence of P.W.1 to P.W.4 were not corroborated with each other and that the trial Court has failed to consider the delay in sending samples for chemical analysis, the discrepancy in the number of the examined and non-examination of the independent witnesses and the



same would establish that the petitioner is innocent and he is falsely implicated in the above case.

7. When the matter was taken up for hearing on 01.03.2023, the learned predecessor Judge, considering the submission of the learned counsel appearing for the petitioner that the petitioner health was not in good condition, directed to produce the petitioner through Video Conferencing before this Court and also directed to get the medical opinion/advise from the Prison Doctor. In pursuance of the direction of this Court, the petitioner was produced before this Court through Video Conferencing and though report has been received from the Central Prison, Trichy, no medical advice has been given by the medical officer suggesting surgery and hence, the learned predecessor has directed to call for a fresh report from the medical officer as to whether the surgery is required for the petitioner immediately or not. In pursuance of the same, the Superintendent of Prison, Central Prison, Trichy has submitted a letter along with the medical certificate issued by the Assistant Surgeon, Central Prison Dispensary, Central Prison, Trichy, wherein, it has been stated that the petitioner is suffering from Type II. Diabetes Mellitus with diabetic ulcer foot (Right) with Right Eye defective vision (Traumatic) past 10 years, that he had Regular follow up in central Prison Dispensary, that he is continuing his medicine for diabetes and its complications, that his vital Parameter are Stable at present and that he was referred to Trichy MGM Hospital for Ophthalmology opinion. Another report dated 08.03.2023 has been received from the Superintendent of Prison, Central Prison, Trichy along with the medical certificate of the Assistant Surgeon, Central Prison Dispensary, Central Prison, Trichy, wherein, it has been stated that the petitioner was referred to Trichy MGM Hospital on 04.03.2023 for expert opinion, that they advised conservative management and to continue Analgesic Drug and Anti diabetic Drug for diabetes mellitus and diabetic ulcer foot and that at present, surgery was not needed.

8. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and also taking note of his medical report, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-

20/03/2023

/ TRUE COPY /

/03/2023

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

CSM

<https://www.mhc.tn.gov.in/judis>



TO

1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE/ PRESIDING OFFICER,
SPECIAL COURT FOR EC AND NDPS ACT CASES, PUDUKKOTTAI

2 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY

3 THE INTELLIGENCE OFFICER
NCB, MADURAI,
NCB NO.48/1/03/2019/NCB-MDU.

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

ORDER
IN
Crl.M.P(MD)No.13854 of 2022
in
Crl.A.(MD)No.308 of 2022
Date :20/03/2023

RK/BUC/SAR-4(24/03/2023) 4P/5C