



CRL MP(MD) No.15753 of 2023

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

Monday, the Twenty Seventh day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15753 of 2023

in

CRL A(MD) No.993 of 2023

MUTHUPANDI

... APPELLANT/PETITIONER

Vs

State Rep.by
THE INSPECTOR OF POLICE
NIBCID POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.136 TO 140 OF 2004.

... 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 in conviction and sentence passed in C.C No.54 of 2005 dt. 10.07.2023 on the file of the I Additional Special court for NDPS Act cases, Madurai and enlarge the petitioner on bail pending disposal of the main criminal appeal.

Prayer in CRL A(MD).993/2023 :

To call for the records and set aside the judgment of conviction and sentence passed C.C.No.54 of 2005 dated 10.07.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai and allow this appeal and acquit the appellants / accused.

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.V.KARUNA, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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



CRL MP(MD) No.15753 of 2023

WEB COPY

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in C.C.No.54 of 2005, dated 10.07.2023, on the file of the I Additional Special Court for NDPS Act Cases, Madurai, and enlarge the petitioner on bail till the disposal of the Criminal Appeal.

2.The case of the prosecution is that on receipt of secret information on 20.08.2004, at about 08.45 a.m., near Dindigul to Old Karur Bye-Pass Road Junction, the petitioner and the four other accused were found in possession of Ganja. The petitioner/Accused No.1 was found in possession of 11 kg of Ganja, the second accused was found in possession of 2 kg of Ganja, the third accused was in possession of 10 kg of Ganja, the fourth accused was in possession of 5 kg of Ganja and the fifth accused was in possession of 2 kg of Ganja. The respondent police after conducting search as per the Act, seized the said Ganja from the petitioner and the other accused. After taking samples, they prepared mahazar and arrested the accused. Thereafter, they registered the First Information Report in Crime Nos.136 of 2004 against the petitioner and also registered the separate FIRs in Crime Nos. 137, 138, 139 and 140 of 2004 against the remaining accused for the offence punishable under Sections 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (herein called as 'NDPS Act'). Thereafter, he was produced before the Court along with the contraband and he was remanded to judicial custody. After



CRL MP(MD) No.15753 of 2023

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completion of investigation, the respondent police filed a final report and the same has been taken cognizance in C.C.No.54 of 2005, on the file of the I Additional Special Court for NDPS Act Cases, Madurai.

3. During the trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 31 documents as Ex.P.1 to Ex.P.31 and marked 15 Material Objects as P.M.O.1 to P.M.O.15, whereas, the accused has adduced neither oral nor documentary evidence.

4.The learned Special Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, convicted the petitioner for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo 3 months Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner submitted that the prosecution has not proved the case in compliance with the relevant provision of 8(c) r/w 20(b)(ii)(B) of NDPS Act. Further, there is violation of mandatory provision under Sections 42, 50, 52 and 57 of the NDPS Act and the sample was sent to the Court belatedly. He further submitted that the petitioner is in custody from 10.07.2023 and pending trial,



CRL MP(MD) No.15753 of 2023

he is in custody for more than 68 days. Therefore, totally he has undergone more than six months imprisonment and the co-accused was already released on bail. In view of the above arguable points, he seeks to grant of suspension of sentence to the petitioner.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

8. Admittedly, the quantity of the contraband recovered from the petitioner is below to the commercial quantity and the petitioner is having no previous case. According to the learned counsel for the petitioner, there is violation of the mandatory provision under Sections 42, 50, 52 and 57 of NDPS Act and there is also some material discrepancy among the witnesses relating to the recovery of the contraband. Therefore, this Court finds force in the submission of the learned counsel for the petitioner. Hence, this Court prima facie feels that 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, the petitioner is in custody from 10.07.2023 and co-accused was already released on bail and also no bad antecedent is



CRL MP(MD) No.15753 of 2023

reported against the petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the I Additional Special Court for NDPS Act Cases, Madurai;

(ii) 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

(iii) 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/-
27/11/2023

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27/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



CRL MP(MD) No.15753 of 2023

TO

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1 THE I ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES, MADURAI.

2 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE, NIBCID POLICE STATION, DINDIGUL DISTRICT.

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

+1 CC to M/s.V.KARUNA, Advocate (SR-16927[I] dated 27/11/2023)

ORDER

IN

CRL MP(MD) No.15753 of 2023

in

CRL A(MD) No.993 of 2023

Date :27/11/2023

RS//SAR-(27.11.2023) 6P 6C

Madurai Bench of Madras High Court is issuing
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