



CRL MP(MD) No.14454 of 2023

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

Thursday, the Fourteenth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL.M.P.(MD)No.14454 of 2023

in

CRL.A.(MD)No.929 of 2023

RASULDEEN

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

THE SUPERINTENDENT OF CUSTOMS ,
ARIPORT,
MADURAI DISTRICT.
(O.S.NO.36/2013)

... RESPONDENT/ RESPONDENT/
COMPLAINANT

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/ Appellant/ Sole Accused namely Rasuldeen, S/o.Liyakath Ali, passed by the Learned I Additional Special Court for NDPS Act Cases, Madurai in C.C.No.30 of 2014 dated 27.09.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD). 929/ 2023 :

To call for the records in C.C.No.30 of 2014 dated 27.09.2023 on the file of the Learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the same.



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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.JEGADEESH PANDIAN M, Advocate for the petitioner and of MR.ARULVADIVEL @ SEKAR, Special Public Prosecutor for customs cases, on behalf of the Respondent, the court made the following order:-

Reserved on : 05.12.2023

Pronounced on : 14.12.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner passed in C.C.No.30 of 2014, dated 27.09.2023 by the I 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 is that on 03.07.2013, the Superintendent of Customs, Madurai Customs Airport, has filed the complaint alleging that the petitioner/Accused was found in possession of 7.229 Kgs of Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride, which he had procured, possessed, transported and attempted to export to Kualalumpur Via Columbo. Therefore, a case was registered in O.S.No.36 of 2013 for the offence punishable under Section 9(A) r/w Rule 3, 4, 6 of the NDPS Act (Regulation of Controlled Substances) order 1993 and punishable under Section 25(A), 29 of NDPS Act 1985 and under Section 11 of the Customs Act. After completion of investigation final report



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was filed before the I Additional Special Court for NDPS Act Cases, Madurai and the same was taken on file in C.C.No.30 of 2014.

3. During the trial, the prosecution has examined 5 witnesses as P.W.1 to P.W.5 and exhibited 17 documents as Ex.P.1 to Ex.P.17 and marked one Material Object as M.O.1. On the defence side, no witness was examined and no exhibit was marked.

4.The learned Additional District Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, convicted the petitioner for the offence under Section 9(A) r/w Rule 3, 4, 6 of the NDPS Act and punishable under Section 25(A) of the NDPS Act 1985 and sentenced to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs.40,000/-, in default, to undergo Simple Imprisonment for a period of 9 months. 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 respondent not at all followed the procedure established under the NDPS Act and no clinching material



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was available with the prosecution to prove the manner in which the seizure has been effected. Further the contraband recovered from the petitioner is only 7.229 Kgs, which is not a commercial quantity and Section 37 of the NDPS Act will not be applicable. He would further submit that during trial, the petitioner regularly complied with all the conditions imposed by the trial Court and co-operated with the trial and he is in custody from 27.09.2023 onwards and no previous case is pending against the petitioner. Hence, he prays for suspension of sentence and bail for the petitioner.

6. The learned Special Public Prosecutor appearing for the respondent fairly conceded that the seized contraband is only a controlled substance, not a narcotic substance and hence Section 37 of the NDPS Act will not be applicable. He would further submit that the petitioner is in judicial custody from 27.09.2023 and if the petitioner is ordered to be released on bail, stringent conditions may be imposed.

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



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8. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains 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 quantity of the contraband recovered from the petitioner is below to the commercial quantity and the petitioner is in custody from 27.09.2023 and no previous case is pending 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.25,000/- (Rupees Twenty Five 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



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(iii) The petitioner shall appear before the concerned Court once in a week i.e., on first working day of every week at 10.30 a.m., until further orders.

sd/-
14/12/2023

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14/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd

TO

1. THE JUDGE,
THE I ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.
2. THE SUPERINTENDENT OF CUSTOMS ,
ARIPORT,
MADURAI DISTRICT.
3. THE SUPERINTENDENT, CENTRAL PRISON
MADURAI.
4. THE SPECIAL PUBLIC PROSECUTOR FOR CUSTOMS CASES,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-17786[I] dated
14/12/2023)



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ORDER
IN
CRL.M.P.(MD)No.14454 of 2023
in
CRL.A.(MD)No.929 of 2023
Date :14/12/2023

SSA/14.12.2023/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023