



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

Tuesday, the Thirty First day of January Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.83 & 1083 of 2023
IN
CRL A(MD) Nos.5 & 70 of 2023

JEYAMARI

... APPELLANT/ACCUSED NO.4
IN CRL.MP(MD).83/2023

KUMARAVEL

... APPELLANT/ACCUSED NO.3
IN CRL.MP(MD).1083/2023

Vs

State Rep.by
THE INSPECTOR OF POLICE
KEERATHURAI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.4 OF 2021

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

PRAYER IN CRL MP(MD).83/2023 IN CRL A(MD).5/2023:

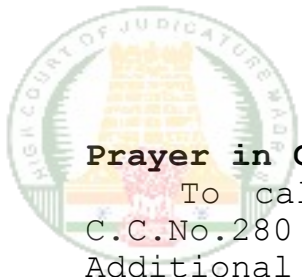
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed in C.C No. 280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai till the disposal of the appeal.

Prayer in CRL A(MD).5/2023 :

To call for the records relating to the judgment passed in C.C.No.280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same and acquit the Appellant/Accused No.4 from the charges leveled against the petitioner.

PRAYER IN CRL MP(MD).1083/2023 IN CRL A(MD).70/2023:

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 C.C No. 280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and enlarge the petitioner on bail pending disposal of above criminal appeal.

**Prayer in CRL A(MD).70/2023 :**

To call for the records relating to the judgment passed in C.C.No.280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same and allow this Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.GOWRISHANKAR, Advocate for the Petitioner in Crl.MP(MD).83/2023 and Mr.M.SUBASH BABU, Senior Advocate for M/S.M.CHANDRABOSE, Advocate for the petitioner in Crl.MP(MD).1083/2023 and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent in both Petitions, the court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed against the petitioners/A3 and A4 in CC No.280 of 2021, dated 08/11/2022 by the II Additional Special Court for NDPS Act cases, Madurai and enlarge the petitioners/A3 and A4 on bail pending disposal of the criminal appeals.

2.The case of the prosecution in brief:-

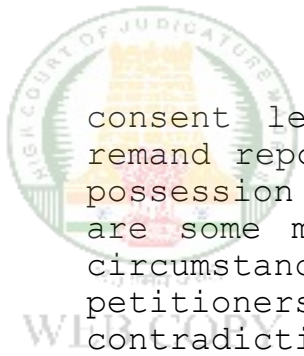
on 03/01/2021 at about 8.15 am, A1 and A2 were found in possession of 15 kgs of ganja and transported the same through a two wheeler bearing registration No.TN-64-U-2770 and A3 and A4 were found in possession of 15 kgs of transporting another vehicle bearing No.TN-59-BP-7740 on the Chinthamani road and Pamban Road junction. They were arrested on the spot itself and after completing the formalities of registration of the FIR, investigation, final report was filed.

3.In order prove the charges, on the side of the prosecution, 5 witnesses were examined and 13 documents were marked, apart from that 8 materials objects were marked. On the side of the accused, no oral and document evidence was adduced.

4.At the conclusion of the trial, the trial court found the petitioners guilty for the offence under section 8(c) r/w 20(b)(ii) (C) of NDPS Act and sentenced to undergo 10 years of rigorous imprisonment and imposed a fine Rs.1,00,000/- with default clause. Challenging the conviction and sentence, appeal has been preferred by the petitioners. Pending appeal, the present criminal miscellaneous petitions have been filed seeking suspension of sentence.

5.Heard both sides.

6.Even though separate submissions have been made by the learned counsel on record, the common submissions re that section 56 of the NDPS Act has not been properly followed and no separate



consent letter has been obtained from the accused; even the remand report itself, the contraband alleged to have been found in possession of the accused have been clearly stated as 15 kgs; there are some mistakes in the remand report also. In the above said circumstances, joint possession cannot be attributed to the petitioners. Even as per the evidence of PW1 and PW4, they are contradictions with regard to the possession.

7. Per contra, the learned Additional Public Prosecutor would submit that in the facts and circumstances of the case, conscious possession must be presumed and section 37 of the NDPS Act has not been complied. Apart from that, he has also submitted that against the petitioners several previous cases are pending, among which similar cases are also involved. It was further submitted by the petitioner to the effect there is a delay in sending the document to the court and with regard to the sending of the documents also several contradictions are available.

8. Now in the light of the above said submission, let us go to the trial court judgment. In para 11 of the judgment reads about the first contention with regard to the non-compliance of section 50 of the Act and several judgments have been cited on either side, discussed by the trial court. Similarly, the alleged violation with regard to section 41 and 42 of the NDPS Act has also been discussed elaborately. Whether the conclusion that is reached by the trial court is correct or not are the matters for consideration in the main appeal. But the antecedent of the petitioners weighs much upon the mind of the court to entertain the petition, since as mentioned earlier, A4-Jeyamari the appellant in Crl.A(MD)No.5 of 2023 is having three previous cases, among which one is similar in nature in Crime No.34 of 2021 and another two cases are the IPC offences namely 307 and 302 IPC.

9. In so far as A3, the appellant in Crl.A(MD)No.70 of 2023 is concerned, he is involved in four previous cases among which, a similar case in Crime No.4 of 2021 and others are 307 IPC, Explosives Substance Act, etc. When we consider the antecedent of the petitioners, naturally section 37 of the Act came into operation and there is no guarantee that they will not indulge in such of illegal activities in future. So the petitions deserve no consideration.

10. In the result, both the criminal miscellaneous petitions are **dismissed**.

sd/-

31/01/2023

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/02/2023

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



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

2 THE INSPECTOR OF POLICE, KEERATHURAI POLICE STATION,
MADURAI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

ORDER IN

CRL MP(MD) No.83 & 1083 of 2023
IN

CRL A(MD) Nos.5 & 70 of 2023

Date :31/01/2023

SA/SSS/SAR.4/07.02.2023/4P/5C