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Crl.M.P.No.763 of 2024 in Crl.A.No.80 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.763 of 2024
in Crl.A.No.80 of 2024

Sharmila Begam

... Petitioner

Vs.

State represented by
The Inspector of Police,
Saibaba Colony Police Station,
Coimbatore City,
(Crime No.509 of 2019).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence imposed by judgment in C.C.No.98 of 2019 dated 06.11.2023 on the file of the learned Special Court under EC/NDPS Act, Coimbatore.

For Petitioner : Mr.D.Ananthapadmanabhan for
Mr.A.Tamilarasan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Additional District Judge & Presiding Officer,



Crl.M.P.No.763 of 2024 in Crl.A.No.80 of 2024

Special Court under EC & NDPS Act, Coimbatore, dated 06.11.2023 in
C.C.No.98 of 2019.

2.The conviction and sentence rendered on the petitioner are as follows:

- For offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, the petitioner is sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo one year Rigorous Imprisonment.

3.The learned counsel for the petitioner submitted that the petitioner is a female person, but no female officer or in presence of any female person conducted search on the petitioner and thereby, violated Section 50(4) of the NDPS Act. Since the seizure is said to have been made from the petitioner, it is mandatory to follow Section 50(4) of the NDPS Act. Further, in this case, PW3 the independent witness for recovery confirms that there was no women Police or any women present during the search of the petitioner. In this case, the property is said to have seized on 12.08.2019, but it reaches the Court only on 20.09.2019. There is a delay of 36 days. The witnesses to the occurrence are PW1, PW4 and PW6. PW1 is the Sub Inspector of Police who received the information, PW4 is the Women Police Constable and PW6 is the Head



Constable. The evidence of these three witnesses are contradictory to each other with regard to receipt of the nature of information and visiting the scene of occurrence. He further submitted that PW1's evidence is that the contraband seized weighed using two scale machines. PW4 the other team member stated that the contraband weighed using electronic machine which they had taken along with them. It is further submitted that the petitioner is a single mother upbringing two female children aged about 13 years and 15 years. Hence, he prays for suspension of sentence.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter stating that on 12.08.2019, the Sub Inspector of Police attached to the respondent Police received secret information that a male person aged about 40 years and a woman aged about 25 years/petitioner were selling ganja in front of MGR Market, Mettupalayam Road. On receipt of information, the Sub Inspector of Police/PW1 along with PW4 and PW6, rushed to the said place. On seeking the Police, the said persons attempted to escape, but they were intercepted by the Police. After following the statutory formalities, they were searched, at that time, the petitioner herein was in possession of 1,100 grams of ganja. Thereafter, the contraband was seized



and the petitioner and the said male person arrested, their confession statement recorded, FIR registered in Crime No.509 of 2019 for offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act. Then, PW1 went to the scene of occurrence prepared Observation Mahazar (Ex.P10), Rough Sketch (Ex.P11), examined the witnesses present in the scene of occurrence and sent the samples for chemical analysis. On receipt of chemical analysis report (Ex.P14), charge sheet filed before the trial Court. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and fourteen documents marked as Exs.P1 to P14 and collected three material objects as MO1 to MO3. On side of the defence, no witness examined and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal of this petition.

5.Considering the submissions and on perusal of the materials, it is seen that the evidence of PW3 is that no female officer had examined the petitioner, hence, there is clear violation of Section 50(4) of the NDPS Act. The evidence of PW1 and PW4 are contradictory to each other with regard to weighing of contraband. One witness stated that it is two scale machines and other witness stated that it is an electronic machine. Hence, the seizure becomes doubtful.



Added to it, the contraband had reached the Court with a delay of 36 days.

WEB COPY

6.In view of the above and considering the petitioner is a single mother for two female children, she has to take care of them, this Court is inclined to grant suspension of sentence to the petitioner.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal appeal and if she is not able to appear before the Trial Court on that day, she shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of her absence as directed by the Trial Court.



Crl.M.P.No.763 of 2024 in Crl.A.No.80 of 2024

9. Accordingly, this Miscellaneous Petition is ordered.

WEB COPY

12.03.2024

Index: Yes/No

Internet: Yes/No

vv2

To

1. The Additional District Judge & Presiding Officer,
Special Court under EC & NDPS Act,
Coimbatore,
2. The Inspector of Police,
Saibaba Colony Police Station,
Coimbatore City.
3. The Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.763 of 2024 in Crl.A.No.80 of 2024

M.NIRMAL KUMAR, J.

vv2

Crl.M.P.No.763 of 2024 in
Crl.A.No.80 of 2024

12.03.2024