



Crl.M.P.No.5634 of 2023 in Crl.A.No.451 of 2023

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner vide judgment, dated 12.04.2023 in C.C.No.128 of 2019 passed by the learned Principal Special Court under EC & NDPS Act, Chennai.

2.The conviction and sentence imposed on the petitioner by the trial Court is as follows:

- For offence under Section 8(c) r/w 21(C) of NDPS Act, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for twelve years and to pay a fine of Rs.1,20,000/-, in default to undergo Rigorous Imprisonment for six months.

3.This Court, on 07.03.2024, had passed the following order:

The learned Senior counsel appearing for the petitioner submitted that the petitioner is said to have been apprehended for the possession of 500 grams of heroin. PW.1, the Officer, who had seized heroin and taken samples, in is evidence



admitted that he had taken only 2 grams each as a sample from 500 grams. As per the Standing Orders 1/89, the minimum quantity required for taking sample is 5 grams, and hence it is violation of the Standing Orders. Further, in view of the same, chemical analysis report cannot be said to be complete.

*2.The learned Senior counsel further submitted that in this case, Section 52-A has not been complied with. In the Judgment of Supreme Court in **Union of India Vs. Mohanlal** reported in **2016 3 SCC 379**, it has categorically held that the procedure for taking sample at the scene of occurrence is not permitted and admissible and the samples ought to have been taken in the presence of a Magistrate to give its authenticity. Further, following the same, the Apex Court in the case of **Simarnjit Singh Vs. State of Punjab** allowed the appeal on the finding that the procedure followed in this case is violation of **Mohanlal case** (referred supra).*

3.The learned Senior counsel further



*submitted that in **Sarija Banu @ Janarthani @ Janani and another Vs. State through Inspector of Police** reported in 2004 12 SCC 266, the Apex Court held that compliance of Section 42 is mandatory and if there is any violation, it would be considered only at the time of final hearing is not proper and the violation of mandatory conditions can be considered at any stage.*

*4.In support of his contentions, the learned Senior counsel also relied upon the judgments of **Jayakumar Vs. State rep.by Inspector of Police- NIC-CID** (Crl.A.(MD).No.338 of 2015, dated 10.08.2021) and **Selvaraj Vs. State Rep.by Narcotic Investigation C.I.D.** (Crl.A.No.777 of 2010, dated 13.12.2018)*

5.The learned Senior counsel appearing further submitted that the occurrence is said to have taken place on 25.05.2019, but the seized contraband was produced before the Court only on 10.06.2019 with a delay of 16 days. There is no explanation given for the delay and in whose safe custody the contraband was kept during this



period was not evidenced. Further, in the remand report it is mentioned that the petitioner was produced along with the goods. But Form 95 and the evidence of witnesses are otherwise. Further, the petitioner is in prison for the past 5 years.

4.In continuation and conjunction to the earlier order passed on 07.03.2024, the learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that the specific overtact of the petitioner is that he bought the contraband from one Sardhar Bai from Madhya Pradesh and intend to sell the contraband to college students and local areas in Chennai for his personal gain.

4.1.It is further submitted that the case of the prosecution is that on 25.05.2019 at about 9.30 hours, when Tr.Rajagopalan the Sub Inspector of Police got a secret information about the illegal sale of heroin. Thereafter, the Sub Inspector of Police along with his police team went to the scene of occurrence i.e., Purasaivakkam near Saravana Stores, Chennai at that time the accused person/Raju Ram Vishnoi standing along with the contraband in suspicious manner. Thereafter, the respondent police conducted in search of



the said place identified the contraband and accused person along with heroin. The police arrested the said accused person and seized the contraband held by the accused person in the quantity of 500 grams of heroin under the cover the Seizure Mahazar in front of the witnesses.

4.2.It is further submitted that based on the above case was registered NIBCID, Chennai in Crime No.65 of 2019, under Section 8(c) r/w.21(c) of NDPS Act against the accused person on 25.05.2019 at about 11.30 hours by Tr.Rajagopalan, the then Sub Inspector of Police and hand over the case property and accused to Tr.D.Purushothaman, Deputy Superintendent of Police for further investigation.

4.3.It is further submitted that the specific overtact of the accused is as follows:-

<i>S.No</i>	<i>Name of the accused</i>	<i>Contraband seized</i>	<i>Commercial /Non commercial</i>	<i>NDPS Schedule No.</i>	<i>Chemical Report</i>
1	Raju Ram Vishnoi	500 grams Heroine	Commercial	56	Obtained



4.4.It is submitted that the trial Court after full fledged and due trial convicted the accused by its judgment in C.C.No.128 of 2019 dated 03.08.2019 and sentenced the accused person as above.

4.5.It is submitted that based on the evidence of the prosecution witnesses supported by the medical version and the prosecution exhibits, the trial Court has rightly convicted the accused. The trial Court convicted the accused only after scrutinizing the evidence of the prosecution witnesses and supporting documents. The prosecution has proved each and every circumstances pointing to the guilt of the accused and the prosecution have proved the case by beyond all reasonable doubts.

5.Considering the submissions and on perusal of the materials, it is seen that the prosecution had let in cogent evidence that the petitioner/accused was found in possession of 500 grams of Heroine, which is of commercial quantity. Added to it, the petitioner not examined any witness on his side and he just denied the incriminating circumstances from the evidence of prosecution questioned to him. The points raised by the



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petitioner are to be decided only during the final hearing of the case and not in the bail application. The petitioner not made out a case to overlook Section 37 of the NDPS Act.

6.In view of the above, this Court is not inclined to grant suspension of suspension. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

27.03.2024

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M.NIRMAL KUMAR., J.



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