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Crl.M.P.No.5653 of 2023
in Crl.A.No.453 of 2023

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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence of imprisonment imposed on them in C.C.No.172 of 2021 by a judgment dated 13.04.2023 passed by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and release the petitioner on bail till the disposal of the above appeal.

2.The petitioners, who are A1 and A2 in C.C.No.172 of 2021, were convicted by the trial Court by judgment dated 13.04.2023 and sentenced them to undergo 10 years rigorous imprisonment each and to pay a fine of Rs.1,00,000/- each, for offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, against which, the present appeal and suspension of sentence petition.

3.The grounds taken by the petitioners for suspension of sentence



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is that they have been in confinement from 22.01.2021, due to which, their family members are put to great sufferings. In this case, the mandatory provisions under Sections 42 and 50 of the NDPS Act not followed by the respondent. Further, Sections 55 and 52A of the NDPS Act is also not complied with. The chain of custody of contraband from the date of seizure till the date of producing it before the Court as well as to the Lab not recorded by contemporary documents and proved through evidence. The ingredients of possession of contraband is also not proved. Considering that the petitioners are in prison for more than 2 years and 3 months, this bail application has been assailed.

4.The learned Additional Public Prosecutor filed his counter and submitted that the case of prosecution is that on 21.01.2021 at 13.00 hrs, PW1/Vijayakumar, the then Inspector of Police, NIB CID, Kanchipuram, received an information from an informant that ganja is being transported by two persons in Madhavaram Rountana. PW1 recorded the said information (Ex.P1) and submitted the same to PW5 / then Deputy Superintendent of Police, NIB CID, and got permission from him and proceeded to the spot along with the raiding team PW2/Thanigaivel, Head Constable and Kannan,



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Grade I PC with necessary equipments and reached the scene of occurrence.

The police party reached the spot and intercepted the Hundai Verna car bearing Reg. No.TN07 BP 4224. On enquiry, the persons in the car revealed their names as Nallaperumal (A1) and Durairaja (A2). PW1 informed them the information received by him and their rights under Section 50 of the Act to the said persons (Ex. P2-search notice) and obtained the signatures of the accused in the presence of police witnesses.

4.1.On due search, A1 Nallaperumal and A2 Durairaja, handed over six white colour polythene bags which totally contained 155 Kgs of ganja, which were found on the rear seat and dickey. PW1/Inspector of Police, lifted 50 gms, of ganja and made it to 2 samples of 50 grams for chemical analysis from six gunny bags and packed them in gunny bag and affixed seal. The said samples were marked as S1 to S6 respectively. PW1 pasted label containing the particulars of seizure in the samples and also the 3 bulk ganja. PW1 marked the Bulk ganja as P1 to P6. PW1 seized the said ganja in the presence of PW2/Thanigaivel, Head Constable, under a cover of Mahazar, (Ex.P3-Seizure Mahazar of A1 and Ex.P6-Seizure Mahazar of A2). PW1 arrested the accused and reached the police station along with A1 and A2 and



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registered FIR in Cr.No.4/2021 u/s. 8(c) r/w 20(b)(ii)(C), 25, 29(1) of the NDPS Act. Then PW1 produced the accused before the Judicial Magistrate, Madhavaram, and they were remanded to judicial custody on the same day.

4.2.Later, PW5/Riyasudeen, then Deputy Superintendent of Police, NIB CID, proceeded with the investigation, recorded the 161 Cr.P.C. statements of the raiding team and PW4/Visalakshi, Deputy Director, Forensic Science Department given a report/Ex.P17. On completion of investigation, PW5 laid final report against A1 and A2 for the offences u / s 8(c) r / w 20(b)(ii)(C) 25, 29(1) of the Act on 17.03.2021 before the I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, and the same was taken on file in CC No.172/2021 on 24.06.2021. On conclusion of trial, the Trial Court convicted the Appellants/A1 and A2 by its judgment, dated 13.04.2023. The trial Court concluded that the prosecution proved the charges against the Appellants/Accused through oral and documentary evidences that they were in illegal possession of aforementioned contrabands. Therefore the Trial Court rightly convicted the Appellants/Accused u/s. 8(c) r/w 20(b)(ii)(C) of NDPS Act. He further submitted that the contraband is a commercial quantity, the petitioners have



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not made out a case satisfying Section 37 of the NDPS Act. Hence, prays for dismissal of the petition.

5.Considering the submissions made and on perusal of the materials, it is seen that the points raised by the petitioners are to be decided at the time of final hearing of the case and not in the suspension of sentence petition. Further the Hon'ble Constitutional Bench of the Apex Court in the case of *Vijay Singh Chandubha Jadeja vs. State of Gujarath* reported in *(2011) 1 SCC 609* had held that only during trial any violation or infraction in following the procedure under Section 50 and 52A of NDPS Act can be considered. The petitioner had been convicted and the appeal is pending. The Appeal is an extension of trial.

6.In view of the same, this Court is not inclined to entertain this petition. Accordingly, this Criminal Miscellaneous Petition is dismissed.

06.03.2024

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