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*Crl.M.P.Nos.16971 & 18018 of 2023
in Crl.A.Nos.1185 & 989 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HON'BLE Mr.JUSTICE **M.NIRMAL KUMAR**

Crl.M.P.Nos.16971 & 18018 of 2023

in

Crl.A.Nos.1185 & 989 of 2023

M.Karthik
S/o.Makali

... Petitioner in Crl.MP.16971/2023

Vincent
S/o.Prakash

... Petitioner in Crl.MP.18018/2023

Vs.

State represented by
Inspector of Police,
E2, Peelamedu Police Station,
Coimbatore District.

... Respondent in both Crl.MPs.

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the execution of the sentence passed in C.C.No.95 of 2018 dated 12.06.2023 on the file of the Special Court Under EC Act/NDPS Act at Coimbatore against the petitioners, pending disposal of the above Criminal Appeal and enlarge the petitioners on bail.

For Petitioner



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in Crl.MP.16971/2023 : Mr.G.Jaisivaraman

For Petitioner

in Crl.MP.18018/2023 : Mr.A.R.Suresh

For Respondents

in both cases

: Mr.S.Raja Kumar

Additional Public Prosecutor

COMMON ORDER

This Criminal Miscellaneous Petitions have been filed by the petitioners, seeking to suspend the sentence of imprisonment imposed on the, in C.C.No.95 of 2018 by a judgment dated 12.06.2023 on the file of the Special Court under EC Act/NDPS Act, Coimbatore and to enlarge the petitioners on bail pending disposal of the above Appeal.

2. The petitioners/A1 & A2 in C.C.No.95 of 2018 were convicted by the Trial Court for the offence under Sections 8(c) r/w 20(b) (ii) (B) of NDPS Act and the petitioners were sentenced to undergo R.I for seven years each and to pay a fine of Rs.50,000/- each, in default to undergo R.I for one year each. Aggrieved against the same, the present appeals have been filed by the petitioners/A1 & A2. The present miscellaneous petitions seeking suspension of sentence and bail is filed by the accused.

3. During trial, on the side of the prosecution, PW1 to PW7 examined



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and marked Exs.P1 to P15 and 5 Material objects. On the side of the defence, no witnesses examined and no document was marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioners as stated above.

4.The contention of the learned counsel for the petitioners is that on 08.02.2017 at about 9.00 hours, the petitioners were riding a two wheeler. At that time, the respondent police had intercepted them and found 1.100 kgms of Ganja kept in the two wheeler petrol tank cover and a sum of Rs.1500/- as sale proceeds. The learned counsel submits that the first petitioner/A1 is auto driver and the second petitioner/A2 is a coconut tree climber, both proceeded in the two wheeler, at that time. The case projected against the petitioners is not sustainable. In this case, PW1, PW2, PW6 and PW7 are the police personnels, PW3 is the scientific officer, PW4 is the Motor Vehicle Inspector and PW5 is a private witness. PW5 not supported the case of the prosecution. In this case, the contraband was produced before the Trial Court with a delay of four months initially only Form 91 submitted and two months thereafter, Form 91 with contraband produced. The Investigating Officer not given any explanation for delay. The learned counsel further submits that a sum of Rs.1,500/- projected as sale proceeds not sustainable. The



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contraband, according to the police found in one bag, nothing to show contraband packed in small packets and sold to various persons. Thus, the case projected by the prosecution is not sustainable. Added to it, the petitioners have no bad antecedents. Hence, he prays for granting suspension of sentence to the petitioner.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that on 08.02.2017 morning at about 10.00 hours, while PW-6 Rajan, Inspector of Police of Peelamedu Police Station were on rounds with his party consisting of PW-1 Murugan, Sub Inspector of Police, PW-2 Jayakumar, Head Constable 2292, Tr.Muthukannan Gr.1 PC 2185 near the Kannapiram Mill Road junction at Udayampalayam, the appellant Karthik, [A-1] and Vincent [A-2] were found to be in possession of 1.100 kgs of Ganja in a polythene cover kept in the two wheeler TVS XL Super TN 37 CZ 0742 and cash of Rs.1,500/- as sale proceeds of Ganja. PW-6 arrested both the appellant and Vincent at 11.00 hrs and seized the Ganja and cash under Ex.P8 seizure mahazar. He took two samples of each 10 grams of Ganja and seized, MO.1 series, airtight polythene cover 10 nos, MO.3 series, an old newspaper MO.4, TVS XL Super TN 37 CZ 0742, MO.5 at 12.45 hrs under Ex.P8 seizure



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mahazar in the presence of PW-5 Nagaraj and Arivarasan. Thereupon PW6 seized the case of Rs.1,500/- from accused Vincent at 13.45 hrs under Ex.P.9 seizure mahazar. PW-6 came to the Police Station and registered a case in Cr.No.139/2017 u/s.8(c) r/w 20(b)(ii)(B) of NDPS Act, which is Ex.P11. He sent the Ganja and other properties to the Court under Ex.P.12 and Ex.P.13 Form-91.

5.1. It is submitted that, PW-6 examined the witnesses and gave requisition to send the contraband for Forensic Science Laboratory. As PW6 was transferred from Peelamedu Police Station, PW-7 Selvaraj joined as the Inspector of Police of Peelamedu Police Station and continued the investigation. During his investigation he examined PW-3 Thangam Bhavani, Scientific Officer who examined the seizures and issued Ex.P2 Chemical Analysis Report that the seizure of Ganja. Hence PW-7 sent Ex.P.15 Section Alteration Report to the Court to alter the Sections of Law from U/s.8(c) r/w 20(b)(ii)(B) of NDPS Act into u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act and 25 of the NDPS Act on 18.07.2017. On 15.12.2017 he examined PW-4, Sathiyamoorthi, Sular Motor Vehicle Inspector.

5.2. It is submitted that after completion of elaborate and detailed investigation, based on the statements of witnesses and material evidences,



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on 06.12.2018 the then Inspector of Police altered the Section into 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act and then filed charge sheet against A-1 and A-2 before the Special Court under EC Act/NDPS Act, Coimbatore and the same was taken on file vide C.C.No.95 of 2018.

5.3. The prosecution has examined 7 witnesses and marked 15 exhibits and 5 material objects. No witnesses, no exhibits and no material objects were marked on the side of the defense.

5.4. PROSECUTION WITNESSES:

Rank of Witnesses	Witnesses	Gist of the Deposition
PW-1	Tr.Murugan, Special Sub Inspector of Police	Deposed that he assisted with PW-6 at the time of occurrence for investigation
PW-2	Tr.Jayakumar, Head Constable	Deposed that he assisted with PW-6 at the time of occurrence for investigation
PW-3	Tmt.Thangam Bhavani, Scientific Officer	Deposed that conducted analysis and issued report Ex.P2 Chemical Analysis Report that the seized property was Ganja
PW-4	Tr.Sathiyamoorthy Regional Transport Officer	Deposed that on request of PW-6, he gave the detailed about the owner of the offence used vehicle and issued Registration Certificate Ex.P3
PW-5	Tr.Nagaraj	Treated as hostile
PW-6	Tr.P.N.Rajan Inspector of	Deposed that he received secret information from informant that



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	Police	Ganja was being trafficked by two persons in a two wheeler. On the basis of the inform, he went to place of occurrence along with PW-1 and PW-2. At the time of vehicle check up, while on seeing the Police party two persons tried to escape from the place, immediately he secured them and seized Ganja under seizure mahazar. Later he brought the accused to the Police, registered a case in Cr.No.139/2017, u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act Ex.P11. The case properties were submitted before court with form 91 Ex.P12 and Ex.P13
PW-7	Tr.Selvaraj Inspector of Police	Deposed that took up the case for further investigation, examined PW3 and PW4 the Scientific Officer and recorded statement and alteration report Ex.P15. After completing the investigation he filed the charge sheet against the accused persons before the Special Court in accordance with law.

5.5. It is submitted that after trial, the trial court by its judgment in C.C.No.95 of 2018 dated 12.06.2023 found both the accused guilty and convicted them for the following offences:

A-1 and A-2 u/s 8(c) r/w 20 (b) (ii)(B) of NDPS Act	Sentenced them to undergo 7 years for RI and to pay a sum of Rs.50,000/-
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5.6. It is submitted that based on the evidence of the prosecution



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witnesses supported by the Forensic Science Evidence 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 beyond all reasonable doubts.

6. On perusal of the materials, it is seen that A2 in this case is only a pillion rider. The contraband found from the Petrol Tank cover of two wheeler and not from person. PW5, the private witness not supported the case of the prosecution, search, seizure doubtful, inordinate delay in producing the contraband before the Court. Considering the submissions made and the fact that there is no bad antecedents as against the petitioners, this Court is inclined to suspend the sentence imposed on the petitioners.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioners/A1 & A2 are ordered to be enlarged on bail, on condition that they shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties,



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each for a like sum to the satisfaction of the Special Court under EC Act/NDPS Act, Coimbatore.

(b) The petitioners/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the Appeal and if they are not able to appear before the Trial Court on that day, they 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.

M. NIRMAL KUMAR, J.

kmi

8. Accordingly, these Criminal Miscellaneous Petitions are ordered.

06.03.2024

kmi

To



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- 1.The Inspector of Police,
E2, Peelamedu Police Station,
Coimbatore District.
- 2.The Special Court
under EC Act/NDPS Act
Coimbatore.
3. The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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