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Crl.M.P.No.15566 of 2023 in Crl.A.No.921 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.15566 of 2023
in Crl.A.No.921 of 2023

Mari,
W/o.Mani

... Petitioner

Vs.

State Rep by
The Inspector of Police,
T-5 Thiruverkadu Police Station,
Chennai.
(Cr.No.57/2021).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence of imprisonment passed vide judgment dated 28.07.2023 in C.C.No.133/2022 on the file of the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge her on bail pending disposal of C.A.No.921 of 2023 filed before this Court.

For Petitioner : Mr.C.V.Kumar
For Respondent : Mr.C.E.Pratap,
Government Advocate (Criminal Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment, dated 28.07.2023 in C.C.No.133 of 2022



by the learned I Additional Special Judge, Special Court for Exclusive Trial of Cases under NDPS Act, Chennai (trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The petitioner was convicted by the trial Court for offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.20,000/-, in default to undergo two months Rigorous Imprisonment. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the Suspension of Sentence.

3.The case of the prosecution is that on 22.02.2021, PW1/Sub Inspector of Police attached to the respondent Police Station received secret information that ganja was peddling by two persons near Kaduvetti Bus Stop, Ottraipalam. The information was recorded and sent to superior officer viz., PW4/Inspector of Police. After information, PW1 proceeded to the spot along with the raiding team. On reaching the spot, on seeing them,



two persons tried to flee from the scene. They were intercepted and interrogated. On enquiry, they revealed their name as Kalaiyarasan (Kalai @ Duke Kalai) and Mari, who are A1 and A2. The petitioner is A2. Thereafter, following statutory condition prescribed in Sections 42, 50 and 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Hereinafter referred to as 'Act') complied with. From A1, 8 kgs of ganja and from the petitioner/A2 5kgs of ganja seized and samples were sent for chemical analysis through Court. PW3, the Chemical Analyst received the same, examined the samples and confirmed ganja, issued report Ex.P6. PW4, Inspector of Police on receipt of information from PW1 and registered FIR (Ex.P7) took up investigation, visited the scene of occurrence, collected documents, recorded the statement of witnesses and thereafter, on receipt of Chemical Analysis Report (Ex.P6) filed the charge sheet before the trial Court.

4. During trial, on the side of the prosecution, four witnesses examined as PW1 to PW4 and nine documents marked as Exs.P1 to P9 and six material objects marked as MO1 to MO6. On side of the defence, no



witness examined and no document marked. On conclusion of trial, the trial

Court convicted the petitioner as stated above.

5.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and she has got no bad antecedents against her. Since the petitioner was found near the place, she had been arrested in this case. In this case, Section 50 of the Act not complied and no contraband seized from the petitioner. Though it has been claimed that the accused were found in a public place and selling ganja, no independent witness examined. PW1 headed the raiding party, PW2 is a member of the raiding team and PW3 is the Chemical Analyst and PW4 is the Investigating Officer. All the witnesses are official witnesses and no independent witness examined. The recording of information, search, seizure, taking samples and reporting are all in violation of the Act but the trial Court failed to consider the same. The finding of the trial Court that non-compliance of Section 57 of the Act is not fatal unless it results in prejudice to the accused is not proper. He further submitted that A1 and the petitioner/A2 are total strangers and they have no connection with each other. The trial Court



finding the same, acquitted the petitioner for offence under Section 8(c) r/w 29(1) of the Act. He further submitted that there is a delay of nearly 25 days in producing the contraband before the trial Court. The trial Court giving opinion that there is an endorsement made that the property produced intact is sufficient cannot be accepted. During 25 days period, when and where the properties under whose custody, no documents to show for safe custody. In this case, the seized property not sent to the Court within 72 hours.

6.The learned counsel further submitted that the petitioner has got no bad antecedents except for the above case. The petitioner is a patient suffering with health ailments, she had been regularly taken to the Stanley Hospital for treatment where she was admitted as inpatient on several occasions. The petitioner has acute promleyocytic and also suffering from thyroid and she has got breathing problem and also suffering from cough, fever, stomach upset often. She gets swollen face with restricted movement. She is unable to even make her daily chores and she needs a support and help from others for her basis requirements. Hence, prays for suspension of



sentence.

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7.The learned Government Advocate (Criminal Side) appearing for the respondent Police opposed the same stating that on secret information received by PW1 on 22.02.2021, he along with his team, visited the scene of occurrence, found A1 and A2 running on seeing them. They were apprehended and on enquiry, from A1 8 kgs of ganja and from the petitioner/A2, 5 kgs of ganga seized. They were informed about the importance of Section 50 of the Act and search was made, contraband was seized, samples taken and sealed. Thereafter, they were produced before the PW4, who took up the investigation, visited scene of occurrence, prepared Observation Mahazar (Ex.P8) and Rough Sketch (Ex.P9). Since no witnesses came forward, the search and seizure were made in presence of raiding team and thereafter, the petitioner and A1 produced before the remanding Magistrate. The properties were later produced before the Special Court and after receipt of the chemical analysis report, the charge sheet was filed before the trial Court. On conclusion of trial, the trial Court convicted the petitioner as stated above. He further submitted that the petitioner visiting Stanley Hospital for her health ailments. She has taken



treatment as inpatient and she is also having thyroid related complications.

He further submitted that the petitioner has got no bad antecedents except the above case.

8.Considering the submissions and on perusal of the materials, it is seen that in this case, except the official witnesses, no private person examined. PW1 leads the raiding team, PW2 is a member of the team, PW3 is the Chemical Analyst and PW4 is the Investigating Officer. The occurrence is in a public place, no public witness examined. Calling public witness and their refusal, no details recorded separately or in reports under Sections 50 & 57 of the Act, which causes doubts in the case projected. Further, there is considerable delay in sending the contraband to the Court. During this interim period, under whose safe custody, the contraband was kept is not known and no materials produced to that effect. The report under Section 42 of the Act not satisfactorily shown complying the provisions of the Act. Admittedly, the petitioner has no bad antecedents and it is an intermediate quantity. Further, the petitioner is woman with health ailments.



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9.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the trial Court.

10.The petitioner shall appear before the Trial Court once in three months at about 10.30 a.m., until the disposal of the 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 his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

05.01.2024

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To

1.The I Additional Special Judge,
Special Court for Exclusive Trial of Cases



Crl.M.P.No.15566 of 2023 in Crl.A.No.921 of 2023

under NDPS Act, Chennai.

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- 2.The Inspector of Police,
T-5 Thiruverkadu Police Station,
Chennai.
- 3.The Superintendent,
Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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