



Crl.M.P.No.3231 of 2023
in Crl.A.No.231 of 2023

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M.NIRMAL KUMAR, J.

This criminal miscellaneous petition is filed to suspend the sentence imposed on the petitioner by the learned Additional District Judge and Presiding Officer, Special Court under EC Act/NDPS Act, Coimbatore in C.C.No.41 of 2020 dated 09.05.2022 and enlarge the petitioner pending appeal.

2.The contention of the learned counsel for the petitioner is that the petitioner is a daily wage earner in Tirupur Railway Station. The case projected against the petitioner is that he was found with two bags containing 22kgs of ganja near Shanthi Theatre Bus Stop, Coimbatore. He would submit that in this case Section 50 of NDPS not complied with and there is a delay in registration of FIR, production of contraband. He further submitted that the case projected against the petitioner was that the petitioner was smuggling ganja to Kerala, he travelled in Dhanbad Express, got down mid-way and planned to travel by bus from there. When the train



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he travelled goes to Kerala there is no need for the petitioner to change for a bus transport. The entire case was fabricated against him. The petitioner is aged about 57 years and he has got no bad antecedents. He would further submit that for the seizure taken place in a public place but no public witnesses were examined and no reason given for the same. He further submitted that in this case samples are not drawn following the provisions of Section 52(A) of NDPS and there is violation of Sections 42 and 50 of NDPS Act. In support of his contentions, the learned counsel for the petitioner relied on the decisions in the case of ***Simarnjit Singh vs. State of Punjab*** reported in ***2023 Livelaw (SC) 570***, ***Sainaba vs. The State of Kerala and another*** reported in ***2022 SCC Online 1784*** and ***Avtar Singh and Others vs. State of Punjab*** reported in ***(2002) 7 SCC 419***.

3.The learned Additional Public Prosecutor on the other hand filed his counter and strongly opposed the contentions putforth by the petitioner. He would submit that in this case four witnesses were examined. P.W.1 is the Inspector of Police who received secret information of the petitioner smuggling ganja, recorded the information, submitted to his superior officer



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following Section 42(2) of NPDS Act through ExP1, P.W.1 was authorized by Ex.P2. Thereafter, the Police team reached the scene of occurrence, on identifying the petitioner by the informant, the petitioner was intercepted and two bags containing 22kgs of ganja was seized from him. Samples were taken and sent to forensic expert. P.W.2/Scientific Officer confirmed that the seized contraband was ganja. P.W.3 is the another witness for the search who accompanied P.W.1. P.W.4 is the Investigating Officer who took up further investigation and filed the charge sheet in this case. He further submitted that the Trial Court on the evidence and materials produced had rightly convicted the petitioner finding that the petitioner was smuggling ganja of commercial quantity. He would submit that the points now raised by the petitioner earlier raised during trial which was negatived by the Trial Court. He further submitted that in this case Section 50 of NDPS Act will not apply since there was no recovery on person from the petitioner. The petitioner hails from Uthamapalayam Taluk, Theni District and he could not give any answer for his presence at Coimbatore along with the contraband. The Trial Court considering all these aspects convicted the petitioner. He further submitted that the points now raised by the petitioner



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can be canvassed during the appeal and not in the petition for suspension of sentence.

4.Considering the submissions made, it is seen that the petitioner was found with ganja of commercial quantity of 22 kgs and the Trial Court had convicted the petitioner on the evidence and materials produced. The points raised by the petitioner would not satisfy Section 37 of NDPS Act to grant bail. In view of the same, this petition seeking suspension of sentence stands dismissed. The petitioner can raise all these points during the final hearing of the case in the main appeal. It is made clear that the observations made herein is only for the limited purpose of disposal of the above petition.

5.Accordingly, the Criminal Miscellaneous Petition stands dismissed.

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