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Crl.M.P.Nos.13401 and 11950 of 2024 in Crl.A.No.1206 and 1088 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.Nos.13401 and 11950 of 2024
in Crl.A.Nos.1206 and 1088 of 2024

1. Senthil Kumar	... Petitioner /Accused 1 in Crl MP No.13401 of 2024
2. Joseph	
3. Alavudeen	..Petitioners /Accused 2 &3 in Crl MP No.11950 of 2024

Vs.

The State Rep. by The Inspector of Police, C1 Flower Bazzar Police Station, Chennai (Crime No.695 /2021)	... Respondent
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PRAYER: Criminal Miscellaneous Petitions filed under Section 430(1) of BNSS., to suspend the sentence of imprisonment imposed on the petitioners in CC No.301 of 2022 on the file of learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai and enlarge the petitioners on bail pending Crl A Nos.1206 and 1088 of 2024.

For Petitioner(s) : Mr.P.Govindaran in Crl.MP.No.13401 of 2024
: Mr.J.Samiullah in Crl.MP.No.11950 of 2024



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For Respondent : Dr.C.E.Pratap
in both Crl MPs Government Advocate (Crl. Side)

ORDER

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentence of imprisonment imposed on the petitioners in CC No.301 of 2022 on the file of learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai and enlarge the petitioners on bail pending disposal of the appeals in Crl A Nos.1206 and 1088 of 2024.

2. It is the case of the prosecution that on 17.12.2021 at 3.00 a.m., based on the secret information received through phone from the informant, the respondent police went to the place of occurrence along with his team; that intercepted the vehicle and conducted a surprise check, wherein, it was found that the 1st petitioner/ accused was in possession of 1 Kg of Ganja, 2nd petitioner/ accused was in possession of 1 Kg of Ganja and the 3rd petitioner / accused was in possession of 1.5 Kg of Ganga; that the respondent police explained the provisions of Section 50 of the NDPS Act to the petitioners/accused and seized the materials.



3. The petitioners 1 to 3 were convicted for the offences under NDPS Act. The petitioners 1 and 2 were sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs.50,000/- each for the offence u/s.8(C) r/w 20(b) (ii) (B) of the NDPS Act and in default of payment of fine thereof to undergo further period of six months Rigorous imprisonment and 3rd petitioner was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- for the offence under Section 8(c) r/w 25 of the NDPS Act, in default of payment of fine thereof to undergo further period of six months Rigorous imprisonment. The period of remand already undergone by the accused is ordered to be set off u/s.428 of Cr.PC. The above sentences imposed on the 3rd petitioner/accused was ordered to run concurrently. The total fine amount of A3 is Rs.1,00,000/- and the total fine amount is Rs.2,00,000/-.

4. Heard Mr.P.Govindaran, learned counsel for the petitioners and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioners would submit



that the search was not conducted in the presence of any independent witnesses and that the search notice was not issued independently to the accused by following the mandatory provision under Section 50(1) and 42(1) of the NDPS Act and hence, prayed for grant of suspension of sentence to the petitioner.

6. The learned Government Advocate (Crl. Side) *per contra* vehemently opposed this petition and submitted that the Trial Court had rightly convicted the petitioner, based on the evidence available on record and that the respondent police had also complied with all the mandatory provisions and hence, prayed for dismissal of this petition.

7. On perusing of the Judgement and the grounds raised by the petitioners, this Court finds that the question as to whether the respondents have complied with the Mandatory provisions under Section 50(1) and 42(1) of NDPS Act requires consideration in the appeal.

8. Therefore, considering the above facts, the submissions made by the learned counsel, the period of incarceration and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioners.



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9. It is seen that the petitioners have not been able to pay the fine amount imposed by the Trial Court due to their poor financial condition, which is not disputed by the respondent and hence, the petitioners are exempted from payment of fine amount, imposed, but instead can be directed to pay Rs.10,000/- each

10. Accordingly, these criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioners is suspended and the petitioners are ordered to be released on bail on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.20,000/- with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court under EC and NDPS Act, Chennai.
- (ii) The petitioners shall pay Rs.10,000/- each towards fine.
- (iii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and



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(iv)The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he 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.

07.11.2024

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Issue order copy by 12.11.2024

Upload the order copy forthwith.



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To

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1. The Principal Special Court under EC and NDPS Act,
Chennai.
2. The State Rep. by
The Inspector of Police,
C1 Flower Bazaar Police Station,
Chennai
3. The Superintendent of Prisons,
Central Prison -I, Puzhal
4. The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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