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Crl.M.P.No.16603 of 2023 in Crl.A.No.1132 of 2023

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RESERVED ON : 23.02.2024
PRONOUNCED ON : 28.02.2024

M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners by the learned Additional District Judge, Special Court under EC Act/NDPS Act, Coimbatore (Trial Court) in C.C.No.99 of 2021, dated 08.08.2023.

2.The conviction and sentence imposed on the petitioners are as follows:

- For offence under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (For Short 'the Act') the 1st petitioner was convicted and sentenced to undergo twenty years for Rigorous Imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo one year Rigorous Imprisonment.
- For offence under Section 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the 1st petitioner was convicted and sentenced to undergo twenty years for Rigorous Imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo one year Rigorous Imprisonment.



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- For offence under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the 2nd petitioner was convicted and sentenced to undergo twenty years for Rigorous Imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo one year Rigorous Imprisonment.
- For offence under Section 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the 1st petitioner was convicted and sentenced to undergo twenty years for Rigorous Imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo one year Rigorous Imprisonment.

3.The learned counsel for the petitioners submitted that in this case, PW3 is the Sub Inspector of Police, Railway Protection Force, Erode, who was on duty at Coimbatore Railway Station. On 22.07.2021, at about 08.15 a.m., when he was on duty, the Train No.07230 Sabari Express arrived at platform No.1A. He found two persons moving in a suspicious manner near the subway carrying two white colour bags. On enquiry, since they gave contradictory statements and they were further questioned and examined. At that time, it is found that the bags carried by the petitioners containing 22 kgs of ganja each. Thereafter, the petitioners were detained and informed NIBCID Police. PW1, the Sub Inspector of Police, on receipt of the information had gone to the railway station, enquired the petitioners, made



search, thereafter brought the petitioners to the Police Station. In this case, PW3 earlier enquired the petitioners, conducted search, found ganja in the bag and detained them. In such circumstances, it is PW3, who ought to have intimated about the rights of the accused to be searched following Section 50 of the NDPS Act. In this case, it has not done so, hence, there is clear violation of Sections 41 and 50 of the Act.

4.He further submitted that PW3 does not know to read or write Tamil and the petitioners herein are only conversant with Tamil. Such being the position, what was the enquiry and how the petitioner questioned and searched in compliance to the Act is not proved. Hence, the entire search and seizure of the contraband is vitiated. Further submitted that the petitioners were detained at about 08.15 a.m., information passed to PW1, the Sub Inspector of Police attached to NIBCID, Coimbatore is at 10.00 a.m., who is said to have informed her superior at 10.20 a.m., and thereafter, reached the railway station at 11.00 a.m., and again search and seizure said to have been made. In this case, already search and seizure done by PW3, but the same not recorded. In this case, PW2 is part of the team along with PW1. But the evidence of both the witnesses are contradictory with regard to the manner in which the detention of the petitioners, seizure of contraband,



weighing and drawing of samples.

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5.He further submitted that the FIR (Ex.P5) registered belatedly only at 03.00 p.m. PW4 is the Deputy Superintendent of Police, to whom the report under Section 57 of the Act submitted later and not within the stipulated period. In the arrest memo served to the petitioners at railway station, the Crime number recorded, but FIR registered at a later point of time, which causes doubt in the case of the prosecution. He further submitted that the petitioners arrested on 22.07.2021, from that day onwards, they are in custody for more than three years. The prolonged incarceration of the petitioners amounts to violation of Article 21 of the Constitution of India, hence, Section 37 of the Act would not be rigour against them. Added to it, the search and seizure said to have taken place in the railway station which is a public place, but no public cited as witness and examined.

6.In support of his submissions, the learned counsel for the petitioners placed reliance on the two decisions viz., “***Dheeraj Kumar Shukla Versus State of Uttar Pradesh*** reported in **2023 SCC OnLine SC 918** and ***Rabi Prakash Versus State of Odisha*** reported in **2023 SCC OnLine SC 1109**”.

The learned counsel submitted that if this Court is not inclined to grant



suspension of sentence to the petitioners, the appeal itself can be taken up for final hearing since the petitioners are in prison from 22.07.2021.

7.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter stating that on 22.07.2021, at about 08.15 a.m, when PW3, the Sub Inspector of Police, Railway Protection Force, Erode and his team consisting of E.Marimuthu, Head Constable, Inbaraj, Head Constable while conducting train check at Coimbatore Railway Station against illegal transportation of goods/contraband items, the Train No.07230 Sabari Express arrived in Coimbatore Railway Station platform No.1A. They noticed two suspected persons in Platform No.1A near subway carrying two white polythene bags. The Railway Sub Inspector and team checked the bag and found 44 Kgs ganja like substances each bag carrying 22 Kgs of Dry Ganja. The said two person disclosed their identify as Chelladurai and Kathiresan, the petitioners herein. Two Train (Exs.P7) original tickets seized. Later, the petitioners were brought to Railway Protection Force office, Coimbatore. After following all legal formalities, the petitioners and seized items with two train original tickets handed over to PW1, the Sub Inspector of Police, NIBCID with special report for further legal action. Based on this special report, PW1 seized the case property of 44 kgs of ganja



and the petitioners were arrested at Coimbatore RPF office at 12.15 p.m., and their confessions recorded in presence of two witnesses. The seized property was identified to be contraband and the samples were taken for further analysis and the petitioners were sent to Judicial Custody on 22.07.2021.

8.He further submitted that submitted that based on the above, a case (Ex.P5) was registered in Crime No.33 of 2021 for offence under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of the Act against the petitioners on 22.07.2023 at about 03.00 p.m., by PW4. Thereafter, the seized contraband 44 Kgs of Ganja produced before the learned Principal Sessions Judge, Special Court for EC & NDPS Act, Coimbatore vide P.R.No.86 of 2021, dated 17.06.2020 and samples of ganja sent to the Forensic Lab, Coimbatore for chemical analysis and the report was obtained. After completion of investigation, PW5 filed charge sheet against the petitioners before the trial Court and the same was taken on file as C.C.No.99 of 2021 on 30.12.2021. During trial, on the side of the prosecution, five witnesses examined as PW1 to PW5 and ten documents marked as Exs.P1 to P10 and three material objects marked as MO1 to MO3. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioners as stated above. Thus, the prosecution had proved



the case against the petitioners pointing out each and every circumstances.

Hence, prays for dismissal.

9.Considering the submissions and on perusal of the materials, it is seen that in this case, the petitioners travelled in Sabari Express and alighted from the train in Coimbatore Railway Station and found moving suspicious manner near subway. PW3, the Sub Inspector of Police, RPF along with his team patrols various places of the railway station, found the petitioners carrying bags in a suspicious manner and questioned them. Since they were giving contradictory statements, they further detained and questioned and asked them to open the bag. From it, it is found that ganja like articles found and they were detained. Immediately, PW3 informed PW1, who on receipt of the information sent a report to superior officer. Thereafter along with a team, reached the railway station and enquired the petitioners. After compliance of Section 50 of the Act, search made and found that each petitioners were carrying 22 kgs of ganja. Thereafter, the contraband samples seized in presence of witnesses by seizure mahazars. The petitioners were arrested and brought to NIBCID Police station, FIR (Ex.P5) registered, thereafter, along with report 57 report, the petitioners produced before PW4. PW4 took up the investigation, recorded the statement of the witnesses,



collected the articles, sent the contraband for forensic examination, received the report and filed charge sheet.

10. In this case, it is chance recovery, hence, Section 43 of the Act would be applicable. Further, the initial detention was made by the PW3 his duty is to guard railway properties, enquire passengers and others found moving in a suspicious manner in the railway area. In this case, on such routine manner, the petitioners were enquired and detained. The petitioners travelled in Sabari Express is confirmed by the seizure of train tickets (Ex.P7 series). The 1st petitioner booked the ticket from Chettanapalli to Thrissur in Coach No.B3 and the 2nd petitioner booked the train ticket from Chettanapalli to Palakad in Coach No.B2. Their presence in the railway station is also not seriously disputed. The petitioners were carrying ganja of commercial quantity. In this case, the detention, search, seizure done by PW1, PW2 and not by PW3. PW3 carried out only his routine work as Sub Inspector of Police, Railway Protection Force. The trial Court considered the petitioners' contention and rightly rejected the same.

11. The decisions relied upon by the learned counsel for the petitioners pertains to the under trial prisoners which will not be applicable to the facts



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and circumstances of the present case. The contentions of the petitioners are factual to be decided during trial. The appeal is an extension of trial and the same can be considered during the final hearing of the appeal and not at this stage.

12.In view of the above, this Court is not inclined to grant suspension of sentence to the petitioners. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

13.Registry is directed to make ready the typed set of papers and post the main appeal for final hearing.

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