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Crl.M.P.Nos.14167 & 14329 of 2024 in Crl.A.Nos.1270 & 1283 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2024

PRONOUNCED ON : 27.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.Nos.14167 & 14329 of 2024
in Crl.A.Nos.1270 & 1283 of 2024

1. Mohammed Naushad Ali ... Petitioner in
Crl.MP.No.14167 of 2024/
A1
2. Ayisha ... Petitioner in
Crl.MP.No.14329 of 2024/
A2

Vs.

The State Rep. by
The Inspector of Police,
C2 Elephant Gate Police Station,
Chennai.
(Cr.No.210 of 2022) ... Respondent

COMMON PRAYER: Criminal Miscellaneous Petitions filed under Section 430 of BNSS, to suspend the sentence imposed in C.C.No.342 of 2022 dated 26.09.2024 on the file of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. and enlarge the petitioners on bail pending disposal of the above Criminal Appeals.

For Petitioner
in Crl.M.P.No.14329/24 : Mr.R.C.Paul Kanagaraj
in Crl.M.P.No.14167/24 : Mr.N.Nishar Ahamed

For Respondent : Dr.C.E.Pratap
Govt. Advocate (Crl. Side)



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Crl.M.P.Nos.14167 & 14329 of 2024 in Crl.A.Nos.1270 & 1283 of 2024

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed to suspend the sentence of imprisonment imposed on the petitioners in the judgment, dated 26.09.2024 in C.C.No.342 of 2022 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.

2.It is the case of the prosecution that the respondent had received an information from a secret informant over phone at about 09.00 a.m on 22.04.2022 that one male and female were involved in transportation of ganja in a Swift Car; that PW1 reduced the said information in writing and after submitting the same to his superior/PW4, PW1 along with PW2 and PW4 reached the spot with an NDPS test kit and intercepted the car bearing Reg.No.TN-04-AU-5320; that they found A1 was driving the car and A2 was seated in the car; that A1 and A2 revealed their names and addresses; that PW1 conveyed to them about their right under Section 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985 to be searched before a Gazetted Officer and that both the accused conveyed their consent for search to be done by PW1 and his team; that the search



notice was issued under Section 50(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985 to the accused; that the Police team found that 11 packets of ganja each containing 2.185 kgs, 2.176 kgs, 2.203 kgs, 2.248 kgs, 2.363 kgs, 2.057 kgs, 2.241 kgs, 2.135 kgs, 2.206 kgs, 2.204 kgs and 2.260 kgs in the dickie of the car and that 2.425 kgs of ganja and 1.045 litres of Hashish Oil were found in a suitcase in the possession of A2.

3.The conviction and sentence imposed on the petitioners/A1 & A2 are as follows:

<i>Rank of the Accused</i>	<i>Offence under Section</i>	<i>Conviction and Sentence</i>
A1 & A2	For offence under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.	The petitioners were sentenced to undergo Rigorous Imprisonment for 12 years each and to pay a fine of Rs.1,20,000/- each in default to undergo Rigorous Imprisonment for 6 months each.
A1 & A2	For offence under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.	The petitioners were sentenced to undergo Rigorous Imprisonment for 12 years each and to pay a fine of Rs.1,20,000/- each in default to undergo Rigorous Imprisonment for 6 months each.
A1 & A2	For offence under Section 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985.	The petitioners were sentenced to undergo Rigorous Imprisonment for 5 years each and to pay a fine of Rs.50,000/- each in default to undergo Rigorous Imprisonment for 6 months each.



A1	For offence under Section 8(c) r/w 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985.	The petitioner was sentenced to undergo Rigorous Imprisonment for 12 years and to pay a fine of Rs.1,20,000/- in default to undergo Rigorous Imprisonment for 6 months.
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4.The learned counsel appearing for the petitioner/A1 would submit that though the seizure was informed to the learned Magistrate on 22.04.2022 and there is an endorsement by the learned Magistrate to produce the contraband on the next working day, the same was produced only on 04.05.2022 as could be seen from Form-95 (Ex.P10); that the evidence of PW1 would show that the signature of the accused is not found in the Seizure Mahazar (Ex.P3); that PW1 had also admitted that all the documents were prepared at the Police Station; and that PW2 had stated that the Police team went with the test kit whereas PW1 had stated that there was no test kit at the Police Station. The learned counsel would further submit that PW4 had admitted that the First Information Report was registered only after sending the Special Report and the seizure of the contraband; that however the seizure mahazar contained the crime number which improbably the prosecution case; that to establish that A1 was not present on the date and time mentioned by the prosecution when the alleged seizure was said to have been made, he had



filed an application to call for the tower location details and without considering the said application, the impugned judgment was passed.

5.The learned counsel appearing for the petitioner/A2 would submit that the alleged possession of ganja and Hashish Oil attributed to A2 were found in a suitcase; that the suitcase was not marked by the prosecution; that even accepting without admitting the prosecution case, the petitioner/A2 was in possession of intermediate quantity of ganja 2.425 kgs and 1.045 liters of Hashish Oil; that the notice under Section 50(2) of the Act was addressed only to A1; and that therefore the presence of A2 is highly doubtful. The learned counsel would further submit that as per the First Information Report, the sample of the Hashish Oil was taken in a plastic cover, however the Lab Report (Ex.P8) would state that as if the sample was found in a plastic container and the weight of the Hashish Oil also varies in the Lab Report (Ex.P8). He would further submit that A2 has a three months old baby to take care of; and that in view of the infirmities in the prosecution case, he has fair chances of success in the appeal.

6.The learned Government Advocate (Crl. Side) appearing for the



respondent Police in both the petitions would submit that the prosecution had established its case beyond reasonable doubt; that there is no reason to doubt the evidence of the Police team (PW1 to PW4); and that therefore the petitioners have not made out any ground for suspension of sentence. The learned Government Advocate (Crl. Side) on instructions would further submit that there are three cases against A1 for the offences under Indian Penal Code registered in three Police Stations in the city; and that therefore, the petitions for suspension of sentence have to be dismissed.

7. Heard the learned counsel appearing for A1/petitioner in Crl.M.P.No.14167 of 20124; the learned counsel appearing for A2/petitioner in Crl.M.P.No.14329 of 2029; and the learned Government Advocate (Crl. Side) appearing for the respondent/State and perused the materials available on record.

8. On perusal of the judgment of the Court below and the evidence of the witnesses relied upon by the learned counsel for the petitioners, this Court finds that the following facts emerge.

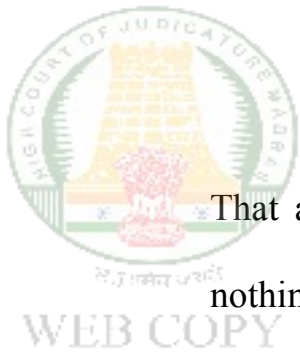


(i) PW1 in his cross examination had admitted that all documents in this case were prepared only at the police station. The other circumstances also confirm this fact. The seizure from A1 was said to have been made at 10.30 a.m., and the seizure from A2 is said to have been made at 12.30 p.m. No explanation has been offered by the prosecution as to the discrepancy in the time, as according to the prosecution, both the seizures were done at the same place and time.

(ii) PW1 had deposed that the police station did not have an NDPS Testing Kit at the relevant point of time. However, PW2 would state that the NDPS Testing Kit was brought by a Head constable to the place of occurrence.

(iii) In Ex.P10 [Form-91], there is an endorsement by the learned Special Judge that the contraband has to be produced on the next working day. However, it is seen from the seal of the office of the learned Judge that the contraband was sent to Court on 04.05.2022.

(iv) It is seen from Ex.P2, the notice issued under Section 50 (2) of the NDPS Act, that there is no time or date mentioned in the said notice.



That apart, the said notice has not been addressed to A2 and there is nothing on record to show that A2 had agreed to a search by the police team.

(v) Though the alleged seizure is said to have been taken place in a public place, the prosecution had not examined any independent witnesses. Further the accused have not signed the seizure mahazar.

(vi) It is also seen that A1 had filed an application to call for the tower location details of his phone, to prove that he could have not been present at the place and time when the alleged seizure was made. However, the said application was not considered and the trial Court had passed the impugned judgment.

(vii) As per the FIR, the sample of Hashish Oil said to have been recovered from A2 were drawn and kept in a plastic cover. However, the lab report [Ex.P8] would show that the sample of Hashish Oil was found in a plastic container.



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9. Considering all the above infirmities and the violation of mandatory provisions, this Court is of the *prima facie* view that there are reasonable grounds to believe that the petitioners/accused are not guilty of the alleged offences. There is no previous case against A2. The counter of the respondent shows that as against A1, there are offences registered under the Indian Penal Code viz.,

(a) under Sections 353, 332, 506 (ii) of the IPC r/w Section 3 of TNPPDL Act [Crime No.182 of 2019 on the file of R4- Pondy Bazaar Police Station];

(b) under Sections 341, 294 (b), 323, 506(i) of the IPC [Crime No.95 of 2020 on the file of B2, Esplanade Police Station]; and

(c) under Sections 294(b), 324 and 506 (ii) of the IPC [Crime No.1634 of 2021 on the file of B1 North Beach Police Station].

The above cases do not suggest that A1 is likely to commit any offence under the NDPS Act in future. Further, admittedly, A2 has a three months old baby to take care of and though both petitioners were remanded to judicial custody on 22.04.2022, A1 was released on bail on 22.06.2023 (after one year and two months) and A2 was released on bail on 15.11.2022 (after seven months), pending investigation and trial.



Now the petitioners are in custody since the date of judgment i.e., from 26.09.2024.

10. Therefore, considering the above, the period of incarceration and also the fact that the appeals are 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/A1 & A2.

11. Accordingly, these criminal miscellaneous petitions stand **allowed**. The sentence imposed on the petitioners are suspended and the petitioners are ordered to be released on bail on the following conditions:

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court under EC & NDPS Act, Chennai;
- (ii) 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
- (iii) The petitioners shall appear before the trial Court on the



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first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any 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 their absence, as directed by the trial Court.

27.11.2024

vv2/ars

Issue order copy today.

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SUNDER MOHAN, J.

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To

1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
2. The Inspector of Police,
C2-Elephant Gate Police Station,
Chennai.
3. The Superintendent of Prisons,
Central Prison-I, Puzhal, Chennai.
4. The Public Prosecutor,
Madras High Court.

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