



Crl.M.P.No.19018 of 2023 in Crl.A.No.1448 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2024

PRONOUNCED ON : 28.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.19018 of 2023
in Crl.A.No.1448 of 2023

Aravinthan,
S/o.Arumairaj.

... Petitioner

Vs.

STATE BY:
The Inspector of Police,
NIB-CID,
Chennai.
[Crime No.62/2019].

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence in the judgment, dated 04.10.2023 in C.C.No.198 of 2019 passed by the Court of the learned Principal Special Judge, Principal Special Court of under EC & NDPS Act, pending disposal of the appeal and enlarge the petitioner on bail.

For Petitioner : Mr.M.S.Ramesh
For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Principal Special Judge, EC & NDPS Court, Chennai (Trial Court) in C.C.No.198 of 2019, dated



04.10.2023.

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2.The petitioner was convicted for offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Substance and Psychotropic Substances Act, 1985 and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default to undergo six months Rigorous Imprisonment.

3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. PW1, the Sub Inspector of Police after getting information (Ex.P1), recorded the same. Thereafter, PW1 along with PW3 and yet another Police Constable Rajarajan had gone to the scene of occurrence, the informant identified the petitioner and the seizure is said to have taken place. In this case, Ex.P1 is a created document. The evidence of PW1 and PW3 is that grey colour shoulder bag of the petitioner was searched, from it, the contraband (MO3) found inside covered with white colour polythene cover. Both the shoulder bag and polythene cover not produced in this case. He further submitted that the samples (MO1 & MO2) is said to have taken and packed in a brown cover, but in the seizure



mahazar (Ex.P3) it is recorded that the samples packed in a paper cover tied with thread. Hence, the samples which was seized is not the samples which was sent to the forensic lab. More so, when the seizure is said to have taken place on 22.05.2019 and it was sent to the forensic lab only on 10.06.2019. PW4 initial Investigating Officer admitted that the samples and contraband produced before her only on 10.06.2019. When and where under whose custody the contraband was kept is not properly recorded, which cuts the root of the prosecution case. In this case, the arrest, seizure took place in a public, but no public witness examined.

4.He further submitted that there have been contradictions with regard to the timings recorded in FIR (Ex.P6) and report (Ex.P7) under Section 57 of the NDPS Act with regard to the preparation of mahazar and arrest of the petitioner. In this case, the oral evidence are contradictory to the documentary evidence. The arrest intimation not informed to the petitioner's family members as per law. In the arrest memo, the quantity of the contraband is not recorded. The trial Court had glossed over these contradictions as minor contradiction is not proper. Hence, he prayed for suspension of sentence.



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5.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter stating that on 22.05.2019, PW1, the Sub Inspector of Police received, secret information, based on the information, he proceeded to Angalamman Koil Street-Strahans Road Junction, Pulianthope along with Police team viz., PW3 and one Rajarajan, Head Constable with NDPS kits. On identification by the informant, they intercepted one person namely Aravinthan, the petitioner herein with grey colour shoulder bag. After observing all legal and mandatory provisions under NDPS Act, search conducted and found that the petitioner was in illegal possession of 1.200 kgs of Ganja in the shoulder bag. The contraband was seized under seizure mahazar (Ex.P3) and the petitioner was arrested. The confession statement of the petitioner was recorded and he was brought to the respondent Police Station and the FIR (Ex.P6) in Crime No.62 of 2019 for offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act was registered and the petitioner was remanded to judicial custody by PW4. After completion of investigation, PW4 filed charge sheet against the petitioner and the same was taken on file as C.C.No.198 of 2019. During trial, on the side of the prosecution, four witnesses examined as PW1 to



PW4 and ten documents marked as Exs.P1 to P10 and four Material Objects marked as MO1 to MO4. On the side the of defence, no witness examined and no document marked. On conclusion of trial, the trial Court rightly convicted the petitioner as stated above. He further submitted that the prosecution proved each and every circumstances pointing towards the guilt of the petitioner. The trial Court concluded that the prosecution proved the charges against the petitioner through oral and documentary evidences that he was in illegal possession of contraband. He further submitted the points now raised by the learned counsel for the petitioner already raised before the trial Court and the trial Court answered the same. The petitioner was arrested along with contraband of 1.200 kgs of ganja which is confirmed by the evidence of the scientific officer (PW2). In this case, the search, seizure and arrest done properly. The petitioner has got no bad antecedents except the above case. Hence, he prayed for dismissal.

6.Considering the submissions and on perusal of the materials, it is seen that PW1, the Sub Inspector of Police on getting secret information had proceeded to the scene of occurrence along with PW3 and Rajarajan, Head Constable. The evidence of PW1 and PW3 is that the contraband was found in a white polythene cover kept inside grey shoulder bag. The said



polythene cover not seized. Further, the samples were taken and sealed in a paper cover, but on the contrary the evidence of PW2, the scientific officer is that the samples was found packed in a brown cover. But in the seizure mahazar (Ex.P2), it is recorded that in two paper covers, it had been packed and tied. In the arrest memo, the quantity of the seized contraband not recorded. There is doubt regarding manner in which the arrest intimation served to the family members of the petitioner. Added to it, there is 18 days delay in producing the contraband. PW4 initial Investigating Officer admitted that the contraband was produced only on 10.06.2019 after delay of 18 days. The Trial Court finding these contradictions are minor is not proper. Hence, the conviction of the petitioner needs reconsideration and reappraisal.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal 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.



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8.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal appeal and if he is not able to appear before the Trial Court on that 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. Accordingly, this Miscellaneous Petition is ordered.

28.02.2024

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M. NIRMAL KUMAR, J.

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To

1.The Principal Special Judge,
EC & NDPS Court, Chennai.

2.The Inspector of Police,



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NIB-CID, Chennai.

3. The Superintendent of Police,
Central Prison-I, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

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