



Crl.M.P.No.20055 of 2023
in Crl.A.No.1640 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 22.03.2024	Orders Pronounced On 15 .04.2024
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Crl.M.P.No.20055 of 2023

in

Crl.A.No.1640 of 2023

Arun Kumar

... Petitioner

Vs.

State by
The Inspector of Police,
NIBCID,
Kancheepuram.
Cr.No.1 of 2020.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner by order dated 12.12.2023 in C.C.No.50 of 2020 on the file of the Principal Special Court under EC and NDPS Act, Chennai and release the petitioner on bail till the disposal of the above Criminal Appeal.



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For Petitioner : Mr.O.Chembulingam

For Respondent : Mr.R.Krishore Kumar
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the judgment, dated 12.12.2023 in C.C.No.50 of 2020 by the learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai and enlarge him on bail pending disposal of the main appeal.

2.The Trial Court convicted the petitioner 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 for the offence under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act. Challenging the same, the petitioner preferred an appeal and the Suspension of Sentence.

3.The contention of the petitioner is that the case projected against the petitioner, a student was found in possession of 2.5 kgs of ganja near the



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bus stand at Tiruvallur, who is said to have smuggled the contraband from the State of Andhra Pradesh. He would submit that no travel ticket from the petitioner seized to show that he travelled from Andhra Pradesh, on the other hand PW1 and PW2, Sub-Inspector of Police and Head Constable state that they found the petitioner walking near the bus stand and he was apprehended. In this case, PW1 is the person received secret information, informed his superior/PW4 by EX.P1 and proceeded along with PW2 and one Rajarajan. But the said Rajarajan not examined as witness, who is said to have typed all the documents, proceedings and statements in the laptop. There is contradiction between PW1 and PW2 as regards the time of reaching the spot, apprehending the accused and conducting search. It is submitted that though in the FIR two private persons name recorded who refused to be the witnesses for search and seizure, except for their names no other details given. He would further submit that PW1 admits that information was given to PW4 but Ex.P1 shows that it was prepared in the place of occurrence. When prior information was received by PW1 in the Police Station, he ought to have prepared Ex.P1, placed it before PW4 and in his absence, he could have informed through phone. But from the



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evidence of PW1, it is clear that Ex.P1 prepared in the scene of occurrence confirmed by PW4. Ex.P11 is the Form 95 and there is nothing to show that the same was produced along with contraband before the remanding Magistrate on 04.01.2020 . The properties in this case was produced with a delay of 19 days. Ex.P7/57 report is contradictory to Ex.P1. He further submitted that in Ex.P3/seizure mahazar and Ex.P7/57 report, it is recorded that MO1 and MO2 samples were placed in a silver plastic cover and forwarded for forensic examination. But the evidence of PW3, Assistant Director, Forensic Department and Ex.P9, it is otherwise the samples were sent in a aluminium foil cover. This aluminium foil is an introduction but no explanation given, further the samples went with a delay of 19 days, hence, the search and seizure becomes doubtful. The Trial Court failed to consider that in this case, statutory conditions not followed and there is a doubt in search and seizure. He further submitted that the petitioner is a student studying 3rd year Computer Science in a Polytechnic College, no public witness examined though the seizure took place in a bus stand and there is a delay in sending the samples to the Forensic Department. Hence prayed for suspension of sentence.



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4.The learned Additional Public Prosecutor filed his counter and submitted that on 04.01.2020 at about 14.00 hours, when PW1/Special Sub Inspector of Police was in station duty, a secret information was received about illegal sale of ganja. PW1 informed the same to PW4/Inspector of Police through Ex.P1 and thereafter, PW1 along with his team went to the place of occurrence, i.e., Near Thiruvallur Bus Stand backside, where the informer identified the petitioner who was selling ganja and he was found in possession of 2.5 kgs of dry ganja. The respondent police issued search notice/Ex.P2. Thereafter, the respondent police arrested the petitioner, recorded his confession statement and produced for judicial custody. The contraband were seized under the cover of seizure mahazar/Ex.P3 in the presence of witnesses, samples were taken and sent to forensic examination. PW4/Inspector of Police took up the investigation and registered a case in Crime No.01 of 2020 for the offence under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act, 1985. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution PW1 to PW4 examined, Ex.P1 to P11 and MO1 to MO3 marked. On the side of the defence, no



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witnesses examined and Ex.D1 marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is a student studying 3rd year Computer Science in Polytechnic College. He was apprehended on the information that he was smuggling ganja from the State of Andhra Pradesh, but no travel ticket seized from the petitioner. Further, PW1 and PW2 are the only police witnesses who speaks about the search, seizure, arrest and recovery of contraband. There are contradictions in the evidence of PW1 and PW2 with regard to the time of reaching the place of occurrence, arrest and seizure. LW3/Rajarajan, Head Constable, who prepared all the documents and statements in the laptop not examined as witness in this case. Likewise, though two persons, namely Kannappan and Murugesan, shown as public present there and refused to be witnesses, but their complete details not given. The scene of occurrence is a bus stand, a public place. In this case, admittedly the contraband produced before the Court with a delay of 19 days and there is nothing to show, under whose custody the contraband was



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kept safe and secure, away from tampering. Further, in Ex.P3/seizure mahazar, Ex.P7/57 report and Ex.P10/FIR, it is recorded that the samples were kept in a silver colour plastic cover, but the evidence of PW3 and Ex.P9, it is seen that the samples MO1 and MO2 were found packed in aluminium foil. It is further seen that there is contradiction between Ex.P1 and Ex.P7, statutory report compliance. Admittedly, the petitioner has got no bad antecedents or any previous case of similar nature. Hence, this Court is inclined to grant suspension of sentence.

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

7.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 appeal and if he is not able to appear before the Trial Court on that day,



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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.

15.04.2024

Index:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Principal Special Judge,
Principal Special Court under EC and NDPS Act,
Chennai.
- 2.The Inspector of Police,
NIBCID,
Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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Pre-delivery order made in

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