



Crl.M.P.(MD) No.1274 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Eighteenth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.1274 of 2024
in
Crl.A.(MD) No.75 of 2024

1. RAJESH

2 KARTHICK

3 PRABHAKARAN

... PETITIONERS/ APPELLANT

Vs

THE INSPECTOR OF POLICE
NIB CID, MADURAI,
MADURAI DISTRICT.
CR.NO.97/2016

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence passed in Cc.No.25/2017 dt 24.08.2023 on the file of the Learned Principal Court for EC and NDPS Act Cases Madurai and pass such further or other orders as this Honourable Court

Prayer in Crl.A.(MD) No.75 of 2024:

To call for the entire records and set aside the sentence and conviction imposed in C.C.No.25 of 2017 on the file of learned Principal Court for EC & NDPS Act Cases, Madurai vide Judgment dated 24.08.2023.



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Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.NIRANJAN S. KUMAR, Advocate for the petitioners and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Principal Court for EC and NDPS Act Cases, Madurai, in C.C.No.25 of 2017 dated 24.08.2023 and to enlarge him on bail, pending disposal of the Criminal Revision Case.

2. The case of the prosecution is that on 04.06.2016 at 14.00 hours, when P.W.2 (Special Sub Inspector of Police) was on duty, based on a secret information, the police party were engaged in vehicle checking near Madurai Railway Junction. During vehicle checking, when they stopped the car of the accused 1 to 3, it was found that they were in possession of three white polythene bags each weighing 8 kgs. of 'Ganja' totally 24 kgs. of 'Ganja'. The respondent police after conducting search as per the Act, seized the said contraband from the petitioner/A1 and the other accused. After taking samples, they prepared mahazar and recorded the confession statements of the accused. Thereafter, a case has been registered in Crime No.97 of 2016 against the petitioner/A1 and other accused on the file of the



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respondent/Inspector of Police, NIB CID, Madurai, for the offences punishable under Sections 8(c) read with 20(b) (ii) (C), 27(A) and 29(1) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985)' [hereinafter referred to as 'NDPS Act' for the sake of convenience and brevity]. Thereafter, he was produced before the Court along with the contraband and was remanded to judicial custody. After completion of investigation, the respondent police filed a final report and the same was taken on file in C.C.No.25 of 2017 before the learned Principal Court for EC and NDPS Act Cases, Madurai.

3. During trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 14 documents as Ex.P.1 to Ex.P.14 and marked 3 Material Objects as P.M.O.1 to P.M.O.3, whereas, the accused has neither adduced any oral evidence nor produced any documents.

4. The learned Principal Judge, upon considering the evidences adduced and on hearing the arguments on both sides, convicted the petitioner/ A1 and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- with 6 months Simple Imprisonment in case of default. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal



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along with the above Miscellaneous Petition seeking suspension of sentence.

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5. Learned counsel for the petitioner/ A1 has submitted that he has been falsely implicated in the crime and he has not committed any offence in any manner as alleged by the prosecution. The petitioner is in custody since from the registration of the criminal case. The trial Court failed to appreciate the claim of P.W.2 that informer pointed out the accused at the scene of occurrence however, contrarily, he also claimed that the informer was not taken to the scene of occurrence. Similarly, P.W.1 in his chief examination claims that the accused begun to run as soon as they saw the police officers, however, in cross-examination, he has claimed that the accused started running away only when the police officers approached to secure them. There is a lot of contradictions between the statements of the official witnesses of the prosecution along with the fact that no independent witnesses or supporting evidences were brought on record and thereby, he prays for grant of suspension of sentence.

6. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor opposed the bail petition pointing out that this Court has already considered the aforesaid issue in the case of Dharma v. A.Karthick (Crl.M.P (MD) Nos.10586 and



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14218 of 2023) decided on 22.02.2024 and prays for dismissal of this petition.

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7. This Court considered the rival submissions made on either side and perused the materials available on record.

8. Admittedly, the petitioners are in possession of a huge quantity of contraband which falls within “Commercial Quantity”. This Court in Dharma's case (cited supra) has elaborately dealt with the issues raised in the present case on hand and the relevant portion of the order reads as follows:

“19. Section 35 of the NDPS Act, deals with presumption of culpable mental state of an accused requiring the Court to presume the existence of such mental state for a prosecution under the Act. Furthermore, an explanation is provided in the provision which states-

“In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.”

This essentially means that a person charged with an offence under the NDPS Act would have to rebut the presumption against him and the burden of proof would lie on him to show that he has not committed the act constituting an offence.



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20. In Naresh Kumar alias Nitu v. State of Himachal Pradesh reported in (2017) 15 SCC 684, it was held by the Supreme Court that the presumptions against the accused of culpability under Section 35 and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt.

21. In Noor Aga v. State of Punjab and Ors. [2008 (16) SCC 417], it was held that Section 35 and 54 of the NDPS Act which imposes a reverse burden on the accused is constitutional as the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution.

22. Further, in Abdul Rashid Ibrahim Mansuri v. State of Gujarat reported in AIR 2000 SC 821, where an accused admits that narcotic drugs were recovered from bags that were found in his possession at the time of his apprehension, in terms of Section 35 of NDPS Act, the burden of proof is then upon him to prove that he had no knowledge that the bags contained such a substance.



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23. Conscious Possession:-

The term 'conscious possession' has not been explicitly mentioned in NDPS Act keeping it apart from the term 'possession', but various judicial enactments from the Hon'ble Supreme Court and High Courts have evolved the term 'conscious possession' according to the needs and circumstances of the respective case.

24. According to Section 35 of NDPS ACT, 1985:

(i) In any prosecution for an offence under this Act which requires a culpable state of mind of the accused, the Court shall presume the presence of such state of mind but it shall be a defense for the defendant to prove the fact that he had no such state of mind concerning the act charged as an offence in that prosecution. In this section, the culpable state of mind includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(ii) For this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of possibility.



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25. Thus, we can infer that conscious possession means a mental state of possession that is bound to be considered along with physical possession of the illicit material. Just like in criminal law, 'Actus Reus' and 'Mens Rea' are two essential ingredients to constitute a criminal offence, the same goes for the NDPS Act where physical, as well as mental possession of drugs, are essential elements to constitute an offence under the same law.

26. The principle of innocent until proven guilty is a cardinal rule of criminal justice administration. An accused is presumed to be innocent and it is the burden of the prosecution to prove any wrongdoing beyond any reasonable doubt. The burden is heavy and entails that after all the prosecution evidence has been appreciated, the only conclusion which the court can draw is the guilt of the accused and no other conclusion can be drawn. However, offences relating to peddling, possessing, consuming or dealing in any manner with narcotic drugs is a grave offence which adversely affects the social fabric of the society by injecting dangerous and addictive substances into the veins of young and impressionable youth. In addition to the direct consequences, it also affects the financial security of the nation and more seriously contributes to anti national or terroristic



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activities by providing funds to terrorist and unlawful organizations. It is a necessary evil that the criminals involved in grave offences are not allowed to take advantages of the law and benefit from the provision meant for innocents. However, it also has to be ensured that an innocent is protected from some adverse interpretations of the law. The rule of conscious possession, thus provides a balance between strict enforcement of law on one hand and protecting the rights of the accused on the other.

27. NDPS Act has been enacted with the object of meeting the unprecedented challenge of illicit traffic in narcotic drugs and psychotropic substances. Drug abuse has been recognized as the single most powerful social offender in recent times creating unimaginable extent of damages in frighteningly large sections of the Society.

28. It is the admitted fact that the two-wheeler was ridden by the petitioner/A2 and A1 was on pillion carrying the bag containing contraband. However, the reason given by the learned counsel for the petitioners that it is normal for the young person who will be afraid of the police when they were intercepted by the police is not convincing. When the police party intercepted the accused and the petitioner/A2 was not aware of the fact that A1 is in possession of contraband, then he would



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have stopped the two-wheeler, however in the present case, without any reason, the petitioner/ A2 escaped from the scene of occurrence. Therefore, the petitioner/ A2 failed to satisfy this Court that there are reasonable grounds for believing that he is not guilty of such offence and hence, he is not entitled for the relief sought for.

29. For the foregoing reasons stated above, these Criminal Miscellaneous Petitions are dismissed.”

9. Since the case of the petitioner is squarely covered by the aforesaid order of this Court, I am not inclined to enlarge the petitioner on bail and accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
18/03/2024

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/03/2024

Sub-Assistant Registrar (CS -I/ II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1. THE PRINCIPAL JUDGE, FOR EC AND NDPS ACT CASES MADURAI



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2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3.THE INSPECTOR OF POLICE
NIB CID, MADURAI,
MADURAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
Crl.M.P.(MD) No.1274 of 2024
in
Crl.A.(MD) No.75 of 2024
Date :18/03/2024

RK/GS (25/03/2024) 11P / 5C
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