



CRL MP(MD) No.1595 of 2024

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

Wednesday, the Twentieth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.1595 of 2024

in

CRL A(MD) No.111 of 2024

ARIVAZHAGAN

... Appellant / Accused No.2

Vs

1 UNION OF INDIA
THROUGH THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
MADURAI SUB- ZONE,
MADURAI DISTRICT.
(NCB.F.NO. 48/1/03/2020/NCB-MDU)

... Respondent / Complainant

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 Execution of Sentence of imprisonment passed in judgment of conviction and sentence in CC.No.577 of 2021 dt.7.9.2023 on the file of the Learned II-Additional Special Court of NDPS Act Cases, Madurai and enlarge the Petitioner on bail pending disposal of the Main Criminal Appeal.

Prayer in CRL A(MD) No.111 of 2024:

To calling for the records pertaining to the conviction and sentence passed in C.C.No.577 of 2021 on the file of the learned II Additional Special Court for NDPS Court Act cases, Madurai dated 07.09.2023 and set aside the same.



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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 M/s.S.MANDHIRALINGESWARAN, Advocate for the appellant and of Mr.C.ARUL VADIVEL @ SEKAR, Special Public Prosecutor for NCB Cases on behalf of the Respondent, the Court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying this Court to suspend the sentence imposed against him by the learned Special Judge, II Additional Special Court of NDPS Act Cases, Madurai in C.C.No.577 of 2021 dated 07.09.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that on 31.12.2020 at 11.30 hours, the petitioner/accused along with other accused were found in possession of 90.30 kgs. of 'Ganja' illegally kept in the car bearing registration No.KL-45-B-5904 near the junction of Kallimandhayam entrance in Dharapuram - Ottanchatram Road and therefore, they have allegedly committed offences punishable under Sections 8(c) read with Section 20(b)(ii)(C), 28, 29 of 'the Narcotic Drugs and Psychotropic Substances Act, 1985)' [hereinafter referred to as 'NDPS Act' for the sake of convenience and brevity] and the same was taken on file in C.C.No.577 of 2021 on the file of the learned Special Judge, II Additional Special Court of NDPS Act Cases, Madurai. After full-fledged trial, the petitioner and other accused were convicted and sentenced under Sections 8(c) read with 20 (b)(ii)(C) and Section 25 of NDPS Act to undergo 12 years Rigorous Imprisonment and to pay a fine amount of



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Rs.1,00,000/- with one year Rigorous Imprisonment in case of default. Aggrieved

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over the same, the main appeal has been filed.

3. The learned counsel for the petitioner submitted that the petitioner is arrayed as Accused No.2. The Court below failed to appreciate the fact that the prosecution has not examined the independent witnesses even though the alleged occurrence took place in the residential area and all the witnesses are interested witnesses, which does not inspire confidence. Further it is the contention of the learned counsel for the petitioner that there is a violation of Sections 51, 50(5), 50(6) of NDPS Act. There is no question of presumption being raised under Section 54 of NDPS Act, in addition, it is the contention of the learned counsel for the petitioner that the statements recorded by the Investigating Officers under Section 67 of NDPS Act had reached the Court belatedly. There is also a clear violation of Section 57 of NDPS Act. He further submits that the petitioner has been incarcerated for more than three years and hence, the learned counsel prays for grant of suspension of sentence to the petitioner.

4. Per contra, Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor for CBI would submit that there are enough materials available on record against the petitioner and hence, opposed for allowing the petition.

5. Heard the learned counsel for the petitioner as well as the learned Special



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on record.

Public Prosecutor appearing for the respondent and perused the materials available on record.

6. Considering the arguable points of the learned counsel for the petitioner and the period of incarceration suffered by the petitioner, this Court is of the prima facie view that the sentence is to be suspended pending this Appeal.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Special Judge, II Additional Special Court of NDPS Act Cases, Madurai, in C.C.No.577 of 2021 dated 07.09.2023 alone is suspended, subject to the following conditions:-

i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, II Additional Special Court of NDPS Act Cases, Madurai.

ii) The petitioner shall appear before the concerned Court daily at 10.30 a.m. and 5.30 p.m., till the disposal of the appeal.

iii) The petitioner shall furnish his residential address and mobile number to the Trial Court ie., learned Special Judge, II Additional Special Court of NDPS Act Cases, Madurai.

iv) On breach of any of the aforesaid conditions, the learned Special



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Judge, II Additional Special Court of NDPS Act Cases, Madurai, is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Additional District Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]; and

v) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A of IPC.

8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

sd/-
20/03/2024

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26/03/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN

To

1.The Special Judge,
II Additional Special Court for NDPS Act Cases, Madurai.



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2.The Intelligence Officer,
Union of India,
Narcotics Control Bureau,
Madurai Sub Zone, Madurai.

3.The Superintendent,
Central Prison, Madurai.

4.The Special Public Prosecutor for NCB Cases,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.SEPICIAL PUBLIC PROSECUTOR, Advocate (SR-3446[I] dated
20/03/2024)

+1 CC to M/s.S.MANDHIRALINGESWARAN, Advocate (SR-3453[I] dated
20/03/2024)

ORDER
IN
CRL MP(MD) No.1595 of 2024
in
CRL A(MD) No.111 of 2024
Date :20/03/2024

ED/ /SAR- (26/03/2024) 6P / 7C

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