



CRL MP(MD) No.1394 of 2024

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

Monday, the Fifteenth day of July Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

CRL MP(MD) No.1394 of 2024

in

CRL A(MD) No.100 of 2024

KRISHNAMOORTHY

... PETITIONER(S)

Vs

THE INSPECTOR OF POLICE
CHEKKANURANI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.425 OF 2013.

... RESPONDENT(S)

For Petitioner(s) : Mr.R.Gandhi, Senior Counsel for M/s.Gandhi Associates
For Respondent(s) : Mr.S.Ravi, Additional Public Prosecutor

ORDER

Reserved On	:	15.04.2024
Pronounced On	:	15.07.2024

The petitioner is accused No.1 in C.C.No.249 of 2014 wherein he was convicted for the offence under Sections 8(c) read with 20(b) (ii) (c) of the NDPS Act and sentenced to undergo Rigorous Imprisonment for 10 years and a fine of Rs.1,00,000/-, in default to undergo 12 months simple imprisonment.



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2. According to the prosecution on 17.11.2023 at 06.45 am., P.W.2 received the secret information about the illegal transportation of ganja. He, recorded the same as per Section 42 of the NDPS Act. They proceeded to occurrence place and made a search on the appellant and other person, after obtaining the compliance of Section 42 of the NDPS Act. In the said search, they found that they were in possession of 24 Kgs of ganja and hence, after completing all formalities, namely, taking the samples and also sealing the remaining contraband with proper seal and arrested the accused and registered FIR in Crime No.425 of 2013 under Section 8(c) r/w 20(b)(ii)(c), 25 and 29 of the NDPS Act, and produced the appellant before the Court below along with the entire contraband and the same was sent to the Special Court for the proper custody. After registration of the case, the investigation officer conducted the investigation and filed the final report before the II-Additional Special Court for NDPS Act Cases, Madurai.

3. The learned Special Judge took the final report on file in C.C.No.249 of 2014 and on appearance of the accused served the copies under Section 207 Cr.P.C and framed the necessary charges. After framing necessary charges, the charges were read over to the accused and the accused denied the same as false and he pleaded not guilty and stood for trial. Thereafter, the trial was commenced.

4. Before the trial Court, to prove the case, the prosecution examined PW.1 to



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PW.3, marked Ex.P1 to Ex.P11 and M.O.1 to M.O.3.

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5. Thereafter, the learned trial Judge put the incriminating materials available against the petitioner and questioned him under Section 313 Cr.P.C, and he denied the same as false. Therefore, the posted the case for defence evidence, but, no witness was examined on the side of the accused and no documents were marked.

6. The learned trial Judge after considering the detailed argument and the material available on record, convicted the accused Nos.1 and 2 for the above said offences. Challenging the said conviction and sentence, the petitioner/accused No.1 filed the present criminal appeal along with the suspension of sentence petition before this Court.

7.The learned Senior Counsel appearing for the petitioner seeks suspension of sentence. The learned Additional Public Prosecutor raised objection to grant suspension of sentence and submitted that typed set of papers have already been prepared by the Registry and this Court is regularly listing the jail appeals daily under the caption for final disposal. Accepting the said contention of the learned Additional Public Prosecutor, this Court directed the learned Senior counsel to argue the main appeal itself and posted the case on 15.07.2024.

8.On 15.07.2024, the learned Senior counsel, on instructions, from his client, insisted this Court to allow him to argue the suspension petition alone and also he



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confined his arguments relating to the non- compliance of Section 52(A) of the NDPS Act. The learned Senior counsel also submitted that the appellant is inside the jail from 06.12.2023 onwards. Therefore, he sought suspension of sentence.

9.The learned Additional Public Prosecutor would submit that the compliance of Section 52(A) of the NDPS Act, is question of fact and the same is to be decided after appreciation of fact. Further, this Court in the case of Mareeswaran Vs. State of Tamilnadu in CrI.A.(MD).No492 of 2022 made elaborate discussion in this aspect and hence, his plea is matter of appreciation. He not even completed period of sentence to enure the benefit under Section 436(A) of the Criminal Procedure Code. He also reiterated his request to take the appeal itself for final hearing.

10.This Court after perusal of the entire records, feels that this accused does not deserve suspension of sentence. The compliance of Section 52(A) of the NDPS Act, as rightly argued by the learned Additional Public Prosecutor is disputed question of fact and the same is to be addressed at the time of the final hearing of the appeal. The petitioner also is not entitled to any benefit under Section 436 (A) of Cr.P.C. Therefore, this Court is of the opinion that this is not a case for interim suspension of sentence and hence dismissed the petition. But the learned Senior counsel seeks permission from this Court to withdraw the said petition filed for suspension of sentence. The learned Additional Public Prosecutor objected to accept the said



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request of the learned Senior counsel for the reason that already detailed argument
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was heard.

11.This Court considered the argument of both learned Additional Public Prosecutor and the learned Senior Counsel and in view of the request made by the learned Senior counsel, this Court is inclined to grant permission to withdraw the petition filed for suspension of sentence.

12.Accordingly, this petition stands dismissed as withdrawn.

sd/-

15/07/2024

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/04/2025

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

sbn

TO

1 THE II ADDITIONAL DISTRICT AND SPECIAL JUDGE FOR NDPS CASES,
MADURAI.

2 THE INSPECTOR OF POLICE,
CHEKKANURANI POLICE STATION,
MADURAI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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



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ORDER

IN

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in

CRL A(MD) No.100 of 2024

Date :15/07/2024

RS/VR/SAR-(04.04.2025) 6P 5C

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