



CRL MP(MD) No.2527 of 2023

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

Thursday, the Seventeenth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)Nos.2527 and 4072 of 2023

in

CRL.A.(MD)Nos.119 and 185 of 2023

DIVAGAR

... PETITIONER/ APPELLANT/ ACCUSED NO.1
IN CRL MP(MD).2527/2023

SUGAPRIYA @ PRIYA

... PETITIONER/ APPELLANT/ ACCUSED NO.6
IN CRL MP(MD).4072/2023

Vs

THE INSPECTOR OF POLICE
KANNIVADI POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO. 30 OF 2022

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH CRL MP's

Prayer in CRL MP(MD).2527/2023 :

To suspend the sentence imposed on the petitioner / Appellant / Accused No.1 namely Divagar, S/o Jeyaseelan passed by the Learned Principal Special Court for EC and NDPS Act cases, Madurai in C.C No. 319 of 2022 dated 30.12.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL.A.(MD)Nos.119 of 2023 :

To call for the records in C.C.No.319 of 2022 dated 30.12.2022 on the file of the Learned Principal Special Court for EC and NDPS Act Cases, Madurai and set aside the same.



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Prayer in CRL MP(MD). 4072/ 2023 :

To suspend the sentence imposed on the Petitioner/ Appellant / Accused No.6 namely Sugapriya @ Priya, W/o.Arasan passed by the Learned Principal Special Court for EC and NDPS Act Cases, Madurai in CC No.319/2022 dt.30.12.2022 and enlarge the Petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL.A.(MD)Nos.185 of 2023 :

To call for the records in C.C.No.319 of 2022 dated 30.12.2022 on the file of the Learned Principal Special Court for EC and NDPS Act Cases, Madurai District and set aside the same.

Common Order : These Criminal Miscellaneous Petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.NA.MANI MARAN, Advocate for the petitioner in CRL MP(MD). 2527/2023 and MR.K.PRABAKARAN, Advocate for the petitioner in CRL MP(MD). 4072/2023 and MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent in both CRL MP's, the court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed on the petitioners by the learned Special Court for EC and NDPS Act Cases, Madurai, in C.C.No.319 of 2022 dated 30.12.2022.

2. The learned counsels for the petitioners submitted that

(i) the petitioner / first accused in this case, has been found guilty and convicted by the learned judge, for the offence under Section 8(c) read with Section 20 (b)(ii)(C) NDPS Act and sentenced to undergo ten years imprisonment and imposed a fine of Rs.1,00,000/- in default to undergo six months, the period of incarceration already undergone by the accused from 30.01.2022 to till date is ordered to be set off under Section 428 of Cr.P.C. (ii) similarly, accused No.6 was convicted under Section



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8(c) read with 20(b)(ii)(C) NDPS Act and sentenced to undergo ten years imprisonment and imposed a fine of Rs.1,00,000/- in default to undergo six months and under Section 8(c) read with 20(b)(ii)(B) NDPS Act and sentenced to undergo two years imprisonment and imposed a fine of Rs.10,000/- in default to undergo three months, the period of detention undergone by the accused No.6 from 01.02.2022 are ordered to be set off.

3.The case of the prosecution in brief is that on 30.10.2022 at about 6.15 a.m., the Sub Inspector of Police attached to the respondent police station received a secret information that Ganja is being transported in the place of occurrence. He along with the police team went to the place of Karamadai to Karisalpatti and at about 7.00 a.m., the police informer identified some persons standing in the place in suspicious manner. At about 7.40 a.m., the police surrounded the persons and on enquiry, they revealed their names. Suspicious search was made and they found in possession of 22 Kgs of Ganja. Sampling was undertaken as per procedure. After arrest, a case was registered in Crime No.30 of 2022 for the offences under Section 8(C) read with 20(b)(ii)(C), 29(1) of NDPS Act. Final report was filed before the trial court after completing the investigation process.

4. Before the trial Court, on the side of the prosecution 3 witnesses have been examined, 29 documents were marked. Apart from that 4 material objects were



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marked. On the side of the accused two witnesses were examined and no document was marked.

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5. Challenging the above said conviction and sentence, appeals have been preferred by the petitioners / accused Nos.1 and 6 namely Divagar and Sugapriya @ Priya. Pending appeals, the petitioners have filed petitions seeking suspension of sentence.

6. Heard both sides and a common order was passed.

7. So far as Divagar is concerned, he is arrayed as Accused No.1. As mentioned in the preamble portion, the specific case of the prosecution is that the first accused was arrested along with Ganja in the place of occurrence by the police team. So they recorded a red handed arrest, seizure and recovery. No strong case has been made out by the petitioner / first accused to suspend the sentence, since the petitioner / accused No.1 has not complied the twin conditions imposed under section 37 of the NDPS Act. Considering that it is a commercial quantity, unless the petitioner / accused No.1, is able to make out a strong case suspension of sentence is not automatic. No strong case has been made out by the petitioner to exercise the discretion of this Court. Therefore, Divagar / Accused No.1 is not entitled for any remedy.

8. So far as Accused No.6 namely Sugapriya @ Priya is concerned, it was



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contended that the identity of this petitioner is not established during the course of trial. Because the husband name differs.

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9. Per contra learned Additional Public Prosecutor would submit that this Sugapriya @ Priya is the main supplier of Ganja to the co-accused and it was established before the trial Court. Therefore, no indulgence can be shown, so far as Sugapriya @ Priya is concerned. The finding of the trial Court is that in the confession statement of the first accused he stated that he purchased Ganja from this petitioner / Accused No.6.

10. According to the learned counsel for the petitioner / Accused No.6, except the confession statement of the co-accused no other evidence is available. But according to P.W.3, in pursuance of the declaration statement made by the first accused, search was made with Accused No.6 namely Sugapriya @ Priya. She was found in possession of 1.500 kg of Ganja.

11. No doubt that there is no link evidence produced before the trial Court by the prosecution to link the Accused No.6 with the co-accused for purchasing. The trial Court has recorded a finding that M.O.1 and M.O.2 recovered from the first accused were purchased from Accused No.6. It is stated that the Accused No.6 is a seller of the commercial quantity to the first accused.

12. In view of the above submission, I am of the considered view that the



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petitioners are failed to comply the twin conditions imposed under Section 37 of the
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NDPS Act.

13. Accordingly, these Criminal Miscellaneous petitions are dismissed.

sd/-
17/10/2024

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/10/2024

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

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TO

- 1 THE JUDGE, SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE, KANNIVADI POLICE STATION,
DINDIGUL DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON FOR WOMEN, MADURAI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL.M.P.(MD)Nos.2527 and 4072 of 2023
in CRL.A.(MD)Nos.119 and 185 of 2023
Date :17/10/2024

RS/MMS/SAR-(29.10.2024) 6P 6C
Madurai Bench of Madras High Court is issuing
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