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

Tuesday, the Nineteenth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) Nos.2517 and 2554 of 2024

in

Crl.A.(MD) Nos.163 and 169 of 2024

VIJAYAN

... PETITIONER/ APPELLANT/ ACCUSED NO.1
IN CRL MP(MD)No. 2517 of 2024

BALAMURUGAN

...PETITIONER/ APPELLANT/ ACCUSED NO.2
IN CRL MP(MD)No. 2554 of 2024

Vs

THE INSPECTOR OF POLICE
NIBCID POLICE STATION,
THENI DISTRICT.

CRIME NO.19 OF 2022.

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

COMMON PRAYER IN CRL MP(MD)NOS. 2517 and 2554 OF 2024

Criminal Miscellaneous Petitions filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed against the Petitioner in CC.No.1126 of 2022 dt.25.9.2023 on the file of the I-Additional Special Court for NDPS Act Cases,Madurai and release the Petitioner on bail till the disposal of the main Appeal.

COMMON PRAYER IN CRL A(MD)NOS.163 and 169 OF 2024:

To call for the entire records connected to the judgment and CC.No.1126 of 2022 dt.25.9.2023 on the file of the I-Additional Special Court for NDPS Act

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Cases, Madurai and set aside the conviction and sentence imposed against the appellant.

Order : These Criminal Miscellaneous Petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.R.ALAGUMANI, Advocate for the petitioner in both petitions and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent in both petitions, the court made the following order:-

The petitioners have filed these Criminal Miscellaneous Petitions praying to suspend the sentence passed against them by the learned I Additional Special Judge for NDPS Act cases, Madurai, in C.C.No.1126 of 2022 dated 25.09.2023 and to enlarge him on bail, pending disposal of the Criminal Revision Case.

2. The petitioners herein are seeking their release on bail being arraigned as Accused Nos.1 and 2 in Crime No.19 of 2022 registered with the respondent Police, invoking Sections 8(c) read with 20(b) (ii) (C), 25 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]. The case of the prosecution is that on a secret information, the respondent police on 10.05.2022 conducted the search near Bodi Bus Stand, in which it is alleged that A1 was found to be in possession of 14 kgs of ganja and on the basis of confession given by A1, Accused Nos.A2 and A3 were called on to a particular spot by A1 and when A2 and A3 came in the vehicle bearing registration No.KL-03-B-5171, they were found in possession of 12 kgs of ganja. The accused



persons were charged for having been in possession of 26 kgs of ganja. After completion of investigation, the respondent police filed a charge sheet and the same was taken on file in C.C.No.1126 of 2022 before the learned I Additional Special Judge for NDPS Act cases, Madurai.

3. During trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 24 documents as Ex.P.1 to Ex.P.24 and marked 4 Material Objects as P.M.O.1 to P.M.O.4, whereas, the accused has neither adduced any oral evidence nor produced any documents.

4. The learned I Additional Special Judge, upon considering the evidences adduced and on hearing the arguments on both sides, convicted the petitioners/A1 and A2 and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.25,000/- with one year simple imprisonment in case of default. Challenging the above said conviction and sentence, the petitioners have preferred these Criminal Appeal along with the above Miscellaneous Petitions seeking suspension of sentence.

5. Learned counsel for the petitioners submitted that there is no evidence produced by the prosecution to substantiate the claim that A1 has invited A2 and A3.

The respondent police has framed the case against A1 and other accused to make out



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a case within the purview of commercial quantity. The respondent police has failed to file a full report with all particulars of arrest or seizure within 48 hours next after such arrest or seizure to his immediate superior and thereby, they failed to comply Section 57 of the NDPS Act. In the present case, though the detailed report of arrest/seizure was prepared on 10.05.2022, the same was sent to the Court along with the final report only on 01.11.2022, that too without endorsement of the immediate superior official. He submitted that the condition as mandated under Section 52(A) of the NDPS Act was not satisfied by the prosecution since the samples have not been drawn in the presence and supervision of Magistrate and thereby, the prosecution has not established the case beyond any reasonable doubt. Learned counsel further submitted that the total period of incarceration awarded to the petitioners was 5 years and they have already suffered incarcerated for more than 2 ½ years and hence, if the petitioners are released on bail, they are ready to abide any conditions imposed by this Court and thereby, he prayed for bail.

6. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor vehemently contended that the trial Court has categorically observed in its order qua compliance of Section 57 of the NDPS Act that Ex.20/detailed report has been signed by P.W.1 and the same was endorsed by P.W.3. In response to the contention of the

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learned counsel for the petitioner, with regard to Section 52(A) of the NDPS Act, the procedures need to be followed if the contraband is sought to be disposed immediately after the seizure. Learned Additional Public Prosecutor further submitted that the petitioner/A1 has involved in two other cases which are of similar in nature and thereby, he prays for dismissal of these petitions.

7. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

8. Considering the arguable points of the petitioners and the period of incarceration already suffered by the petitioners, this Court is of the prima facie view that the sentence is to be suspended pending this Appeal.

9. Accordingly, this Criminal Miscellaneous Petitions are allowed. The sentence imposed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.1126 of 2022 dated 25.09.2023 alone is suspended, subject to the following conditions:-

i) The petitioners shall execute a bond each 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 I Additional Special Judge for NDPS Act Cases, Madurai;



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ii) The petitioners 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 petitioners shall furnish their residential address and mobile numbers to the Trial Court i.e., learned I Additional Special Judge for NDPS Act Cases, Madurai.

iv) On breach of any of the aforesaid conditions, the learned I Additional Special Judge 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 I Additional Special 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.

10. Subject to the above conditions, these Criminal Miscellaneous Petitions are allowed.

sd/-
19/03/2024

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25/03/2024
Sub-Assistant Registrar (PA-II)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

- 1 THE I ADDITIONAL SPECIAL JUDGE
FOR NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
NIBCID POLICE STATION,
THENI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.R.ALAGUMANI, Advocate (SR-3390(I) & 3391[I] dated 19/03/2024)

ORDER
IN
Crl.M.P.(MD) Nos.2517 and 2554 of 2024
in
Crl.A.(MD) Nos.163 and 169 of 2024
Date :19/03/2024

PKP/25.03.2024/ 7P/ 7C

Madurai Bench of Madras High Court is issuing certified
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