



Crl.M.P.(MD) Nos.6615 of 2023 & 1326 and 1734 of 2024

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

Wednesday, the Twenty Eighth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) Nos.6615 of 2023 & 1326 and 1734 of 2024
in
Crl.A.(MD) Nos.340, 5 and 70 of 2023

KALEESHWARAN ... PETITIONER/ APPELLANT/ ACCUSED 1
IN CRL.MP(MD).6615/2023

JEYAMARI ... APPELLANT/ SOLE ACCUSED
IN CRL.MP(MD).1326/2024

KUMARAVEL ... APPELLANT/ ACCUSED 3
IN CRL.MP(MD).1734/2024

Vs

THE INSPECTOR OF POLICE
KEERAITHURAI POLICE STATION,
MADURAI CITY.
(CRIME NO.4/2021).

... RESPONDENT/ COMPLAINANT
IN ALL THE PETITIONS

Prayer in CRL.MP(MD).6615/2023:

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 imposed on the petitioner/appellant/accused no.1 namely Kaleeshwaran, S/o.Vijayan @ Vijayaramu, passed by the Learned II Additional Special Court for NDPS Act Cases, Madurai in CC No.280/2021 dt.8/11/2021 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

<https://www.mhc.org.in/judis>



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Prayer in CRL.A(MD).340/2023:

Pleaded to call for the records in C.C.No.280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

Prayer in CRL MP(MD). 1326/ 2024 :

To suspend the sentence imposed against the me in Learned II Additional Special Court for NDPS Act cases in C.C No. 280 of 2021 dt. 08.11.2022 and enlarge petitioner on bail pending disposal of the above appeal.

Prayer in CRL.A(MD).5/2023:

Pleaded to call for the records relating to the Judgment passed in C.C.No.280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same and acquit the Appellant/Accused No.4 from the charges leveled against him.

Prayer in CRL MP(MD). 1734/ 2024 :

To suspend the sentence imposed against the petitioner in C.C No. 280/2021 dt. 08.11.2022 on the file of the learned II Additional Special Court for NDPS Act cases, Madurai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

Prayer in CRL.A(MD).70/2023:

Pleaded to call for the records relating to the Judgment in C.C.No.280 of 2021 dated 08.11.2022 on the file of the Learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same and allow this Criminal Appeal.

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 M/S.JEGADEESH PANDIAN M, Advocate for the petitioner in CrI.MP(MD). 6615/2023 and Mr.G.KARUPPASAMY PANDIAN, Advocate for the Petitioner in CrI.MP(MD).1326/2024 and Mr.M.SUBASH BABU, Senior Counsel for Mr.C.SUSIKUMAR, Advocate for the in CrI.MP(MD).1734/2024 and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent in all the Petitions, the court made the following order:-



Reserved on	15.02.2024 & 23.02.2024
Delivered on	28.02.2024

The petitioners have filed these Criminal Miscellaneous Petitions praying to suspend their sentence imposed on them by the learned II Additional Special Judge for NDPS Act cases, Madurai, in C.C.No.280 of 2021 dated 08.11.2022 and to enlarge them on bail, pending disposal of the Criminal Appeals.

2. The case of the petitioners in a nutshell, is as follows:

a) There are four accused involved in this case. The petitioners herein are the third and fourth accused in C.C. No.280 of 2021. On 03.01.2021 at about 8.15 a.m., on information when the respondent police intercepted the accused two wheelers, it was found that they are in possession of 30 kgs of Ganja in their vehicles, wherein A1 & A2 are in possession of 15 kgs of contraband in one two-wheeler bearing Registration No.TN 64 U 2270 and A3 & A4 carried 15 kgs of contraband in another two-wheeler bearing registration No.TN 59 BP 7740, which is more than the “commercial quantity” as per the provisions of the Narcotic Drugs Psychotropic Substances Act, 1985 (for short, “the NDPS Act”). In this backdrop, the respondent police arrested the accused persons and recorded their confession statement. In view of the same, a case has been registered against the accused persons in Crime No. 4 of 2021 for the offences under Sections 8(c) r/w. 20 (b) (ii) (e), 25 and 29(i) of the NDPS Act.



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b) The petitioners herein / A1, A3 and A4 were convicted under Sections 8 (c) r/w. 20 (b) (ii) (c) of the NDPS Act and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1 Lakh each and in default, to undergo simple imprisonment for a further period of twelve months but however, they have been acquitted under Sections 25 and 29(i) of the NDPS Act.

3. Heard Mr.M.Jegadeesh Pandian, Mr.G.Karuppasamy Pandian, learned counsels, as well as Mr.Subash Basu, learned Senior counsel for the petitioners and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent respectively.

4. Since the issue involved in these cases are one and the same, they were taken up together and disposed of by a common order.

5. The learned counsel for the petitioner in CrI.M.P.(MD) No.6615 of 2023 submitted that that the petitioner herein is the first accused. He submitted that the contraband seized from the petitioner is only of intermediate quantity as the same was of 15 kgs and does not attract Section 37 of the NDPS Act but the trial Court had failed to take this aspect and committed error in arriving at the conclusion by convicting the petitioner under Commercial quantity. He further submitted that there are material contradictions in the evidences of the prosecution. Except this case, the petitioner herein has no other bad antecedents and prayed for grant of suspension of



sentence of the petitioner.

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6. The learned counsel for the petitioner in CrI.M.P.(MD) No.1326 of 2024 submitted that the petitioner herein is the fourth accused. No contraband was seized from the petitioner and only based on the confession statement of A3, the petitioner has been implicated in this case. He pointed out that the confession of co-accused is ipso facto and the same cannot be relied upon by the prosecution which was not even marked by them during trial. Furthermore, the samples ought to be taken in the presence of the learned Magistrate as per Section 52(A) of the NDPS Act whereas in this case, they were taken only by the police and violated the provision under Section 52(A) of the Act. As per provision of the Act, which contemplates the commercial quantity as 20 kg and the contraband recovered from the third and fourth accused is only 15 kgs and therefore the question of commercial quantity does not arise at all and raising objections under Section 37 of the NDPS Act is illegal.

7. The learned counsel for the petitioner in CrI.M.P.(MD) No.1734 of 2024 submitted that that the petitioner herein is the third accused. He would submit that no recovery was made from the petitioner and there was no mention about the alleged vehicle driven by the petitioner herein in any of the documents and exhibits during the said seizure. He drew the attention of this Court to the case of Yusuf @ Asif Vs. State in C.A.No.3191 of 2023 wherein the Hon'ble Supreme Court has held



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that in the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the learned Magistrate and that the inventory was duly certified by the learned Magistrate, it is obvious that the seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. In the present case on hand, the seized contraband was not drawn in the presence of the learned Magistrate and the same was not duly certified by him and hence, the entire case of the prosecution stands vitiated. Moreover, the provisions of Sections 42(1), 42(2) and 50(1) were not duly complied by the respondent and also that during the process of arrest, seizure and quantum of contraband, marking of evidence, there were many contradictions and no independent witnesses were examined, which creates reasonable doubts that the petitioner has been roped in this case. He further submitted that the petitioner is suffering from diabetics and he is the sole breadwinner of the family who is having two daughters and pleaded to suspend the sentence imposed on the petitioner.

8. Contrary to the submissions made by the learned counsel for the petitioners, the learned Additional Public prosecutor submitted that the earlier applications in this regard, filed by the petitioners herein were dismissed by this Court vide orders dated 31.01.2023 and 22.11.2023 respectively whereby the Court had passed a detailed order for refusing the prayer sought for by the petitioners for suspending



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their sentences and they are now with the third round of litigation before this Court.

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He contended that in view of the provision of Sections 35 and 54 of the NDPS Act, the burden is cast upon the accused to rebut the case of prosecution but they failed to prove their case by providing proper oral and documentary evidences during trial. The trial Court has specifically discussed the role played by the accused persons and their knowledge about the possession of the said contraband, which were not rebutted by the accused. To buttress his submission, the learned Additional Public Prosecutor cited the decision of the Hon'ble Apex Court in the case of Union of India through NCB Vs. MD Nawaz Khan reported in 2021 (10) SCC 100, wherein the Court has discussed about conscious possession. It is to be taken into account the typed-set of papers is ready for final hearing. As per the decision of the Hon'ble Apex Court in the case of State of M.P. Vs. Kajad reported in 2001 (7) SCC 673, wherein it has held that successive bail applications are permissible under change of circumstances.

9. The learned Additional Public Prosecutor pointed out that review of the earlier orders is not permissible under criminal law without change of circumstances which has dealt by the Hon'ble Apex Court in the case of Hari Singh Mann Vs. Harbhajan Singh Bajwa reported in 2001 (1) SCC 169. In this case, there is no change of circumstances. He also brought to the notice of this Court about the bad antecedents of the petitioners who have four (disposed), three and two previous cases



respectively. He would submit that it is the well settled proposition of law that the grant of bail is not automatic in the case of commercial quantity and the twin conditions adumbrated under Section 37(1)(b)(ii) has to be satisfied. He also quoted the various decisions of the Hon'ble Apex Court which are as follows:

- a)2009 (2) SCC 624 [Union of India Vs. Rattan Mallik @ Habul; and
- b)2020 (12) SCC 122 [State of Kerala and Others Vs. Rajesh]

10. Furthermore, he highlighted the order of the Hon'ble Supreme Court dated 12.02.2024 passed in S.L.P.(Crl.) No.8137 of 2022, wherein it has held that in case of recovery of a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents and also that, while entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

11. Concluding his submissions, he submitted that it is a case of recovery of 30 kgs of ganja and the contention of the accused that 15 kgs were recovered independently would be untenable when the accused had come together and arrested together. Supplementing his contentions, he submitted that fine amount have not been paid by the petitioners and pleaded for dismissal of the aforesaid petitions.



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12. Heard the rival submissions of the learned Counsels on either side and also perused the materials available on record.

13. In view of the foregoing discussions, this Court is of the considered view that as rightly held by the trial Court, the petitioners together were in possession of the contraband weighs 30 kgs which comes under the purview of commercial quantity and hence rejects the plea of the petitioners that it is of intermediate quantity. It is also to be noted that they have knowledge of the contraband and committed the said offence as alleged by the prosecution.

In the light of the decisions of the Hon'ble Apex Court as stated supra and the orders passed by this Court in their earlier applications and a detailed discussions of this Court in its order dated 22.02.2024 in CrI.M.P.(MD) Nos.10586 and 14218 of 2023, wherein it has dealt with the aspect of "conscious possession" and also taking note of the previous criminal antecedents of the petitioners, this Court dismisses the relief sought for by the petitioners in these Criminal Miscellaneous Petitions and accordingly, the Criminal Miscellaneous Petitions stand dismissed.

sd/-
28/02/2024

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/02/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

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

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
KEERAITHURAI POLICE STATION,
MADURAI CITY.

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

ORDER IN

Crl.M.P.(MD) Nos.6615 of 2023 & 1326 and 1734 of 2024
in Crl.A.(MD) Nos.340, 5 and 70 of 2023

Date :28/02/2024

SA/VR/SAR. /29.02.2024/10P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.