



Crl.MP(MD)No.4944 of 2024 in Crl.A(MD)No.1007 of 2024

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

Tuesday, the Twenty Seventh day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)No.4944 of 2024 in Crl.A(MD)No.1007 of 2023

SELVAM

... PETITIONER/ACCUSED NO.1

Vs

THE INSPECTOR OF POLICE
ELUMALAI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.137/2021)

... 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 sentence imposed by the Judgment dated 21/9/2023 in CC No.508/2021 passed by the Learned I Additional Special Judge for NDPS Act Cases, Madurai, pending disposal of this appeal and release the petitioner on bail.

Prayer in CRL A(MD).1007/2023 :

To call for the record and allow this appeal and acquit the appellant from all the charges by setting aside the impugned Judgment passed by the Learned I Additional Special Court for NDPS Act Cases, Madurai in C.C.No.508 of 2021 dated 21.09.2023.

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 MR.J.SELVAM, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the I Additional Special Judge for NDPS Act Cases, Madurai, in CC No.508 of 2021, dated 21/09/2023 and to enlarge him on bail pending disposal of the criminal appeal.

2.The case of the prosecution brief:-

On 04/05/2021 at 07.00 hours near Rengasamypatti Bus Stop, A1 was found in possession of 11 kgs of ganja and A2 was found in possession of 10 kgs of ganja having purchased from Rajamundiri, Andhra Pradesh. The respondent police after conducting search as per the procedure, seized the said contraband from A1 and other accused. After taking samples, they prepared mahazar and arrested the accused. Thereafter, a case has been registered in Crime No.137 of 2021 against the petitioner/A1 and other accused on the file of the respondent/Inspector of Police, Elumalai Police Station, Madurai District, for the offences punishable under Sections 8(c) read with 20(b) (ii) (C) of the NDPS Act, 1985. Thereafter, he was produced before the Court along with the contraband and was remanded to judicial custody.

3.After completion of investigation, the respondent police filed a final report and the same was taken on file in C.C.No.508 of 2021 before the I Additional Special

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Judge for NDPS Act cases, Madurai.

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4.During the trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 17 documents as Ex.P.1 to Ex.P.17 and marked 6 Material Objects as P.M.O.1 to P.M.O.6, whereas, the accused has neither adduced any oral evidence nor produced any documents.

5.The 1st Additional Special Judge, upon considering the evidences adduced and on hearing the arguments on both sides, convicted the petitioner/A1 for the offence under section 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.25,000/- with 12 months simple imprisonment in case of default.

6.Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7.Heard both sides.

8.This is the second application filed by the petitioner. The earlier application



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filed by the petitioner in Crl.MP(MD)No.16104 of 2023, was came to be dismissed by this court, on 10/01/2024 by making the following observation:-

“10.Admittedly, huge quantity of contraband was recovered from the petitioner/A1 along with other accused which falls within “Commercial Quantity” and the petitioner/A1 is also having five previous cases which are of similar in nature. The petitioner/A1 was in possession of commercial quantity of ganja in one of the aforesaid cases. In the present case, the petitioner/A1 was found in possession of 11 kg of ganja and the other accused was found in possession 10 kg of ganja and the learned trial Judge convicted the petitioner/A1 under Sections 8(c) read with 20 (b)(ii)(C) of NDPS Act and therefore, the statutory embargo created under Section 37 (1) (b)(ii) of NDPS Act. The petitioner/A1 has failed to satisfy this Court that there are reasonable grounds for believing that he is not guilty of such offence and also that he is not likely to commit any offence if enlarged on bail.

11.Accordingly, this Criminal Miscellaneous Petition is dismissed.”

9.The date of dismissal is 10/01/2024. Now this petition has been filed stating

that the the petitioner is in custody for more than 2-1/2 years; As per the judgment of

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the Hon'ble Supreme Court in Satender Kumar's case, since half of the sentence
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period is spent, he is entitled for bail.

10.But the learned Additional Public Prosecutor would submit that the petitioner is having previous cases numbering about 5, that was also intimated and noted by the previous Bench in the above said order.

11.Absolutely there is no change of circumstances. Now the type set is also ready, the petitioner is at liberty to argue the matter out of turn.

12.In the result, this miscellaneous petitions is dismissed. List the main appeal for final hearing on 09/09/2024.

sd/-
27/08/2024

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/09/2024

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

ER

TO

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

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

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

ORDER
IN

Crl.MP(MD)No.4944 of 2024 in Crl.A(MD)No.1007 of 2023

Date :27/08/2024

RK/VR (06/09/2024) 6P / 5C

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