



CRL MP(MD) No.5883 of 2024

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

Thursday, the Twenty Ninth day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.5883 of 2024

IN

CRL A(MD) No.519 of 2024

C.NAVEENKUMAR

... Petitioner / Appellant / Respondent

Vs

THE INSPECTOR OF POLICE
CUMBUM NORTH POLICE STATION,
THENI DISTRICT.

(CRIME NO.638/2021).

... Respondent / Respondent / Petitioner

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 in CC No.66/2022 on the file of the Ist Additional Spl. Courts for NDPS Act Cases, Madurai, dated 13/9/2019 u/s.8(c) r/w 20(b)(ii)(C) and 29(i) of the NDPS Act till the disposal of the instant Criminal Appeal Petition.

Prayer in CRL A(MD) No.519 of 2024:

To call for the records relating to the judgment in C.C.No.66/2022 dated 11.08.2022 on the file of the learned Additional District Judge / Ist Additional Special Court NDPS Act Cases and set aside the same and allow this criminal appeal.

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 M/s.S.VINODH, Advocate for the petitioner and of Mr.R.MEENAKSHI



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SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Additional District (FAC), 1st Additional Special Court for NDPS Act Cases, Madurai, in CC No.66 of 2022, dated 11/08/2023 and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution brief:-

On 02/09/2021, the Sub Inspector of Police attached to Cumbum North Police Station received a secret information at about 07.00 am that Ganja is being smuggled illegally. On the basis of the above said secret information, along with a police team, he visited the place of occurrence namely near 18 Canal Bridge, Cumbum Manikatti Banyan Tree road. The Police Informer identified one person with head load in White Colour fertilizer gunny bag along with two persons. PW2 Sub Inspector of Police and team of police members surrounded them and on enquiry, they revealed their name as Surendar, Jeya Surya and Naveenkumar. On search, they were found in possession of 21 kgs of Ganja. Sampling was undertaken as per the procedure. The accused were arrested on the spot and the report was prepared as per the procedure. Upon the above said occurrence, a case in Crime No.638 of 2021 was registered by the respondent police for the offence under sections 8(c) r/w 20(b)(ii)



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(C) and 29(1) of the NDPS Act. Thereafter, they were produced before the court along with the contraband and remanded to judicial custody.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in CC No.66 of 2022 by the I Additional Special Court for NDPS Act Cases, Madurai.

4.On the side of the prosecution, 3 witnesses were examined and 21 documents were marked. Apart from that, 2 material objects were exhibited. On the side of the accused, no oral and documentary evidence adduced.

5.At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- each, in default, to undergo 12 months Simple Imprisonment.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant/A3. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A3 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner/A3 would submit that even as per the case of the prosecution, no contraband was recovered from him, who carried 21 kgs of Ganja was not stated by the prosecution; No confession statement



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was recorded from any one of the accused; So the recovery projected by the prosecution itself is bad under law; He is also referring to various portion of the prosecution side evidence.

9.Per contra, the learned Additional Public Prosecutor would submit that all the three persons were found in the place of occurrence and it is a joint conscious possession; Since on the spot itself recovery was made, the absence of the confession statement does not affect the prosecution case.

10.Perusal of the records shows that PW2 the Sub Inspector of Police, Cumbum North Police Station on the basis of the secret information went to the place of occurrence. The police informer identified the accused persons in that place. Among the three persons, one was carrying bag and on subsequent search found containing the contraband. All the three persons disclosed their names. So, the non-mentioning of the persons, who carried the contraband will not affect the prosecution case. It is a matter for consideration in the main appeal.

11.During the course of cross examination, PW1 has stated that from all the three persons, Ganja was recovered. Whether that can be taken as means to say that it is the conscious possession or not is also a matter for consideration in the main appeal.

12.The learned counsel appearing for the petitioner also referring to PW2's



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evidence during the course of cross examination as to the identify of the persons, who carried Ganja bags and mentioning of the recovery particulars in the report prepared under 57 of the NDPS Act. He is also referring to the consent letter particulars.

13.It is admitted by the prosecution that except this case, the petitioner is involved in one other case. Since the only point to be considered in this appeal is whether it is a conscious possession or not? Since the quantity is a commercial quantity and the judgment of conviction has been rendered on 11/08/2023, unless the petitioner is able to convince this court that no offence is made out, he is not entitled for the discretion of suspension of sentence.

14.In the result, this criminal miscellaneous petition is dismissed. Since the main appeal itself is admitted for hearing, the Registry is directed to prepare the type set and list the matter for final disposal on 18/09/2024.

sd/-
29/08/2024

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/09/2024
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 Additional District Judge,
I Additional Special Court NDPS Act Cases, Madurai.

2.The Inspector of Police,
Cumbum North Police Station,
Theni 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.5883 of 2024

IN

CRL A(MD) No.519 of 2024

Date :29/08/2024

ED/ VR /SAR- (12/09/2024) 6P / 5C

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