



CRL MP(MD) No.4855 of 2024

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

Wednesday, the Fourth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)Nos.4855 & 4856 of 2024

in

Crl.A(MD)No.445 of 2023

RANJITHKUMAR

... PETITIONER/ APPELLANT
IN BOTH CRL MP's

Vs

THE INSPECTOR OF POLICE
TIRUMANGALAM TOWN POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.164/2021)

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

Prayer in CRL MP(MD).4855/2024 :

To permit the petitioner to adduce additional evidence to mark the newspaper of Thina Thanthi dated 24/4/2021 as Ex.D4, in CC No.365/2021 vide Judgment dated 27/4/2023 on the file of the Learned IInd Additional Special Court for NDPS Act Cases, Madurai pending disposal of the Crl A(MD)No.445/2023.

Prayer in CRL MP(MD). 4856/ 2024 :

To suspend the sentence imposed on the petitioner in CC No.365/2021 vide Judgment dated 27/4/2023 on the file of the Learned IInd Additional Spl. Court for NDPS Act Cases, Madurai and enlarge him on bail pending disposal of the Criminal Appeal.

Prayer in Crl.A(MD)No.445 of 2023 :

To call for the records and set aside the order of conviction and sentence passed by the Learned IInd Additional Special Court for NDPS Act Cases, Madurai in

<https://www.mhc.tn.gov.in/judis>



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C.C.No.365 of 2021 vide judgment dated 27.04.2023 and allow this appeal and acquit the Appellant/ Accused No.2 from the charge leveled against him.

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.M.VIVEK KUMAR, Advocate for the petitioner in both CRL MP's and of MR.M.SAKTHI KUMAR, Government Advocate (Crl.Side) on behalf of the Respondent in both CRL MP's, the court made the following order:-

Crl.MP(MD)No.4855 of 2024 is filed seeking permission of this court to adduce evidence and to mark the newspaper of Thina Thanthi, dated 24/04/2021 as Ex.D4 in CC No.365 of 2021, vide Judgment, dated 27/04/2023 on the file of the II Additional Special Court for NDPS Act cases, whereas Crl.MP(MD)No.4856 of 2024 has been filed to suspend the sentence imposed by the II Additional Special Court for NDPS Act Cases, Madurai, in CC No.365 of 2021, dated 27/04/2023 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution in brief:-

PW1 was the Sub Inspector of Police attached to Thirumangalam Town Police Station. He received a secret information on 24/04/2021 at about 11.00 am. After making entry in the General Diary, along with the police team he went to the place of occurrence namely Maravankulam Kanmai Bye-pass Bridge. At that time, he found two persons standing nearby an Auto bearing registration No.TN-58-V-7848 in a suspicious manner. On enquiry, they revealed their name as Thanush @ Thanushkudi and Raniith Kumar. A search was made, wherein they were found in possession of 15



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kgs of Ganja. Sampling was taken as per the procedure. After completing the official formalities, a case in Crime No.164 of 2021 was registered by the respondent police for the offences under section 8(c) r/w 20(b)(ii)(C) and 29(1) of NDPS Act.

3.After completion of investigation, final report was filed before the II Additional Special Judge for NDPS Act Cases, Madurai and the same was taken on file in CC No.365 of 2021.

4.Before the trial Court, on the side of the prosecution, 4 witnesses were examined and 10 documents were marked. Apart from that, 10 material objects were marked. On the side of the accused, 5 witnesses were examined and 3 documents were marked.

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 NDPS Act and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo simple imprisonment for a period of 12 months.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, seeking suspension of sentence, this petition is filed along with CrI.MP(MD)No.4855 of 2024 seeking permission of this court to lead additional evidence. Both petitions were heard together and this common order is passed.

7.This is the second application filed by the petitioner seeking suspension of



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sentence. Earlier application, which was moved by the petitioner along with A1 was dismissed by this court in Crl.MP(MD)No.8380 of 2023, dated 19/01/2024. After dismissal, this petition is filed seeking suspension of sentence along of with Crl.MP (MD)No.4855 of 2024.

8.A short point, which is involved in this matter is whether the petitioner was arrested and secured in Crime No.160 of 2021 on the file of the Thirumangalam Town Police Station on 23/04/2021 itself; Whether this case was foisted upon him, since he is involving in very many theft cases; His arrest was only informed to the higher officials by the Arresting Officer in Crime No.161 of 2021; Simultaneously, information was also given to the newspaper, which published the arrest of this petitioner and others; On 23/04/2021 at about 11.00 am, when he was secured in connection with the case in Crime No.160 of 2021, there is no possibility for him that he is available in the place of occurrence along with the contraband and the co-accused.

9.To prove that he was secured on that date, the petitioner made an attempt before the trial court to summon the newspaper correspondent, etc. But that came to be dismissed by the trial court stating that newspaper report is only a secondary evidence. Pointing out that, it also found that the stand taken by the petitioner is self-contradictory in nature. Because, as per his evidence, on 23/04/2021 he was available



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in his house. At the same time, he says that he was secured by the Arresting Officer in connection with Crime No.160 of 2021. So, self-contradictory stand cannot be taken, that was the finding of the trial court.

10. Another attempt was made by the petitioner after the remand by filing Crl.OP(MD)No.10824 of 2021 seeking bail on the very same ground. The Coordinate Bench of this Court, considering the above said issue recorded a finding that the issue can be tried to its logical conclusion at the time of trial. So, pending trial the petitioner was enlarged on bail. This is the third attempt made by the petitioner now after conviction on the similar and same issue.

11. Per contra, the learned Government Advocate (Criminal side) would submit that as per the records available in Crime No.160 of 2021, the petitioner was arrested only on PT warrant. After the arrest made in this case, the request made by the petitioner to send for GD entry was negated by this court, as the accused has no right to send for the GD entry. If at all, the court can make that exercise, that would be considered at the time of hearing the main appeal. Apart from that, several grounds are also made by the petitioner, which are not available to him at this stage.

12. Now, the point is narrow down, whether pending further evidence, in this case the petitioner is entitled for suspension of sentence.

13. For answering this question, we can straightway go to the judgment of the



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Hon'ble Supreme Court in Laxmi Raj Shetty and another Vs. State of Tamil Nadu (CDJ 1988 SC 326), wherein similar situation arose, the accused relied upon the newspaper report to show that he was not secured on the date mentioned by the prosecution. The relevant portion of the judgment is extracted hereunder:-

“26.It is now well-settled that a statement of fact contained in a newspapers is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The accused should have therefore produced the persons in whose presence the seizure of the stolen money from appellant no. 2's house at Mangalore was effected or examined the press correspondents in proof of the truth of the contents of the news item. The question as to the admissibility of newspaper reports has been dealt with by this Court in [Samant N. Balakrishna v. George Fernandez & Ors.](#),[1969] 3 SCR 603. There the question arose whether Shri George Fernandez, the successful candidate returned to Parliament from the Bombay South Parliamentary Constituency had delivered a speech at Shivaji Park attributed to him as reported in the Maratha, a widely circulated Marathi newspaper in Bombay, and it was said "A newspaper report without any further proof of what had actually happened through



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witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

14. In view of the above said settled proposition of law, the question which arises for consideration is whether CrI.MP(MD)No.4855 of 2024 can be allowed.

15. Perusal of the entire records shows that a specific question was put to the Investigating Officer as to whether the police station informed or gave information to the newspaper that the petitioner was arrested in connection with Crime No.160 of 2021. But an evasive answer was given by him. He has not answered for that. But he has not denied that no such information was given to the Press. When that is being so, the only alternative remedy or course available to the petitioner is to examine the concerned newspaper Correspondent, who gathered information from the police station as a witness. Whether this application must be heard along with main appeal has been answered by the Hon'ble Supreme Court in *Asim @ Munmum @ Asif Abdulkarim Solanki Vs. The State of Gujarat* (CRIMINAL APPEAL NO.184 of 2020, Dated 28/01/2020) observing that there is no such prohibition or restriction when



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the additional evidence is permitted to be let. The course available to this court is to take the evidence itself or can direct the trial court to record the evidence of the additional witness. That will be decided later. When the petitioner says that he was falsely implicated in this case and due opportunity must be given to him to exhaust all the remedies available, whether the additional evidence proposed to be adduced can be recorded or not by this court can be the matter for consideration at the time of hearing the appeal. I am not recording any opinion on that.

16.With the above said observation, Crl.MP(MD)No.4855 of 2024 stands allowed. But it is made clear that the petitioner must summon only the newspaper Correspondent, who gathered the information from the police station, but not other person.

17.When the additional evidence is permitted to be adduced by the petitioner herein, it may not be proper to keep the petitioner in custody, more-so in the light of the above said circumstances. Apart from that, it is also seen that recovery was not made from this petitioner, as mentioned above by the Coordinate Bench of this court while granting bail to the petitioner.

18.It is not the case of the prosecution that two persons namely this petitioner and A1-Thanush @ Thanushkodi were found in joint possession of 15 kgs of Ganja in an Auto. When admittedly no recovery has been made from this petitioner, whether



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this petitioner is also in conscious joint possession is a matter for consideration at the time of the main appeal and that too in the light of the above said circumstances.

19.Considering the above said facts and circumstances of the case and the period of incarceration and also considering the fact that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future, Crl.MP(MD)No.4856 of 2024 is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond 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 II Additional Special Court for NDPS Act cases, Madurai and on further condition that the petitioner shall appear before the said Court daily at 10.30 am until further orders.

sd/-
04/09/2024

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05/09/2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

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



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2 THE INSPECTOR OF POLICE, TIRUMANGALAM TOWN POLICE STATION,
MADURAI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+2 C.C. to MR.M.VIVEK KUMAR, Advocate SR.No.48821[F] & SR.No.48822[F]
Dated 04/09/2024

ORDER
IN

Crl.MP(MD)Nos.4855 & 4856 of 2024
in

Crl.A(MD)No.445 of 2023
Date :04/09/2024

RS//SAR-(05.09.2024) 10P 7C
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