



Crl.MP(MD)No.6894 of 2023 in Crl.A(MD)No.354 of 2023

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G.ILANGO VAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai, in CC No.50 of 2020, dated 05/04/2023 and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution brief:-

On 30/07/2021 at about 05.30 am when PW1 was in the police station received a secret information at about 06.00 am regarding the smuggling of contraband. Along with a team of policemen, they went to the place of occurrence. At that time, they found a white colour Car and 2 two wheelers. At that place, 10 male and a female was found. On seeing the police team, three of the male members escaped. Others were surrounded. On search, they revealed their name as Soundarapandian, Jeyaprakash, Packiyaraj, Elangovan, Kumar, Naresh, Muthuraja and Menaga. A search was made. At that time, they found in possession of contraband weighing about 25 kgs. Further sampling was undertaken as per the procedure. Upon the above said occurrence, a case in Crime No.359 of 2021 was registered by the respondent police for the offence under section 8(c) r/w 20(b)(ii)(C), 29(1), 25



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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.50 of 2022 by the Special Principal District and Sessions Court for EC and NDPS Act cases, Madurai.

4.On the side of the prosecution, 50 witnesses were examined and 51 documents were marked. Apart from that, 24 material objects were exhibited. On the side of the accused, no witness was examined, but one document was 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), 29(1), 25 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 6 months Simple Imprisonment.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant/A8. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A8 seeking suspension of sentence.

7.Heard both sides.



8.The learned counsel appearing for the petitioner would submit that section 50(4) of the NDPS Act is violated; Search ought to have been made only by Women Police Officer; But here, search was made by a team of male members; The contraband was sent to the Court only after 16 days, which is admitted by the Investigating Officer himself. According to him, arrest and seizure itself is doubtful, since regarding the notice, seizure mahazar and consent letter are differently entered.

9.Per contra, learned Additional Public Prosecutor would submit that there was no personal search on this petitioner; all the persons were carrying the bag, that was searched and there is no question of violating the search procedure.

10.Regarding the violation of search procedure, I find no merit. As per the prosecution, the bag alleged to have been carried by the accused was searched and not on person of the petitioner. Regarding the seizure, we need not concentrate much with regard to the arrest, seizure and entries made in the relevant records, which are all the matters for consideration at the time of hearing the main appeal.

11.Since 25 kgs of ganja was recovered on the spot,



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I find absolutely no reason to enlarge the petitioner by granting suspension of sentence, even now twin conditions have not been satisfied.

12.In the result, this miscellaneous petitions are **dismissed.**

06/09/2024

Index : Yes/No
Internet: Yes/No
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To,

- 1.The Principal Special Court
for EC and NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Usilampatti Town Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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