



CRL MP(MD) No.5235 of 2024

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

Friday, the Eighteenth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.5235 of 2024

IN

CRL A(MD) No.420 of 2024

R.GAWTHAM

AT PRESENT CONFINED IN CENTRAL PRISON MADURAI,
AS CONVICT PRISONER ... PETITIONER/ APPELLANT/ ACCUSED No.2

Vs

THE INSPECTOR OF POLICE
NIB-CID,
DINDIGUL DISTRICT.
CR.NO.09/2022

... 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 learned II Additional Special Court for EC and NDPS ACT Cases Madurai in CC.No.26/2023 dt 23.01.2023 and enlarge the petitioner on bail pending disposal of the criminal appeal.

PRAYER in CRL A(MD) No.420 of 2024:

To allow the above appeal and Call for the records set aside the conviction and sentence passed by judgment dated 25.04.2024 in C.C.No.26 of 2023 of II Additional Special Court for NDPS Act Cases, Madurai and acquit the appellant herein of all the charges.



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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.M.RAMU, Advocate for M/S.MANIMARAN.NA, Advocate for the petitioner and of Mr.R.MEENAKSHI 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 on the petitioner by the learned II Additional Special Court for EC and NDPS Act Cases, Madurai, in C.C.No.26 of 2023 dated 23.01.2023.

2. Learned counsel for the petitioner submitted that the petitioner, who is the second accused in this case, has been found guilty and convicted by the learned judge, for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act in and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo simple imprisonment for a further period of 2 years. Set off under Section 428 Cr.P.C. was also ordered.

3. The case of the prosecution in brief is that on 17.07.2022, the defacto complainant received a secret information that near Vadamadurai Bus Stop, Ganja is being transported illegally. Therefore, the defacto complainant along with his team of police people, went to the place of occurrence. At about 4.30 p.m., they were



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waiting near Vadamadurai bus stop. At that time, two persons were found coming to that place with two polythene bags. The informer identified the accused and they were surrounded. On enquiry, they revealed their names as Ramu and Gowtham. Search was made and they were found in possession of 20.500 Kgs of Ganja. Sampling was taken as per the procedure. A case was registered and final report was also filed before the trial court after completing the investigation process.

4. Before the trial Court, on the side of the prosecution 3 witnesses have been examined, 17 documents were marked. Apart from that three material objects were marked. On the side of the accused 2 witness were examined and no document was marked.

5. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner / accused. Pending appeal, the petitioner has filed a petition seeking suspension of sentence.

6. Learned counsel for the petitioner would submit that even as per the case of the prosecution, no recovery was made from this petitioner. Joint consent alleged to have been given, which is not valid under law. Mahazar and confession statement



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contained the crime number. The crime number was assigned only subsequent to the seizure and after reaching the police station. So the very mentioning of crime number in the recovery mahazaar, confession statement shows that the prosecution has created documents in foisting the case. Learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court reported in *2023 0 Supreme (Mad) 1073 in the case of K.Kumaresan Vs. State.*

7. Per contra, learned Additional Public Prosecutor would submit that eventhough recovery was made from the first accused, the petitioner who is the son of the first accused, was also carrying the bag and conscious possession must be imputed to the petitioner. Because he was trying to sell the contraband to the public. Involvement of this petitioner was also established by the prosecution during the course of trial.

8. Perusal of records and judgment of the trial Court shows that even before registering the FIR, the crime number is mentioned in the mahazar and confession statement. How it occurred and whether this will enure to the benefit of the petitioner is a matter for consideration in the appeal. Since commercial quantity is involved, unless the petitioner is able to satisfy the twin requirements as per Section



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37 of the NDPS Act, he is not entitled for the relief. But except stating the above said
mistake in the documents, no other sufficient ground is advanced by the petitioner
to satisfy the twin requirements. Therefore, no valid ground is stated by the
petitioner to enlarge him on bail, by exercising the discretionary power of this Court.

9. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
18/10/2024

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/10/2024

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

PNN

TO

- 1 THE II ADDITIONAL SPECIAL JUDGE
FOR NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
NIB-CID, DINDIGUL DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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ORDER
IN
CRL MP(MD) No.5235 of 2024
IN
CRL A(MD) No.420 of 2024
Date :18/10/2024

SS/MMS/SAR- /29/10/2024/ 6P/5C

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