



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

Crl.MP(MD)Nos.5441 in Cr.A(MD)No.60 of 2024
&
5442 of 2024 in Crl.A(MD)No.79 of 2024

WEB COPY

G.ILANGO VAN, J

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed against the petitioners/A4 and A5 in CC No.1242 of 2022, dated 22/12/2023 on the file of the I Additional Special Court for NDPS Act cases, Madurai and enlarge them on bail pending disposal of the Criminal Appeals.

2.The case of the prosecution is that on 04/06/2022 at about 03.00 pm, PW2 Inspector of Police received a secret information that contraband has been smuggled in a particular place. So, the police team went to Thoothukudi George Road Indira Nagar 2nd Street. At that time, five persons standing in a suspicious manner with white colour gunny bag. On seeing the police, all the persons tried to escape. But three persons napped, two persons escaped. On enquiry, they revealed their name as Ananthakumar, Charles and Padaiyappa @ Arunkumar and the escaped persons are Christopher and Ajan. On search, they found in possession of ganja oil weighing about 5 Kgs. Sampling was undertaken and further process was also taken. Upon the above said occurrence, a case in Crime No.397 of 2022 was registered by the respondent police for the offence under section 8(c)



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

r/w 20(b)(ii)(B), 28 and 29(1) of 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.1242 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 10 documents were marked. Apart from that, 16 material objects were exhibited. On the side of the accused, no oral and documentary evidence was 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 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 1 year Simple Imprisonment.

6.Challenging the conviction and sentence, these two separate appeals are preferred by the appellants/A4 and A5. Pending appeal, these criminal miscellaneous petitions were taken out by the petitioners/A4 and A5 seeking suspension of sentence.



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

7.Heard both sides.

WEB COPY

8.The learned counsel appearing for the petitioners would submit that the identity of the persons, who escaped from the place of occurrence was not properly established; How the identity of these petitioners was made, there is no proper explanation on the part of the prosecution; No identification parade was also conducted subsequent to the occurrence.

9.Per contra, the learned Additional Public Prosecutor would submit that these petitioners were arrayed through the evidence of PW2 and their names were also disclosed by the co-accused.

10.Perusal of the records shows that the petitioners were not involved in any offence of this nature. Now the prosecution says that these petitioners were also found in the place of occurrence from where ganja oil was seized. So, conscious possession must be taken against the petitioners.

11.The only point to be decided in the appeal is whether the identity of these petitioners was established during the course of trial.



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

12.It was the specific case of the petitioners before the trial court that they were not present in the place of occurrence. But a finding has been recorded by the trial court stating that such an issue was not raised during the course of trial.

13.The learned counsel appearing for the petitioners also brought to the notice of this court the cross examination to the Investigating Officer as well as PW1.

14.Whether identification parade was conducted after the occurrence is not clear on record. It is also seen that no contraband was recovered from these petitioners. Except the PW1's evidence that the identity of those persons came to notice on the disclosure statement made by the co-accused. So, whether in those circumstances, the conviction and sentence recorded against the petitioners is legal is the only point to be decided in the main appeal.

15.Apart from that, the learned Additional Public Prosecutor would submit that A5-Ajan was involved in more than seven cases, but not similar nature. In some of the cases, he was acquitted and some of the cases are pending.



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

16. But however, considering the fact that no other material is available to connect these petitioners into the crime.

17. Considering the above said facts and the period of incarceration and also considering the fact that there are arguable points involved in these criminal appeals and further the criminal appeals are not likely to be taken up for final hearing in the near future, these criminal miscellaneous petitions are **allowed** and the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that they shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the Additional District and Sessions Judge, I Additional Special Court for NDPS Act cases, Madurai and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.30 am until further orders.

12/09/2024

Index:Yes/No
Internet:Yes/No

er



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

To,

WEB COPY

- 1.The Additional District Judge,
I Additional Special Court for NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.



WEB COPY



Crl.MP(MD)Nos.5441 in Crl.A(MD)No.60 of 2024 and
5442 of 2024 in Crl.A(MD)No.79 of 2024

G.ILANGOVAN, J.,

er

Crl.MP(MD)Nos.5441 and 5442 of 2024
in
Cr.A(MD)Nos.60 and 79 of 2024

12.09.2024