



Cr1.MP(MD)No.10483 of 2023 in Cr1.A(MD)No.584 of 2023

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Additional District, I Additional Special Court for NDPS Act cases, Madurai, (FAC) in CC No.80 of 2023, dated 12/06/2023 and enlarge the petitioner/A1 on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

On 15/10/2010 at about 04.45 pm, the accused persons were found in possession of 25 kgs of ganja near Sadchipatti Masana Temple in a bike bearing registration No.TN-59-S-0543 that was referring to A1. So far as A2 and A3 are concerned, they were found in possession of 26 kgs ganja bearing registration No.TN-63-B-4519. Totally, 51 kgs of ganja were seized from the place of occurrence by the police team comprising PW3. Sampling was taken as per the procedure. After completing the official formalities, a case in Crime No.45 of 2010 was registered by the respondent police for the offences under section 8(c) r/w 20(b) (ii) (C) and 25 of the NDPS Act.

3.After completion of the investigation, the respondent police filed a final report and the same has



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been taken cognizance in CC No.235 of 2010 by the 1st Additional Special Court for NDPS Act Cases, Madurai.

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4.All the 6 accused persons were facing trial originally in CC No.235 of 2010. Except the petitioner/A2, others tried in the above said case. During the course of trial process, this petitioner was absconding. So, the case was split up against the petitioner and renumbered as CC No.80 of 2023.

5.On the side of the prosecution, 4 witnesses were examined and 12 documents were marked. Apart from that, 8 material objects were exhibited. On the side of the accused, no oral and documentary evidence was adduced.

6.The original parent case in CC No.235 of 2010 ended in acquittal against A1 and A3 to A6, by judgment, dated 14/03/2023. Later, this petitioner was secured and trial conducted in CC No.80 of 2023, in which the petitioner was found guilty, by judgment, dated 12/06/2023, for the offence under section 8(c) r/w 20(b)(ii)(C) of NPDS Act and sentenced him to undergo 10 years rigorous imprisonment and imposed a fine of Rs.1,00,000/- in default to undergo 1 year simple imprisonment.



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7.Challenging the conviction and sentence, this appeal is preferred by the appellant/A2. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A2 seeking suspension of sentence.

8.Heard both sides.

9.The learned counsel appearing for the petitioner/A2 would submit that on the very same set of facts in the parent case, all the accused were acquitted and direction was issued to the Superintendent of Police, Madurai to initiate action against the erring police officials. But quite contrary to the above said finding, this case has been tried and came to the opposite conclusion that the charge was proved by the prosecution beyond all reasonable doubt. That is called in question in the appeal.

10.Per contra, the learned Additional Public Prosecutor would submit that this petitioner/A2 found escaped from the place of occurrence and by this time, before the trial court, the involvement of this petitioner came to be established beyond reasonable doubt. According to him, there is no error in the judgment of the trial court.



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11.The only point to be considered in this appeal is the trial court is right in its finding of conviction and sentence on the very same set of facts and evidence as stated above.

12.Considering the above said facts, 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, this criminal miscellaneous petition is **allowed** and the substantive sentence of imprisonment alone is suspended and the petitioner¹ 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 Additional District Judge, I Additional Special Court for NDPS Act Cases, Madurai (FAC) and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 am until further orders.

25/09/2024

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

- 1.The Additional District Judge,
I Additional Special Court for NDPS Act cases,
Madurai (FAC).
- 2.The Inspector of Police,
Uthappanaickanur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Madurai.



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