



CRL MP(MD) No.9106 of 2024

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

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

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.9106 of 2024

in

CRL A(MD) No.714 of 2024

ANANTHAN

... Appellant / Accused No.1

Vs

THE INSPECTOR OF POLICE
SEDAPATTI POLICE STATION,
MADURIA DISTRICT.
(CRIME NO.123/2022).

... 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 on the petitioner by order dated 29/5/2024 passed in CC No.430/2023 on the file of the Learned Principal Special Judge for EC and NDPS Act, Madurai and enlarge the petitioner pending disposal of the above Criminal appeal.

Prayer in CRL A(MD) No.714 of 2024:

To call for the records pertaining to the judgment made in C.C.No.430 of 2023 dated 29.05.2024 passed by the learned Principal Special Judge for EC and NDPS Act, Madurai and set aside the same by allowing this appeal.

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 M/s.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of



CRL MP(MD) No.9106 of 2024

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 by the Principal Special Judge for EC and NDPS Act Cases, Madurai in CC No.430 of 2023 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

On 07/10/2022 PW2 was working as Sub Inspector of Police, on duty at Sedapatti Police station, on 07/10/2022 he received a secret information stating that the contraband has been smuggled in a particular place. Along with PW1 and other police officials, they went as a team near Kalapanpatti Crematorium. The accused persons, on seeing the police party tried to run away from that place. They were nabbed. On enquiry, they revealed their name as Anand, Sethuraman and others stated their name as Ananda Kumar, M.Balchami of Kammalapatti. They were found in possession of a two wheeler bearing registration No.TN-58-BV-0292. On suspicious, they searched the box, which contained the contraband. It was weighed and found 10 kgs in two separate bags. Sampling was under taken as per the procedure. Upon the above said occurrence, a case in Crime No.123 of 2022 was registered by the respondent police for the offence under section 8(c) r/w 20(b)(ii)



CRL MP(MD) No.9106 of 2024

(C), 25, 29(1) 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.430 of 2023 by the Principal Special Judge for EC & NDPS Act cases, Madurai.

4.On the side of the prosecution, 9 witnesses were examined and 68 documents were marked. Apart from that, 3 material objects were exhibited. On the side of the accused, no witness was examined and 2 documents were marked.

5.At the conclusion of the trial process, the trial court found the accused guilty of the offences under section 8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act and sentenced him 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/A1. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A1 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner/A1 would submit that on the very same set of facts, the co-accused were acquitted by the trial court; But that benefit was not extended to this petitioner; Section 52 of the NDPS Act has not been



CRL MP(MD) No.9106 of 2024

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properly complied and it is out and out creates doubt about the defence in respect of the place of occurrence and the examination of defence side evidences were not properly appreciated by the trial court.

9.Per contra, the learned Additional Public Prosecutor would submit that along with the contraband, this petitioner was arrested red handed and the trial court rightly convicted the petitioner. So no indulgence need be shown.

10.Now we will go to the judgment of the trial court regarding the complaint made by the petitioner in respect of the co-accused. As mentioned in the preamble portion, it is the case of PW2 that three persons were found in the place of occurrence. Out of three persons three persons run away from that place and other two persons were nabbed in the occurrence place itself.

11.No doubt that some confusion exist with regard to the number of persons available in the place of occurrence; there is contradiction between the evidence of PW1 and PW2 on this aspect. PW1 says that out of three persons, one person went hiding and two others were arrested on the spot, among the two persons, this petitioner is named as A1 and based upon his confession statement only, the contraband was recovered. On the side of the accused DW1 was examined, who stated to be the Panchayat President to show that there was no traces in the occurrence place. This is the only weak piece of evidence. On that account, it was



CRL MP(MD) No.9106 of 2024

rightly rejected by the trial court. Whether the rejection is correct or not is a matter for consideration at the time of hearing the main appeal. But as contended by the petitioner, the co-accused were not acquitted on the very same ground. But this ground is not available to the petitioner.

12.Perusal of the entire records shows that the contraband has been smuggled from Andhra Pradesh. Considering the commercial quantity of the contraband, this court is not inclined to exercise the discretion in favour of the petitioner.

13.In the result, these miscellaneous petitions are dismissed.

sd/-
18/09/2024

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/10/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

1.The Principal Special Judge
for EC and NDPS Act, Madurai.

2.The Inspector of Police,
Sedapatti Police Station,
Madurai District.



CRL MP(MD) No.9106 of 2024

3.The Superintendent,
Central Prison, Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.DINESH, Advocate (SR-11388[I] dated 19/09/2024)

ORDER
IN
CRL MP(MD) No.9106 of 2024
in
CRL A(MD) No.714 of 2024
Date :18/09/2024

ED/ JGB /SAR- (18/10/2024) 6P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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