



CRL A(MD) No.626, 561 and 613 of 2023

WEB COPY

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

Monday, the Twenty Ninth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) Nos.11048, 14414 and 10767 of 2023

in

CRL A(MD) No.626, 561 and 613 of 2023

SARAVANAKKUMAR @ VAZHAIPAZHA SARAVANAKUMAR

... Petitioner / Appellant / Accused No.1
in CRL MP(MD) No.11048 of 2024

JAYAPAL

... Petitioner / Appellant No.4
in CRL MP(MD) No.14414 of 2023

KANNAN @ MOKKAI KANNAN

... Petitioner / Appellant
in CRL MP(MD) No.10767 of 2023

Vs

THE INSPECTOR OF POLICE
MATHICHAYAM POLICE STATION,
MADURAI,
(CRIME NO.354/2021)

... Respondent / Respondent / Complainant
in all petitions

Prayer in CRL MP(MD). 11048/ 2023 :

To suspend the sentence imposed by the I Additional Special Court for NDPS Act cases, Madurai in CC.No.556 of 2021 dated 29.05.2023 enlarge the petitioner on bail till the disposal of the above criminal appeal



CRL A(MD) No.626, 561 and 613 of 2023

Prayer in CRL A(MD). 626/ 2023 :

To admit this Criminal appeal on file and to call for the records pertaining to the C.C.No.556 of 2021, on the file of I Additional Special Court for NDPS Act cases, Madurai and set aside the order, dated 29.05.2023.

Prayer in CRL MP(MD). 14414/ 2023 :

To suspend the sentence and release him on Bail pending disposal of the Criminal Appeal before this Honble Court against the Judgment in CC No.556/2021,dt.29.05.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai pending disposal of the appeal on such terms and conditions as may be deemed fit.

Prayer in CRL A(MD). 561/ 2023 :

To call for the records in C.C.No.556 of 2021, dated 29.05.2023 on the file of the I Additional Special Court for NDPS Act cases, Madurai and set aside the same and acquit the appellant.

Prayer in CRL MP(MD). 10767/ 2023 :

To suspend the execution of the sentence, was passed by the judgment of conviction and sentence in CC.No.556/2021 dated 29.05.2023 on the file of the 1st Additional Special Court for NDPS Act Cases, Madurai and to release the petitioner on bail pending disposal of the criminal appeal.

Prayer in CRL A(MD). 613/ 2023 :

To call for records and set aside the judgment of conviction passed against the appellant / accused dated 29.05.2023 in C.C.No.556 of 2021 on the file of the Additional District Judge, I Additional Special Court for NDPS Act cases, Madurai and allow this criminal appeal.

Order : These criminal miscellaneous petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.NANTHAKUMAR.J, Advocate for the petitioner in CRL MP(MD) No.11048 of 2023 and of Mr.R.VENKATESAN, Advocate for the petitioner in CRL MP(MD) No.14414 of 2023 and of Mr.A.JEYARAM, Advocate for the petitioner in CRL MP (MD) No.10767 of 2023 and of Mr.S.RAVI, Additional Public Prosecutor on behalf of the Respondent in all petitions, the court made the following order:-



WEB COPY



CRL A(MD) No.626, 561 and 613 of 2023

Reserved on : 06.12.2023

Pronounced on : 29.01.2024

The respective petitioners have filed these respective petitions to suspend the sentence imposed against them by the learned I Additional Special Judge for NDPS Act Cases, Madurai in C.C.No.556 of 2021 by judgment dated 29.05.2023 and to enlarge them on bail pending disposal of the Criminal Appeals.

2.The brief facts of the prosecution case:

P.W.2 Sub Inspector of Police, Mathichiyam Police Station, Madurai received a secret information on 21.06.2021 at 8.00 a.m. that the Accused No.1/Saravanakumar @ Vazhaipazha Saravanakumar, Accused No.2 Kannan @ Mokkaikannan, Accused No.3/Mukesh @ Mookkan, Accused No.4/Jayapal and Accused No.5/MaitheenKani were smuggling ganja from an old damaged and demolished building near Mahina Mosque, Vaigai Vadakari Road, Madurai. On the same day at 9.00 a.m. P.W.2 and his team police officials along with informant went to the said occurrence place. The informant identified the accused and left the spot. P.W.2 and police party surrounded and caught hold of Accused Nos.1 to 4, whileso Accused No.5/ Maitheen Kani escaped from the place. The P.W.2 made search upon consent letters separately obtained from Accused Nos.1 to 4 and they found in possession of 22.500 kgs of Ganja purchased from Checkanurani and Accused



CRL A(MD) No.626, 561 and 613 of 2023

WEB COPY

No.1/Saravanakumar @ Vazhaipazha Saravanakumar gave confession and handed over gunny bag containing 22.500 kgs ganja and seized them in the presence of witnesses. P.W.2 took two samples of 50 grams each and repacked the remaining Ganja. P.W.2 arrested the accused and returned to police station and registered a case in Crime No.354 of 2021 for the offence under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act. P.W.3 did investigation and laid charge sheet against the petitioners/Accused Nos.1 to 5. The accused were charged under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act.

3. To prove the charge, the prosecution examined 3 witnesses as P.W.1 to P.W.3 and marked 18 exhibits as Ex.P.1 to Ex.P.18 and M.O.1 to M.O.3 were marked. No witness was examined on the accused side, however, Ex.D.1 to Ex.D.3 were marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioners guilty for the offence under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act and convicted and sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs.1,00,000/- (Rupees One lakh only) each, in default, to undergo simple imprisonment for a period of 12 months each and acquitted Accused Nos.1 to 4 from the charge under Section 29(1) of NDPS Act and acquitted Accused No.5 from all the charges and directing the period of incarceration already undergone to be setoff under Section 428 of Cr.P.C. by



CRL A(MD) No.626, 561 and 613 of 2023

passing impugned judgment dated 29.05.2023.

WEB COPY

4. Aggrieved by the conviction judgment, the petitioners/Accused Nos.1, 2 and 4 preferred the present Criminal Appeals before this Court. Along with appeal, the petitioners/ Accused Nos.1, 2 and 4 filed these respective Criminal Miscellaneous Petitions seeking for suspension of sentence and for bail till the disposal of the appeal.

5. Heard both sides and perused the records in these Criminal Miscellaneous Petitions.

6. The learned counsel for the petitioners has submitted that the petitioners/Accused Nos.1 and 2 were arrested on 20.06.2021 in Crime No.351 of 2021 and 352 of 2021 in connection with Section 75 of TN City Police Act and this was admitted by the P.W.3 in his cross examination. But, the respondent police alleged that on information P.W.2 and the police party visited the occurrence place on 21.06.2021 at 9.00 a.m. and seized a white bag containing 22.500 kg of ganja from the petitioners and co-accused. There were no independent witness for such seizure. Moreover, the prosecution witnesses clearly deposed that the occurrence place was a public place and having frequent movement of people and they have not called any independent witnesses. The alleged consent letter obtained from the petitioners are printed one and there is no evidence whether any typing instrument was



CRL A(MD) No.626, 561 and 613 of 2023

WEB COPY

available at the occurrence place. Further, the police party took spring balance (Vil Tharaasu) and there is no evidence whether the police brought any weight stone 50g, 100g and 1 kg as they deposed that they took two 50 gram sample ganja and remaining 22.400 kg was repacked. The petitioners got abrasive injuries and this was noted by the learned Judicial Magistrate at the time of remand. There is no explanation on the prosecution side. The prosecution has not followed the provisions of Sections 42, 50 and 57 of NDPS Act. P.W.1 to P.W.3 are all police officials and they are interested witnesses and there is no independent witness in this case. There is no material available on record to attract the alleged offences. The alleged informant was not examined in this case. The trial Court has not properly appreciated the above aspects and merely given a formal conviction judgment based on the evidence of police officials and sentenced them to rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-. The petitioners are in prison from the date of arrest i.e., from 21.06.2021. Moreover, the appeal has been taken on file by this Court and it would get further time for disposal and the Hon'ble Supreme Court held that if the Court is not in a position to hear the appeal within a reasonable period, the accused be released on bail. The petitioners have a fair chance of succeed in the appeal. Therefore, the learned counsel for the petitioners prays for suspension of sentence and bail for the petitioners. In support of his above



CRL A(MD) No.626, 561 and 613 of 2023

WEB COPY

contentions, the learned counsel for the petitioners/accused relied on the order passed by the High Court at Calcutta in CRAN.No.1 of 2019 in C.R.A.6 of 2019 dated 18.10.2023.

7. Per contra, the learned Special Public Prosecutor would contend that there are five accused and Accused No.5 was acquitted. Accused Nos.1 to 4 were convicted and sentenced to imprisonment of 10 years and fine. Accused Nos.1 to 4 were spot arrested by the police officials on information and seized 22.500 kg of ganja from the accused. Before search, the petitioners/accused were duly informed about their right available under the Act to be searched in the presence of a Magistrate or Gazetted Officer, but the petitioners refused to avail that opportunity and consented search and executed consent letters - Ex.P.1 to Ex.P.4. Within 48 hours the P.W.2 sent the arrest of the accused and seizure of ganja to the higher officials by a detailed report. P.W.2 was properly authorized by the higher officials for taking action in this case. This was not categorically cross examined by the petitioners. So, the prosecution agency followed the mandatory provisions of Sections 42, 50 and 52. Regarding previous day arrest of the petitioners, the petitioners were released on bail by the police concerned even previous day of this case occurrence and this was discussed by the trial Court relying on evidence adduced by the prosecution. The petitioners have not disproved the seizure of ganja



CRL A(MD) No.626, 561 and 613 of 2023

WEB COPY

from them and they have not produced acceptable material that they were not found with possession of ganja. The information of the informant has been marked as Ex.P18. In nature of this case on hand, the non-examination of informant would not affect the prosecution case. The petitioners are not entitled to suspension of sentence as per Sections 32 and 37 of the NDPS Act. It is held by the Hon'ble Supreme Court that the Appellate Court should bear in mind that in a murder case the accused commits murder of one or two persons, while those accused who are dealing in narcotic drugs are instrumental in causing death or in inflicting death blow to a number of innocent young victims while considering suspension petitions. The Appellate Court can only exercise the power of suspension of sentence within the parameters prescribed as per Section 37 of the Act. The petitioners have not fulfilled the said parameters. Moreover, the petitioners are having number of previous cases from the year 2015 and produced list of previous cases against the petitioners. In this case, the prosecution clearly proved that the seizure of ganja from the accused and the offence should be viewed strictly and seriously. The incarceration period of petitioners is immaterial in the nature of this case. The Trial Court has rightly appreciated the evidence and correctly passed the judgment convicting the accused as stated therein. Therefore, he strongly opposed to grant suspension of sentence and bail. In support of his argument, the learned Special Public Prosecutor has relied



on the citation reported in (2000) 8 Supreme Court Cases 437 (Dadu alias Tulsidas /vs/ State of Maharashtra).

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioners were found guilty of possession of commercial quantity of ganja under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. The learned counsel for the petitioners mainly contended that the mandatory procedures are not complied with, which are contained in Sections 42 and 50(1) of NDPS Act. In this case, P.W.2 is the Sub Inspector of Police who is authorized for search and seizure as per G.O.Ms.No.161 Prohibition and Excise (VII) Dept dt:18.08.1992. when the officer who conducted search and seizure was not authorized then only Section 42 would come into play. But, in this case P.W.2 is an authorized officer. The next contention of the petitioners is that the prosecution has not followed the provision of Section 50. As per Section 50, it becomes applicable when there is a physical search of the person, but in this case, the petitioners were found in possession of white gunny bag containing 22.500 kg ganja and the same was seized upon reliable information. So, this aspect would be looked into only at the time of hearing the appeal. The petitioners seek only suspension of sentence and so the conditions spelt out in Section 37 of NDPS Act has to be necessarily taken into consideration. The main two conditions are the Court must be satisfied that the accused has not committed the



WEB COPY

offence and the other is that in the event of his release he would not commit such offence again. At this juncture, the prosecution filed a list of previous cases against the petitioners for which the petitioners have not produced any contra material as to whether those cases were ended in their favour. It is a settled principle that an accused is presumed to be innocent till he is held guilty by a Court of law and once the accused is held guilty at the conclusion of trial before a Court of law, then the presumption of innocence gets erased. Since the petitioners are having previous number of cases, the condition under Section 37 of the Act is not satisfied by the petitioners.

9. It is pertinent to mention the principle laid down by the Hon'ble Supreme Court while considering the suspension of sentence.

“In a judgment rendered in Salem Advocates Bar Association, Tamil Nadu v. Union of India, 2005 (3) RCR (Civil) 530 (SC) : 2005 (3) Civil Court Cases 420 (SC), the Apex Court while dealing with the issue of disposing of the appeals under different Acts including the NDPS Act laid certain guidelines for the Courts to make an endeavour to dispose of the appeals within a fixed period by putting the cases in different tracks. The same are reproduced as under:



WEB COPY

“Criminal Appeals should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment cases, rape, sexual offences, dowry death cases should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature should be kept in Track III. Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V - all other offences.

The endeavour should be to complete Track I cases within a period of six months. Track II cases within nine months. Track III within a year, Track IV and Track V within fifteen months.”

We, therefore, feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under :—



WEB COPY

(i) Where the convict is sentenced for more than ten years for having in his conscious possession of commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of six years, which must include at least fifteen months after conviction.

(ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include at least fifteen months after conviction.

(iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include at least twelve months after conviction

(iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case but his case is not covered by the



WEB COPY

offences punishable under section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include at least twelve months after conviction.

30. In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand and other connected cases convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the 'Act'.

31. Similarly a convict who is sentenced for the commission of an offence punishable under sections 31 and 31A of the Act shall not be entitled to be released on bail by virtue of this order.



WEB COPY

32. The principles enumerated above would, however, have no effect on the concession of bail, otherwise provided under the provisions of the Act or any other law for the time being in force. At the same time these principles would also not affect the right of any convict to apply for interim suspension of sentence on account of any exceptional hardship, which shall be dealt with according to the facts of the each individual case, nor shall it affect the right of convict to seek bail on the merits of case.”

As per above settled principle, where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include at least fifteen months after conviction.

10. On perusal of case records on hand and on perusal of citations relied on by both sides, the trial Court has passed conviction against the petitioners in a narcotic case, which cannot be dealt with as like other offences as it is settled that the offences under NDPS Act should be viewed strictly and seriously. The arguments of the petitioner are points to be decided only at the time of disposal of the Criminal Appeal. The petitioners are admittedly in prison from 21.06.2021 and the petitioners



CRL A(MD) No.626, 561 and 613 of 2023

were convicted and sentenced to undergo 10 years Rigorous Imprisonment on 29.05.2023 for their possession of commercial quantity of ganja. Therefore, this Court holds that the petitioners have not completed the above period of incarceration. Considering the period of incarceration already suffered by the petitioners in the present case, it does not deem it appropriate to suspend the sentence awarded against them. Therefore, considering the gravity of offence and short period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, these Criminal Miscellaneous Petitions are dismissed.

sd/-
29/01/2024

/ TRUE COPY /

/02/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

1.The I Additional Special Judge for NDPS Act Cases,
Madurai.

2.The Inspector of Police,
Mathichiyam Police Station,
Madurai.



CRL A(MD) No.626, 561 and 613 of 2023

3.The Superintendent,
Central Prison, Madurai.

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

+1 CC to M/s.J.NANTHAKUMAR, Advocate (SR-1063[I] dated 29/01/2024)

ORDER
IN
CRL MP(MD) Nos.11048, 14414 and 10767 of 2023
in
CRL A(MD) No.626, 561 and 613 of 2023
Date :29/01/2024

ED/ GS /SAR- (27/02/2024) 16P / 6C

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