



CRL MP(MD) No.8918 of 2024

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

Tuesday, the Twenty Second day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) Nos.8918 and 8720 of 2024

in

CRL A(MD) Nos.708 and 695 of 2024

JEEVA

... Petitioner / Appellant
in CRL MP(MD) No.8918 of 2024

ALAGARRAJA

... Petitioner / Appellant
in CRL MP(MD) No.8720 of 2024

Vs

THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI.

(NCB F.NO.48/1/03/2020/NCB-MDU)

... Respondent / Respondent
in both petitions

Prayer in CRL MP(MD). 8918/ 2024 :

To suspend the execution of sentences of imprisonment passed in the Judgment of conviction and sentence in CC No.577/2021 dated 7/9/2023 on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai and enlarge the petitioner.

Prayer in CRL A(MD) No.708 of 2024:

To call for the records pertaining to the conviction and sentence passed C.C.No.577 of 2021 on the file of the learned II Additional Special Court for NDPS



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Act Cases, Madurai dated 07.09.2023 and set aside and as illegal and acquit the appellant/A4.

Prayer in CRL MP(MD). 8720/ 2024 :

To suspend the execution of sentences of imprisonment passed in the Judgment of conviction and sentence in CC No.577/2021 dated 7/9/2023 on the file of the learned II Additional Special Court for NDPS, Court Act Cases, Madurai.

Prayer in CRL A(MD) No.695 of 2024:

To call for the records pertaining to the conviction and sentence passed in C.C.No.577 of 2021 on the file of the learned II Additional Special Court for NDPS Court Act Cases, Madurai dated 07.09.2023 and set aside the same and as illegal and acquit the appellant/ A3.

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.S.VIKRAM, Advocate for the petitioner in both petitions and of Mr.C.ARULVADIVEL @ SEKAR, Special Public Prosecutor for NCB Cases on behalf of the Respondent in both petitions, the Court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed on the petitioners by the learned II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.577 of 2021 dated 07.09.2023.

2. The learned counsels for the petitioners submitted that the petitioner / first accused in this case, has been found guilty and convicted by the learned judge, for the offence under Section 8(c) read with Section 20(b)(ii)(C) and under Section 25 of NDPS Act and sentenced to undergo twelve years rigorous imprisonment and imposed a fine of Rs.1,00,000/- in default to undergo one year, the period of incarceration already undergone by the accused from 02.01.2021 to till date is



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ordered to be set off under Section 428 of Cr.P.C.

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3. The case of the prosecution in brief is that P.W.2 is the Intelligence Officer, NCB, Madurai. On 31.12.2020, he received a secret information from an informer that some persons are transporting huge quantity of contraband through a four wheeler bearing registration number KL 45 B 5904. After completing the official formalities, along with team of officials belongs to his department, went to the place of occurrence namely Kallimanthaiyam junction area. At that time, a Tata Indica car bearing registration number KL 45 B 5904 was coming. On seeing the police team, one of the occupants, alight from the car and escaped from the place. Later they found four persons in the car. They were surrounded and on enquiry they revealed their names as Kannan, Arivalagan, Alagarraja and Jeeva. On suspicion, search was made and the car found contained 80 Kgs of Ganja. They disclosed that they purchased the same from Andhra Pradesh and transporting. Sampling was taken as per the procedure and on the basis of the occurrence, a case was registered. Final report was filed before the trial court after completing the investigation process.

4. Before the trial Court, on the side of the prosecution 5 witnesses have been examined, 120 documents were marked. Apart from that 28 material objects were marked. On the side of the accused two witnesses were examined and no document was marked.



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5. Challenging the above said conviction and sentence, appeals have been preferred by the petitioners / accused Nos.3 and 4 namely Alagarraja and Jeeva. Pending appeals, the petitioners have filed petitions seeking suspension of sentence.

6. Heard both sides and a common order was passed.

7. Learned counsel for the petitioners would submit that no independent witness was examined on the side of the prosecution. Only official witnesses have been examined and during the course of investigation, several statutory violations have been committed by the raiding party and the investigation officer. Their involvement is not brought on record by the prosecution beyond all reasonable doubts. No document was also seized during the course of investigation to show the ownership of the vehicle.

8. Per contra, learned Special Public Prosecutor would submit that the place of occurrence is a public place and there is no question of violation of Section 42 of NDPS Act and the petitioner has not complied the twin conditions given under Section 37 of the NDPS Act. Since no personal search was made, the grounds raised by the petitioner are not available to them. He relied upon the judgment of the Hon'ble Supreme Court reported in (2018) 13 Supreme Court Cases 813 in the case of Satpal Singh Vs State of Punjab, for the purpose of arguments that unless the twin conditions under Section 37 of NDPS Act has not been satisfied, the petitioners



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are not entitled for any suspension of sentence.

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9. Reading of the evidence of P.W.2 does indicate that in the place of occurrence four persons were arrested along with huge quantity of contraband. The trial Court has recorded a finding of guilt after going through the evidence on record. Since the contraband recovered is a commercial quantity, unless the petitioners are able to convince the Court that the twin conditions under Section 37 of NDPS Act has been satisfied, they are not entitled for any relief. Except stating that there is a statutory violations and the ownership of the vehicle was not established, no other ground worth considering were brought on record by the petitioners.

10. In view of the above submission, I am of the considered view that since the petitioners failed to comply the twin conditions under Section 37 of the NDPS Act, they are not entitled for any relief.

11. Accordingly, these Criminal Miscellaneous petitions are dismissed.

sd/-
22/10/2024

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/11/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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To

1.The Additional District Judge,
II Additional Special Court for NDPS Act Cases, Madurai.

2.The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone, Madurai.

3.The Superintendent,
Central Prison, Madurai.

4.The Special Public Prosecutor of NCB Cases,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) Nos.8918 and 8720 of 2024
in
CRL A(MD) Nos.708 and 695 of 2024
Date :22/10/2024

ED/ MMS /SAR- (30/10/2024) 6P / 5C

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