



CRL.M.P.(MD)No.8819 of 2024

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

Monday, the Twenty First day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)No.8819 of 2024

in

CRL.A.(MD)No.585 of 2024

P.SANTHOSH KUMAR

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
CUMBUM POLICE STATION,
THENI DISTRICT
CRIME NO.712/2021

... RESPONDENT/RESPONDENT

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 sentences passed in C.C.No.309 of 2022 dated 05.01.2024 on the Court of the Learned Principal Special Judge for NDPS Act Cases, Madurai pending disposal of the above Criminal Appeal.

Prayer in CRL.A.(MD)No.585 of 2024:

Pleased to call for the records relating to the judgment dated 05.01.2024 in C.C.No.309 of 2022 on the Court of the Principal Special Court for EC & NDPS Act Cases, Madurai District and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.

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

<https://www.mhc.tn.gov.in/judis>



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Mr.V.KATHIRVELU, Senior Counsel for Mr.J.SULTHAN BASHA, Advocate for the petitioner and of 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 on the petitioner by the learned Principal Special Judge for NDPS Act Cases, Madurai, in C.C.No.309 of 2022 dated 05.01.2024.

2. Learned counsel for the petitioner submitted that the petitioner, who is the second accused in this case, has been found guilty and convicted by the learned judge, for the offence under Section 8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act in and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo simple imprisonment for a further period of six months. Set off under Section 428 Cr.P.C. was also ordered.

3. The case of the prosecution in brief is that on 21.11.2021, at about 6.45 a.m., the accused A1 was found in possession of 20 Kgs of Ganja in a vehicle bearing registration number KL 39 A 9011. Accused Nos.2 and 3 were jointly in possession of 22 Kgs of Ganja in another vehicle bearing registration number KL 49 D 7713. On the basis of the above said occurrence, a case was registered and after completing the investigation final report was filed.

4. Before the trial Court, on the side of the prosecution 2 witnesses have been examined, 19 documents were marked. Apart from that two material objects were



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marked. On the side of the accused no witness was examined and no document was marked.

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5. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner / accused No.2. Pending appeal, the petitioner has filed a petition seeking suspension of sentence.

6. Learned Senior counsel appearing for the petitioner would submit that even as per the case of the prosecution, two vehicles were carrying the contraband weighing 20 Kgs and 22 Kgs. A person who received the secret information is not recorded the special report as mandated under the provisions of NDPS Act. The report submitted under Section 57 of NDPS Act is recorded or treated as FIR which according to him is not legal but illegal. He is also taking the Court through various documents prepared during the course of investigation that the accused were carrying 42 Kgs of Ganja which is not the case of the prosecution. According to him, arrest memo, seizure memo, search memo were prepared with improper particulars. It is also submitted by him that on the basis of the occurrence, seizure was made, but in the recovery mahazar, consent letter, etc., the crime number were mentioned which according to him, could not be possible before the registration of the case. This itself, according to him, shows that the prosecution is a false one. From this petitioner, nothing has been recovered, even as per the seizure mahazar. Except the official



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witnesses, no other person was examined on the side of the prosecution, even the investigation officer was not examined.

7. Per contra, learned Additional Public Prosecution would submit that the petitioner is the owner of the vehicle which stands established during the course of investigation. Along with the remand report of the accused, through Form 91, the contraband was produced before the trial Court, but the trial Court returned the contraband to resubmit after sometime. That is not tampering of any sample etc.

8. Per contra, learned Senior counsel appearing for the petitioner would submit that even the Forensic Laboratory report is not proper and does not even indicate which category of contraband composition is involved. According to the learned counsel for the petitioner, the prosecution itself has not established the fact that the accused carried the contraband which is the prohibited article.

9. Since in the light of the rival submissions, we will go to the judgment of the trial Court. No doubt that the arrest memo, seizure memo be filed regarding the same in typed written form, wherein the crime number are mentioned. How it occurred would have been explained by the prosecution before the trial Court.

10. Learned Senior Counsel appearing for the appellant would refer to the cross examination of P.W.1 that the involvement of three accused was not established during the course of investigation.



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11. The evidence of P.W.1 is very clear to the effect that this petitioner along with Accused No.3 was found carrying the contraband weighing about 22 Kgs in KL 49 A 7713. Whether the subsequent sampling and preparation of records were legal and believable or not, is a matter for consideration at the time of appeal. Whether the defects pointed out by the learned Senior Counsel appearing for the petitioner are capable of upsetting the finding of the trial Court, must be addressed at the relevant point of time. Regarding the role alleged to have played by the petitioner as mentioned by the learned Additional Public Prosecutor, it is established that he is the owner of the vehicle. But whether that argument is correct or not can be considered at the time of the appeal. As stated above, this petitioner was arrested red handed along with the contraband in commercial quantity.

12. As mentioned above, whether the defects in the document will enure to the benefit of the petitioner, can be considered at the time of appeal. This is not a fit case to exercise the discretionary power of this Court.

13. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
21/10/2024

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



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TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR NDPS ACT CASES,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
CUMBUM POLICE STATION, THENI DISTRICT

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL.M.P.(MD)No.8819 of 2024
in CRL.A.(MD)No.585 of 2024
Date :21/10/2024

SA/SVR/SAR. /29.10.2024/6P/5C

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