



CRL A(MD) No.791 and 445 of 2023

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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.12679 and 8380 of 2023
and
CRL A(MD) No.791 and 445 of 2023

THANUSH @ THANUSHKODI ... Petitioner / Appellant / Accused No.1
in CRL MP(MD) No.12679 of 2023

RANJITH KUMAR ... Petitioner / Appellant
in CRL MP(MD) No.8380 of 2023

Vs

THE INSPECTOR OF POLICE
TIRUMANGALAM TOWN POLICE STATION,
MADURAI DISTRICT.

(CRIME NO.164 OF 2021.) ... Respondent / Respondent / Complainant in both
petitions

Prayer in CRL MP(MD). 12679/ 2023 :

To release the petitioner on bail by suspending the sentence appealed against
in C.C No. 365 of 2021 dated 27.04.2023 on the file of the II Additional Special Court
for NDPS Act cases, Madurai pending disposal of the above appeal.

Prayer in CRL A(MD). 791/ 2023 :

To call for records relating to judgment in C.C.No.365 of 2021 dated 27.04.2023
on the file of the II Additional Special Court for NDPS Act cases, Madurai, and set
aside the same and acquit the appellant from all charges framed against hi.



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Prayer in CRL MP(MD). 8380/ 2023 :

To Suspend the Sentence imposed on the Petitioner in CC.No.365 of 2021 vide judgement dt.27.4.2023 on the file of the Learned II-Additional Special Court for NDPS Act Cases, Madurai and enlarge the Petitioner on bail pending disposal of the criminal appeal.

Prayer in CRL A(MD). 445/ 2023 :

To call for the records and set aside the order of conviction and sentence passed by the learned II Additional Special Court for NDPS Act cases, madurai in CC.No.365 of 2021 vide judgment dated 27.04.2023 and allow this appeal and acquit the appellant / accused no.2 from the charge leveled against him.

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.MURUGENDRAN.G, Advocate for the petitioner in CRL MP(MD) No.12679 of 2023 and of Mr.M.VIVEK KUMAR, Advocate for the petitioner in CRL MP(MD) No.8380 of 2023 and of Mr.S.RAVI, Additional Public Prosecutor on behalf of the Respondent in both petitions, the court made the following order:-

Reserved on : 21.12.2023

Pronounced on : 29.01.2024

The respective petitioners have filed these respective petitions to suspend the sentence imposed against them by the learned II Additional Special Judge for NDPS Act Cases, Madurai in C.C.No.365 of 2021 by judgment dated 27.04.2023 and to enlarge them on bail pending disposal of the Criminal Appeals.

2.The brief facts of the prosecution case:

P.W.1 Sub Inspector of Police, Tirumangalam Police Station received a secret information on 24.04.2021 at about 11.00 a.m. that there were selling ganja in an auto



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near Maravankulam Kanmoi of Thirumangalam. After obtaining permission from Inspector of Police, on the same day at 11.30 a.m. P.W.1 and his team of police officials along with instruments went to the occurrence place, i.e., Maravankulam kanmoi near bypass bridge. The petitioners/Accused Nos.1 and 2 were trying to run by getting down from auto bearing registration No.TN 58 V 7848 and police party surrounded and caught hold of Accused Nos.1 and 2. The P.W.2 made search upon consent letter obtained from Accused Nos.1 and 2 and upon search, Accused Nos.1 and 2 found in possession of 30 kgs of 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 case in Crime No.164 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(C) and 29(1) of NDPS Act. P.W.4 did investigation and laid charge sheet against the petitioners/Accused Nos.1 and 2. The accused were charged under Section s 8(c) r/w 20(b)(ii)(c) of NDPS Act.

3. To prove the charge, the prosecution examined 4 witnesses as P.W.1 to P.W.4 and marked 10 exhibits as Ex.P.1 to Ex.P.10 and M.O.1 to M.O.10 were marked. D.W.1 to D.W.5 were examined on the accused side and 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/Accused Nos.1 and 2 guilty for the offence



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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 directing the period of incarceration already undergone under Section 428 of Cr.P.C. by passing impugned judgment dated 27.04.2023.

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

5. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

6. The learned counsel for the petitioners has submitted that the petitioners were arrested on 23.04.2021 in Crime No.164 of 2021 in connection with 341, 394 and 506 (2) of IPC and this was published in Tamil news paper with photo of petitioners and the same was marked as Ex.D.1. But, the respondent police alleged that on information, P.W.1 and police party visited the occurrence place on 24.04.2021 at 11.00 a.m. and seized white bag containing 30 kg of ganja from the petitioners. The



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prosecution alleged that the police seized 15 kg each of ganja from the petitioners each and so non-commercial quantity. The alleged eye witnesses L.W.2 - Alagarsamy and L.W.3 - Dineshkumar were not examined. The alleged recovery is from the auto and not from the petitioners. There is no evidence whether the petitioners had nexus with the said auto and whether the petitioners are owner or possessor of auto. Moreover, there is no recovery from the body of the accused. So, Section 50 is not complied with. The samples were prepared on the spot which is contrary to the settled proposition of the Supreme Court in Mohanlal case. The chemical examiner was not examined to prove the sample. The alleged consent letter obtained from the petitioners is not proved and the same was not prepared by following the procedure under NDPS Act. 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. The samples were sent belatedly. 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 first accused is in prison from 24.04.2021. The second accused is



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in from 24.04.2021 to 06.01.2022 and then from the date of judgment. 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 petitioner has a fair chance of succeed in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. This Court empowers to suspend the sentence pending appeal and accordingly passed order in some other case. In support of his above contentions, the learned counsel for the petitioners/accused relied on the following citations:

- (1) Order passed by this Court in Crl.M.P.(MD) No.2689 of 2020 in Crl.A.(MD) No.143 of 2020 dated 11.10.2022
- (2) Order passed by this Court in Crl.M.P.(MD)No.6239 of 2019 in Crl.A.(MD)No.305 of 2019 dated 22.11.2019
- (3) 2023 SCC online SC 906 (Simarnjit Singh /v/ State of Punjab)
- (4) (2015) 12 Supreme Court Cases 247 (Makhan Singh /v/ State of Haryana)
- (5) Order passed by this Court in Crl.M.P.(MD) No.6105 of 2022 in Crl.A.(MD) No.551 of 2021 dated 29.09.2023



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(6) Order passed by this Court in Crl.M.P.(MD) No.5093 of 2021 and others dated 23.12.2021

(7) Judgment passed by the Hon'ble Supreme Court in Crl.A.No.3191 of 2023 dated 13.10.2023.

(8) (2000) 2 Supreme Court Cases, 513 (Abdul Rashid Ibrahim Mansuri /v/ State of Gujarat)

7. Per contra, the Special Public Prosecutor would contend that there are two accused and they were selling ganja which kept in an auto at a public open space and it is not a closed area so, Section 42 would not apply. The Trial court has correctly held in its judgment. Both were in joint possession of 30 kg ganja containing 15 kg ganja each. So, Section 50 would not be applicable. The alleged newspaper publication has no valid evidence in the eye of law. It is held by the Hon'ble Supreme Court that a report in a newspaper is only hearsay evidence and a newspaper is not one of the documents referred to in Section 78(2) of Evidence Act. The petitioners' plea of non-compliance of Section 52A is to be decided in the course of hearing of the main criminal appeal and the same will not be decided in this petition which is filed for suspension of sentence and for bail. This Court has also held that Section 52A deals with the disposal of seized contraband and when the prosecution took a stand that the samples were taken at the spot and the samples



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along with the remaining contraband were produced before the Court as physical evidence, Section 52A is not applicable. In this case also the same was adopted and the same has been proved through Ex.P.6 - Form 91. The petitioners involved in this case after involvement of IPC offence case on earlier day at 11.00 p.m. A1 and A2 were spot arrested by the police officials on information and seized 30 ganja from the possession of accused in an auto. 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 letter Ex.P.2. Within 48 hours, P.W.1 sent the arrest of accused and seizure of ganja to the higher officials by a detailed report. P.W.1 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 Section 42, 50 and 52. The petitioners have not disproved the seizure of ganja from them and they have not produced acceptable material that they were not found with possession of ganja. 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 Section 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



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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. 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 following citations:

(1) (1988) 3 Supreme Court Cases, 319 (Laxmi Raj Shetty and Anr. /v/ State of Tamil Nadu)

(2) Judgment of this Court in CrI.A.(MD) Nos.492 and 500 of 2022, 347 & 577 of 2023, dated 03.10.2023.

(3) Order passed by this court in CrI.M.P.(MD)Nos.6113 & 7993 of 2023 in CrI.A.(MD) Nos.70 & 5 of 2023, dated 22.11.2023.



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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 Sections 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 Section 42 and 50(1) of NDPS Act. In this case, P.W.1 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 the Section 42 would come into play. But, in this case P.W.1 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 are found possession of ganja containing 15 kg each totally 30 kg in an auto for sale 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 offence and the other is that in event of his release he would not commit such offence again. At this juncture, the prosecution stated that the



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petitioners involved in previous cases 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 cases, there is no guarantee on the side of the petitioners that they would not indulge in such cases in case of release on bail and hence, 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:

“Criminal Appeals should be classified based on offence,



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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 :—

(i) Where the convict is sentenced for more than ten years



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for having in his conscious possession 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 offences punishable under section 25, 27-A and 29 of the Act,



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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.

32. The principles enumerated above would, however, have



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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 petitioner 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 petitioner are points to be decided only at the time of disposal of the Criminal Appeal. The 1st accused is admittedly in prison from 24.04.2021 and and the 2nd accused is from 24.04.2021 to 06.01.2022 and from the date of judgment and both the



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petitioners were convicted and sentenced to undergo ten years Rigorous Imprisonment on 27.04.2023 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

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

VSD

To

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

2.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.



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3.The Superintendent,
Central Prison,
Madurai.

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

+1 CC to M/s.G.MURUGENDRAN, Advocate (SR-1245[I] dated 31/01/2024)

+1 CC to M/s.M.VIVEK KUMAR, Advocate (SR-1253[I] dated 31/01/2024)

ORDER
IN
CRL MP(MD) Nos.12679 and 8380 of 2023
and
CRL A(MD) No.791 and 445 of 2023
Date :29/01/2024

ED/ GS /SAR- (27/02/2024) 17P / 7C

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