



CRL MP(MD) No.14958 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) No.14958 of 2023

in

CRL A(MD) No.950 of 2023

PRAVEENRAJ

... Petitioner / Appellant

Vs

THE INSPECTOR OF POLICE
KARIMEDU POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.1451/2020.)

... 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 sentence imposed on the petitioner by the II Additional Special court for NDPS Act cases, Madurai in C.C No. 15 of 2021 by his judgment dt.01.08.2022 and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD) No.950 of 2023:

To call for records in C.C.No.15 of 2021 by the II Additional Special Court for NDPS Act Cases, Madurai and set aside the conviction passed by judgment dated 01.08.2022.



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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.MUTHUMALAIRAJA S, Advocate for the petitioner and of Mr.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 06.12.2023

Pronounced on : 29.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him by the learned II Additional Special Judge for NDPS Act Cases, Madurai in C.C.No.15 of 2021 by judgment dated 01.08.2022 and to enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

P.W.3 - Sub Inspector of Police, Karimedu Police Station Madurai received a secret information on 02.10.2020 at 8.00 a.m that Accused No.1/Ravi along with the co-accused were attempting to transport ganja from the house of Accused No.2 in a car bearing registration number TN 07 AW 0955 and the petitioner was going to pilot the said car in a two wheeler TN 64 L 3813. On the same day at 9.00 a.m. P.W.3 and his team of police officials along with the informant went to the said occurrence place and monitoring the movement at roundana. The informant pointed out the



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vehicle TN 64 L 3813 and caught hold the rider of the two wheeler, the petitioner herein and within 5 minutes the car bearing registration No.TN 07 AW 0955 was coming. P.W3 and his team stopped the car and made search upon consent letters obtained from Accused Nos.1 to 5 and Accused Nos.1 to 4, who were in the car, found in possession of two pockets of ganja weighing 16 kg each and seized them in the presence of witnesses. P.W.3 took two samples of 50 grams each and repacked the remaining Ganja. P.W.3 arrested the accused and returned to police station and registered a case in Cr.No.1451 of 2020 for the offence under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of NDPS Act. P.W.4 did investigation and laid charge sheet against the accused/Accused Nos.1 to 5. Accused Nos.1 to 5 were charged for the offence under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act r/w 34 of IPC and in addition Accused No.2 was also charged for the offence under Section 25 of NDPS Act.

3. To prove the charge, the prosecution examined 4 witnesses as P.W.1 to P.W.4 and marked 12 exhibits as Ex.P.1 to Ex.P.12 and M.O.1 to M.O.4 were marked. No witness was examined and no document was marked on the accused side. After considering both sides evidences and both side arguments, the Trial Court has found the Accused Nos.1 to 5 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



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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 to be setoff under Section 428 of Cr.P.C. by passing impugned judgment dated 01.08.2022.

4. Aggrieved by the conviction judgment, the petitioner/Accused No.5 preferred the present Criminal appeal before this Court. Along with appeal, the petitioner/Accused No.5, filed this Criminal Miscellaneous Petition 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 petitioner has submitted that the petitioner is Accused No.5 in this case and the overtact against the petitioner is that the petitioner was riding a two wheeler, belonging to Accused No.1 to pilot them, in which Accused Nos.1 to 4 were transporting ganja. There was no recovery from the petitioner. In this case as per evidence of P.W.3, only single consent letter was prepared and signature of all accused were obtained and there was no separate mahazar and there was no separate signature of the accused for serving of the said consent letter. So, Section 50 of the Act was not complied with by the prosecution agency. The alleged sample was seized on 02.10.2020, but the same was sent to



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chemical analysis only on 04.11.2020 and there is no explanation for not sending the sample immediately. No contraband was seized from this petitioner and the alleged two wheeler is not belonged to Accused No.1 as alleged by the prosecution. So, Section 42 was not complied properly. 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 prosecution has not followed the provisions of Sections 42 and 50 of NDPS Act. P.W.1 to P.W.4 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 Investigating Officer/PW4 has not marked the alleged information or examined the informant. 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 petitioner is in prison from the date of arrest ie., from 02.10.2020. 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



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petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In support of his above contentions, the learned counsel for the petitioner/ Accused No.5 relied on the citation reported in 2018-1 Law Weekly (Crl.) 360 (T.K.Srinivasan and Ors. / vs/ The State rep. by Protection officer, Chennai – 600 091)

7. Per contra, the Special Public Prosecutor would contend that there are five accused and the petitioner is Accused No.5. Accused Nos.1 to 5 were convicted and sentenced to imprisonment of 10 years and fine in this case. Accused Nos.1 to 5 were spot arrested by the police officials on information and seized 32 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 petitioner and co-accused refused to avail that opportunity and consented search and executed consent letter Ex.P.1. Within 48 hours, the P.W.3 sent the arrest of accused and seizure of ganja to the higher officials by a detailed report. P.W.3 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 and 50. Already co-accused/ Accused No.4 moved suspension of sentence before this Court in Crl.M.P(MD) No.14739 of 2021 was dismissed on 10.01.2023 holding all the



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accused involved in transportation of commercial quantity of ganja. The information of the informant has been marked as Ex.P.3. 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-A and 37 of the NDPS Act. It is held by the Hon'ble Supreme Court that the Appellate Court should bear in mind the nature of offence of this case while considering the suspension petitions. 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 petitioner 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 order of this Court passed in CrI.M.P(MD)No.14739 of 2022 in CrI.A(MD) No.817 of 2022, dated 10.01.2023.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner/Accused No.5 along with co-accused A1 to A4 transported commercial quantity of ganja and ganja was seized from Accused Nos.1 to 4 and so they were charged for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. The learned counsel for the petitioner mainly contended that the mandatory



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procedures are not complied with, which are contained in Sections 42 and 50 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 the Section 42 would come into play. But, in this case P.W.3 is an authorized officer. The next contention of the petitioner 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 ganja weighing 32 kg and the same was seized upon reliable information. So, this aspect would be looked into only at the time of hearing the appeal. The petitioner seeks 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 strongly opposed that the petitioner would continue in involving of this type of case if he is released on bail. There is no possible circumstances put forth by the petitioner that he would not indulge in this nature of offence in future. 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



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the accused is held guilty at the conclusion of trial before a Court of law, then the presumption of innocence gets erased. The condition under Section 37 of the Act is not satisfied by the petitioner.

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, 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



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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 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



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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, 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.



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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 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



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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 the petitioner are points to be decided only at the time of disposal of the Criminal Appeal. The petitioner is admittedly in prison from 02.10.2020 and the petitioner was convicted and sentenced to undergo ten years Rigorous Imprisonment. Therefore, this Court holds that the petitioner has not completed the above period of incarceration. Considering the period of incarceration already suffered by the petitioner in the present case, it does not deem it appropriate to suspend the sentence awarded against him. Therefore, considering the gravity of offence and



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short period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, this Criminal Miscellaneous Petition is 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,
Karimedu Police Station,
Madurai District.

3.The Superintendent,
Central Prison,
Madurai.

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



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ORDER
IN
CRL MP(MD) No.14958 of 2023
in
CRL A(MD) No.950 of 2023
Date :29/01/2024

ED/ GS /SAR- (27/02/2024) 15P / 5C

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