



CRL MP(MD) No.15428 of 2023

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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 MP(MD) No.15428 and 15439 of 2023

in

CRL.A(MD) No.978 of 2023

R.REJUN

... Petitioner / Appellant /
Accused No. 5
in CRL MP(MD) No.15428 of 2023

1. K.ARUL GANESH

2. K. BAGAVATHI NATHAN

... Petitioners / Appellant /
Accused No.3 &4
in CRL MP(MD) No.15439 of 2023

Vs

THE INSPECTOR OF POLICE
KOTTAR POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO. 718/2021

... Respondent / Respondent
in both petitions

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 and conviction imposed by the court of I Additional Special court, Exclusive trial of cases under NDPS Act, Madurai dt. 28.08.2023 made in Special C.C No.97/2022 and enlarge the petitioner on bail and pass such other orders



CRL MP(MD) No.15428 of 2023

Prayer in CRL MP(MD). 15439/ 2023 :

C-60.To suspend the sentence and conviction imposed by the Court I Additional Special Court, Exclusive Trial of Cases under NDPS Act, Madurai dt.28/8/2023 made in Spl.CC No.97/2022 and enlarge the petitioner on bail pending disposal of Crl.A.

Prayer in CRL A(MD). 978/ 2023 :

to callings for the record and set aside the judgement dated 28.08.2023 made in C.C No.97/2022 in the Court of I Additional Special Court, Exclusive Trial of Cases under NDPS Act, Madurai and allow the above Criminal Appeal.

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 .K. PRABHU, Advocate for the petitioner and of M/s.R.MEENASKHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondents the Court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed on the petitioners by the learned I Additional Special Court, Exclusive Trial of cases under NDPS Act Cases, Madurai, in C.C.No.97 of 2022 dated 28.08.2023.

2. Learned counsel for the petitioners submitted that the petitioners, who are the accused Nos. 3 to 5 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) 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 the Sub Inspector of Police, Kottar Police Station, received a secret information on 05.08.2021 at about 10.30 a.m that



CRL MP(MD) No.15428 of 2023

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Ganja is being transported near the place of occurrence. Along with police team, he went to the place of occurrence. At that time on the backside of Royal Garden Open Place, the informer identified five persons sitting near a vehicle. They were surrounded and enquired. They disclosed their names as Pappish, Croswin, Arul Ganesh, Bagavathi Nathan and Rejun. On suspicion, search was made. They were found in possession of 21 Kgs of Ganja kept in five packets. Sampling was taken as per the procedure. The accused were arrested and a case was registered. After completing the investigation final report was filed.

4. Before the trial Court, on the side of the prosecution 3 witnesses have been examined, 18 documents were marked. Apart from that ten material objects were marked. On the side of the accused no witness was examined and no document was marked.

5. Challenging the above said conviction and sentence, appeals have been preferred by the petitioners / accused Nos.3, 4 and 5. Pending appeals, the petitioners have filed a petitions seeking suspension of sentence. These petitions were heard in common and a common order is passed.

6. Learned Senior counsel appearing for one of the petitioner would submit that joint consent letter has been obtained which is per se illegal. Section 53 of NDPS Act has not been complied. One previous case is pending against the accused No.5 /



CRL MP(MD) No.15428 of 2023

Rejun. Apart from that it is submitted that only official witnesses have been examined and no independent witness before the trial Court.

7. Learned counsel for the petitioner rely upon the following judgment to the reference to the violation of Section 52 A of NDPS Act and violation of Section 50. Apart from that they relied upon the following judgments :

- i) judgment of Hon'ble Supreme Court of India reported in (2014) 5 Supreme Court Cases 345 in the case of State of Rajasthan Vs Parmanand and Another
- ii) judgment of Hon'ble Supreme Court of India reported in 2023 LiveLaw (SC) 890 in the case of Yusuf @ Asif Vs State
- iii) judgment of Hon'ble Supreme Court of India made in Crl.A.No.167 of 2006 in the case of Baldev Singh Vs State of Haryana
- iv) judgment of this Court made in Crl.A(MD)No.70 of 2016 ; and
- v) judgment of the Hon'ble Principal Seat of this Court made in Crl.O.P.Nos.21519 and 21520 of 2017

8. Per contra, learned Additional Public Prosecutor would submit that all the accused persons were found in possession of 21 Kgs of Ganja which according to him was established by the official witnesses, since it is a joint possession. It is for the appellant to prove that they are not involved in the offence which they failed before the trial Court. So, no interference is called for.



CRL MP(MD) No.15428 of 2023

9. Reading of the evidence of P.W.1 prima facie indicates that in the place of occurrence, the petitioners were in possession of the contraband weighing about 21 Kgs. Whether there is any violation of procedure and that too will enure the benefit of the petitioners herein is a matter for consideration in the appeal. It is for the appellants to establish that they complied Section 37 of the NDPS Act. When there is a prima facie finding recorded by the trial Court that the possession of the contraband by the accused stands established beyond reasonable doubts, as mentioned above, the defects pointed out by the petitioners / appellants can be taken up only at the time of hearing the appeal.

10. Further the records also does indicate that the appellant were permitted to advance their arguments in the main appeal by the predecessor by order dated 15.04.2024. The matter was already listed on 21.06.2024. It appears that after change of roster, it was not listed. When there is a specific direction by the predecessor Bench, the petitioner ought to have complied the same. Without complying the above said direction, they are insisting upon the Criminal miscellaneous petitions.

11. Moreover, for the reasons stated above, considering the quantity of the contraband, this Court is not inclined to grant relief to the petitioners, since the appellant has failed to establish the twin conditions given under Section 37 of NDPS Act.



CRL MP(MD) No.15428 of 2023

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12. Accordingly, these Criminal Miscellaneous Petitions are dismissed.

sd/-
21/10/2024

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

PNN

TO

1. THE JUDGE, I ADDITIONAL SPECIAL COURT,
EXCLUSIVE TRIAL OF CASES UNDER NDPS ACT, MADURAI

2 THE INSPECTOR OF POLICE
KOTTAR POLICE STATION,
KANYAKUMARI DISTRICT.

3. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

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

ORDER
IN
CRL MP(MD) No.15428 and 15439 of 2023
in
CRL.A(MD) No.978 of 2023
Date :21/10/2024



CRL MP(MD) No.15428 of 2023

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PSP/ MMS /SAR /07.11.2024/ 7P/ 5C

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