



Crl.MP(MD)Nos.16178 & 16209 of 2023

WEB COPY

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

Friday, the Twenty Third day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)Nos.16178 & 16209 of 2023

and

Crl.A(MD)No.1009 & 1010 of 2023

SUNDARAPANDI

... PETITIONER/ ACCUSED 1
IN CRL.MP(MD).16178/2023

SUNDAR

... PETITIONER/ ACCUSED 2
IN CRL.MP(MD).16209/2023

Vs

THE INSPECTOR OF POLICE
NIB CID POLICE STATION,
THENI DISTRICT.
(IN CRIME NO.05 OF 2022)

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

Prayer in CRL MP(MD). 16178/ 2023 :

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 by the Judgment dated 09.10.2023 in C.C.No.193 of 2022 passed by the Learned I Additional Special Judge for NDPS Act cases, Madurai, pending disposal of this appeal and release the dated at Madurai, pending disposal of this appeal and release the petitioner on bail.

Prayer in Crl.A(MD)No.1009 of 2023:

Pleased to call for the record and allow this appeal and acquit the appellant

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



Crl.MP(MD)Nos.16178 & 16209 of 2023

from all the charges by setting aside the impugned Judgment passed by the Learned I Additional Special Court for NDPS Act Cases, Madurai in CC.No.193 of 2022 dated 09.10.2023.

Prayer in CRL MP(MD). 16209/ 2023 :

To suspend the sentence imposed by the Judgment dt.09.10.2023 in CC No.193/2022 passed by the Learned I Additional Special Judge for NDPS Act Cases, Madurai, pending disposal of this appeal and release the petitioner on bail and thus render justice.

Prayer in Crl.A(MD)No.1010 of 2023:

Pleased to call for the record and allow this appeal and acquit the appellant from all the charges by setting aside the impugned Judgment passed by the Learned I Additional Special Court for NDPS Act Cases, Madurai in CC.No.193 of 2022 dated 09.10.2023.

Order : These Criminal Miscellaneous Petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.J.SELVAM, Advocate for the petitioner in both petitions and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor 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 by the Additional Special Judge for NDPS Act cases, Madurai, in CC No.193 of 2022, dated 09/10/2023 and enlarge the petitioners/A1 and A2 on bail, pending disposal of the above said Criminal Appeals.

2.The case of the prosecution brief:-

On 23/08/2021 at about 02.15 pm, PW1 received a secret information from the police informer that Ganja has been transported in the vehicle in the place of occurrence. Along with the police team, after recording the information and getting



WEB COPY

prior permission, they went to the place of occurrence. At about 03.00 pm, the police informer identified the two vehicles and the persons. They were intercepted by the police. On enquiry, the rider of the two wheeler bearing registration No.TN-60-U-3467 disclosed his name as Sundarapandi and the another person is Sundar who was the rider of the two wheeler bearing registration No.TN-39-CB-7241. Two persons escaped from the place of occurrence, who are the pillion riders. On search, they were found in possession of the contraband. A1 handed over 27 kgs of Ganja kept in the fertilizer gunny bag and from A2 namely Sundar 25 kgs of Ganja. Sampling has been undertaken as per the procedure. The confession statement of the accused were recorded. In pursuance of which, seizure was made. Upon the above said occurrence, a case in Crime No.631 of 2021 was registered for the offences under sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act. Thereafter, they were produced before the court along with the contraband and remanded to judicial custody.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in CC No.193 of 2022 by the I Additional Special Court for NDPS Act Cases, Madurai.

4.On the side of the prosecution, 5 witnesses were examined and 22 documents were marked. Apart from that, 5 material objects were exhibited. On the side of the accused, no witness was examined, but one document was marked.



Crl.MP(MD)Nos.16178 & 16209 of 2023

WEB COPY

5.At the conclusion of the trial process, the trial court found the petitioners namely A1 and A2 guilty of the offence under section 8(c) r/w 20(b)(ii)(C) of NDPS Act and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- each, in default, to undergo one year Simple Imprisonment each.

6.Challenging the conviction and sentence, these two separate appeals are preferred by the appellants/A1 and A2. Pending appeal process, these criminal miscellaneous petitions were taken out by the petitioners/A1 and A2 seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioners/A1 and A2 would submit that totally 4 persons identified; Three persons in the place of occurrence; Based upon the confession of A1, which was recorded at 05.00 pm, recovery was made; That confession statement was not marked; Of course, in the recovery document, the time of recovery is mentioned as 04.00 pm; Knowing that seizure is doubtful, the prosecution chose not to mark the confession statement. So, according to him, it creates doubt in the prosecution story.

9.It is further submitted that one Selvaraj, who was present in the place of occurrence was not examined as witness; There was non-compliance of sections 58(A)



WEB COPY

and section 65-B of the NDPS Act. Even the visit and the place of occurrence is doubtful, since PW3 has stated that the vehicle mentioned in the final report was some somewhere else and not in the place of occurrence. The driver of the vehicle Manimaran was not examined as witness. In short, he tries to impress upon the court that the visit of the police team to the place of occurrence, seizure and recovery are stage-managed to foist the case, which indicates that it is a false case.

10.Per contra, the learned Additional Public Prosecutor would submit that even though, the confession statement was not recorded, recovery was proved and both the accused were searched in the place of the occurrence and from them, totally 52 kgs of Ganja was recovered on the spot red-handed and arrested and seized. The grounds now raised by the petitioners were already rejected by the trial court. So, once again the very same point cannot be canvassed before this court for considering the suspension of sentence. It is a matter for consideration at the time of hearing the main appeal.

11.As mentioned above, even though for suspending the sentence, the petitioners must establish that there is no reason to believe that the petitioners committed the offence punishable under the NDPS Act. Since, prima facie materials are available, as stated above, it is red-handed recovery of the contraband, I am not inclined to exercise the discretionary power in favour of the petitioners.



Crl.MP(MD)Nos.16178 & 16209 of 2023

12. In the result, both criminal miscellaneous petitions are dismissed. Registry is directed to prepare the typed set, since the case is posted for final hearing on 19/09/2024.

sd/-
23/08/2024

/ TRUE COPY /

/09/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER
TO

1 THE I ADDITIONAL SPECIAL JUDGE
FOR NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
NIB CID POLICE STATION,
THENI DISTRICT.

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

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



WEB COPY



CrI.MP(MD)Nos.16178 & 16209 of 2023

ORDER
IN
CrI.MP(MD)Nos.16178 & 16209 of 2023
and
CrI.A(MD)No.1009 & 1010 of 2023
Date :23/08/2024

SA/SG/SAR. /12.09.2024/7P/6C

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