



CRL MP(MD) No.16104 of 2023

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

Wednesday, the Tenth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.16104 of 2023

in

CRL A(MD) No.1007 of 2023

SELVAM

... PETITIONER/ACCUSED NO.1

Vs

THE INSPECTOR OF POLICE
ELUMALAI POLICE STATION,
MADURAI DISTRICT.
CRIME NO. 137 OF 2021

... RESPONDENT/COMPLAINANT

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 dt. 21.09.2023 in C.C no. 508 of 2021 passed by the Learned I Additional Special court for NDPS Act Cases, Madurai pending disposal of this appeal and release the petitioner on bail.

Prayer in CRL A(MD).1007/2023 :

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 C.C.No.508 of 2021 dated 21.09.2023.

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 MR.J.SELVAM, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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Reserved on	04.01.2024
Delivered on	10.01.2024

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned I Additional Special Judge for NDPS Act cases, Madurai, in C.C.No.508 of 2021 dated 21.09.2023 and to enlarge him on bail, pending disposal of the Criminal Revision Case.

2. The case of the prosecution is that on 04.05.2021 at 07.00 hours near Rengasampatti Bus Stop, the Accused No.1/petitioner herein was found in possession of 11 kgs. of 'Ganja' and the second accused was found in possession 10 kgs. of 'Ganja' having purchased from Rajamundiri, Andhra Pradesh. The respondent police after conducting search as per the Act, seized the said contraband from the petitioner/A1 and the other accused. After taking samples, they preferred mahazar and arrested the accused. Thereafter, a case has been registered in Crime No.137 of 2021 against the petitioner/A1 and other accused on the file of the respondent/Inspector of Police, Elumalai Police Station, Madurai District, for the offences punishable under Sections 8(c) read with 20(b) (ii) (C) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985)' [hereinafter referred to as 'NDPS Act' for the sake of convenience and brevity]. Thereafter, he was produced before the Court along with the contraband and was remanded to judicial custody. After completion of

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investigation, the respondent police filed a final report and the same was taken on file in C.C.No.508 of 2021 before the learned I Additional Special Judge for NDPS Act cases, Madurai.

3. During the trial, the prosecution has examined 3 witnesses as P.W.1 to P.W.3 and exhibited 17 documents as Ex.P.1 to Ex.P.17 and marked 6 Material Objects as P.M.O.1 to P.M.O.6, whereas, the accused has neither adduced any oral evidence nor produced any documents.

4. The learned I Additional Special Judge, upon considering the evidences adduced and on hearing the arguments on both sides, convicted the petitioner/A1 was convicted and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.25,000/- with twelve months simple imprisonment in case of default. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. Learned counsel for the petitioner/A1 has raised twofold submissions. Firstly, the Court below refused to grant bail to the petitioner/A1 without appreciating the ingredients of Sub-section (viia) of Section 2 of NDPS Act which defines 'Commercial Quantity' and that only after the conclusion of trial, it was found that the case of the petitioner/A1 fell under intermediate quantity. Sub-section (viia)



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of Section 2 of NDPS Act reads as follows:

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'[2.Definitions.- In this Act, unless the context otherwise requires:-

.....

(viia) "commercial quantity", in relation to narcotic drugs and psvchotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;]'

Thereby, learned counsel for the petitioner/A1 submitted that Section 37 of NDPS Act will not attract the offence.

6. Secondly, learned counsel submits that the petitioner/A1 has been incarcerated for more than half of the period of sentence and there is a likelihood to hear his appeal in near future. In this regard, learned counsel for the petitioner/A1 relied upon several judgments among which he relied upon one of the judgments of the Hon'ble Supreme Court in Satender Kumar's case [Satender Kumar Antil v. Central Bureau of Investigation & Another, reported in 2022 LiveLaw (SC) 577] wherein, the Hon'ble Supreme Court pleased to suspend the sentence in a case of commercial quantity relying on the benevolent proviso of Section 436A of Cr.P.C. He further submitted that the petitioner/A1 has already been granted bail in his previous cases and therefore, prays for grant of suspension of sentence.



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7. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor vehemently contended that the respondent police after recording the statements of 3 witnesses under Section 161(3) of Cr.P.C., and perusing the exhibits and material objects viz., 17 Exhibits and 6 Material Objects and conducting a detailed investigation laid the charge sheet against the petitioner/A1 for the offences punishable under Sections 8(c) read with 20(b) (ii) (C) of NDPS Act and filed a final report before the learned I Additional Special Court for NDPS Act cases, Madurai and the same was taken on file in C.C.No.508 of 2021. Learned Additional Public Prosecutor further submitted that the petitioner/A1 has involved in five other cases which are of similar in nature which read as follows:

Sl.No	Police Station	Crime No.	Offences
1	Nagapattinam NIBCID PS	Cr.No.16/2020	8(c) read with 20(b) (ii) (A) of NDPS Act
2	Thanjavur Ammamet PS	Cr.No.1074/2020	8(c) read with 20(b) (ii) (B) of NDPS Act
3	Thanjavur Taluk PS	Cr.No.338/2018	8(c) read with 20(b) (ii) (C) of NDPS Act
4	Thanjavur Ammamet PS	Cr.No.404/2019	20(b) (ii) (B) of NDPS Act
5	Thanjavur Taluk PS	Cr.No.69 of 2020	294(b), 386 and 506 (ii) of IPC

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8. The main contention of the learned Additional Public Prosecutor is that the prosecution has proved the conscious possession of the contraband ganja beyond reasonable doubt and therefore, bar created under Section 37(1)(b)(ii) applies. Even in one of the aforesaid previous cases (as alluded supra), the petitioner/A1 had involved in possession of contraband which falls within the 'Commercial Quantity'. It is also admitted by the petitioner/A1 himself that in the bail petition he has not remitted the fine amount as imposed by the trial Court. It is pertinent to draw attention on Satender Kumar's case (cited supra) which has been relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court had referred to section 436-A of Cr.P.C. Section 436-A of Cr.P.C speaks about the maximum period for which a under-trial prisoner can be detained. Learned Additional Public Prosecutor submits that Section 436-A is aimed only at under-trial prisoners whereas in the present case, after conducting a detailed investigation and trial, charges were framed against the petitioner/A1 for the offences punishable under Sections 8(c) read with 20(b) (ii) (C) of NDPS Act. Therefore, the judgment relied on by the learned counsel for the petitioner/A1 is not applicable for the present case. Learned Additional Public Prosecutor also submitted that there are enough materials available on record against the petitioner/A1 and hence, he strongly opposed to grant suspension of sentence to the petitioner.



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9. This Court considered the rival submissions made on either side and perused the materials available on record.

10. Admittedly, huge quantity of contraband was recovered from the petitioner/A1 along with other accused which falls within “Commercial Quantity” and the petitioner/A1 is also having five previous cases which are of similar in nature. The petitioner/A1 was in possession of commercial quantity of ganja in one of the aforesaid cases. In the present case, the petitioner/A1 was found in possession of 11 kg of ganja and the other accused was found in possession 10 kg of ganja and the learned trial Judge convicted the petitioner/A1 under Sections 8(c) read with 20 (b)(ii)(C) of NDPS Act and therefore, the statutory embargo created under Section 37 (1)(b)(ii) of NDPS Act. The petitioner/A1 has failed to satisfy this Court that there are reasonable grounds for believing that he is not guilty of such offence and also that he is not likely to commit any offence if enlarged on bail.

11. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-

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

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TO

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

2 THE INSPECTOR OF POLICE, ELUMALAI POLICE STATION,
MADURAI DISTRICT.

3 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

ORDER

IN

CRL MP(MD) No.16104 of 2023

in

CRL A(MD) No.1007 of 2023

Date :10/01/2024

RS/DD/SAR-(12.01.2024) 8P 5C

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