



CRL MP(MD) No.18028 of 2023

WEB COPY

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

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

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.18028 of 2023

in

CRL A(MD) No.308 of 2022

SOLAIYAPPAN

... Petitioner / Petitioner / Appellant

Vs

THE INTELLIGENCE OFFICER  
NARCOTICS CONTROL BUREAU,  
MADURAI.

(NCB F. NO.48/1/03/2019/NCB-MDU.)

... Respondent / 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 of imprisonment imposed by the Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukottai passed in CC.No.119/2019 dated 17.10.2019 pending disposal of the above said criminal appeal.

Prayer in CRL A(MD) No.308 of 2022:

To call for the records in C.C.No.119 of 2019 relating to the judgment dated 12.01.2022 passed by the Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai and to set aside the judgment of the conviction on the appellant / accused.



**CRL MP(MD) No.18028 of 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 M/S.PON KARTHIKEYAN.R, Advocate for the petitioner and of Mr.ARUL VADIVEL @ SEKAR, Special Public Prosecutor for NCB Cases on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence imposed on him by the Additional District and Sessions Judge / Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai, in C.C.No.119 of 2019, dated 12.01.2022, and to enlarge him on bail, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 24.04.2019 at about 13.00 hours, NCB Madurai received an information that the petitioner/accused, who was scheduling to travel Malaysia by Malindo Airflight at 23.25 hours, carrying substantial quantity of Cough Syrup containing narcotic drugs, that the NCB had immediately proceeded to Trichy airport at about 21.30 hours and they stopped the petitioner and detected some suspicious item in his baggage. They found 5 packets wrapped in scotch tape and English newspapers from one bag and 4 similar packets and 5 loose bottles of Eskuf cough syrup from another bag and also detected 10 bottles of Eskup cough syrup each containing 9 packets wrapped with newspaper. In total, they found 95 bottles of Eskup cough syrup containing Codeine Phosphate and the contraband was recovered and the petitioner was remanded to Judicial custody on



CRL MP(MD) No.18028 of 2023

26.04.2019.

WEB COPY

3. After completing the investigation, a complaint was filed on 17.10.2019 and the case was taken on file in C.C.No.119 of 2019 and the same was pending on the file of the Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai.

4. During trial, the prosecution has examined 5 witnesses as P.W.1 to P.W.5, marked 35 documents as Ex.P.1 to Ex.P.35 and 10 material objects as M.O.1 to M.O.10. Neither oral nor documentary evidence was adduced by the accused.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 21.01.2022 finding the petitioner guilty for the offences under Sections 8(c) r/w 21(c) of NDPS Act and Sections 8(c) r/w 23(c) r/w 28 of NDPS Act and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 6 months for the offences under Sections 8(c) r/w 21(c) of NDPS Act and to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 6 months for the offences under Sections 8(c) r/w 23(c) r/w 28 of NDPS Act and further ordered that both the sentences of imprisonment to run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal



**CRL MP(MD) No.18028 of 2023**

along with the above Criminal Miscellaneous Petition for suspension of sentence.

WEB COPY

6. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor for NCB Cases and perused the materials available on record.

7. The learned counsel appearing for the petitioner would contend that the manner in which search, arrest and seizure effected was not proved by the prosecution and the mandatory provisions of the NDPS Act was not complied with by the respondent. He further submitted that the evidence of P.W.1 to P.W.4 were not corroborated with each other and he also submitted that the trial Court has failed to consider the delay in sending samples for chemical analysis, the discrepancy in the number of the sealed bags and non-examination of the independent witnesses and the same would establish that the petitioner is an innocent person and he has been falsely implicated in the above case.

8. The learned counsel for the petitioner further submitted that this is the second petition for suspension of sentence. Earlier petition was dismissed on the ground that based on the medical report of the doctor that no surgery is required. He further submitted that the petitioner was hospitalized for the past four days in Mahatma Gandhi Government Hospital, Trichy, due to severe diabetes. The doctor has performed surgery on his left leg first toe finger and he also underwent surgery



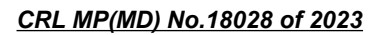
**CRL MP(MD) No.18028 of 2023**

above the left leg ankle and his movements were restricted and he is now bedridden. Therefore, the learned counsel prays for suspension of sentence of the petitioner. He has further submitted that the petitioner is in Central Prison, Trichy for more than 4 years.

9. The learned Special Public Prosecutor for NCB cases appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature and hence, prays to dismiss the petition.

10. Considering the above facts and circumstances, this Court finds force in the submission of the learned counsel for the petitioner. Moreover, the petitioner has been in incarceration from 26.04.2019 and on due consideration of that fact that the petitioner is suffering from severe diabetic and taking note of the surgeries undergone and his health condition, this Court is of the considered view that the petitioner is entitled to the relief of grant of suspension of sentence.

11. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned (\*)Additional District and Sessions Judge / Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai in C.C.No.119 of 2019 dated 12.01.2022 alone is suspended, subject to the following stringent conditions:-



v) The petitioner shall furnish his residential address and mobile number to the Trial Court i.e., learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai.



**CRL MP(MD) No.18028 of 2023**

WEB COPY  
allowed.

12. Subject to the above conditions, this Criminal Miscellaneous Petition is

sd/-  
24/01/2024

(\*)Amended as per order of this Hon'ble Court in  
CRL MP(MD).18028/2023 in CRL A(MD).  
308/2022 dated 07/02/2024

/ TRUE COPY /

08/02/2024  
Sub-Assistant Registrar  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

RM

To

TO BE SUBSTITUTED WITH THE ORDER ALREADY DESPATCHED ON  
24/01/2024

1.The Additional District and Sessions Judge / Presiding Officer,  
Special Court for EC and NDPS Act Cases, Pudukkottai.

2.The Intelligence Officer,  
Narcotics Control Bureau, Madurai.

3.The Superintendent,  
Central Prison, Trichy.

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

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate ( SR-1030[I] dated 24/01/2024 )



WEB COPY



**CRL MP(MD) No.18028 of 2023**

ORDER

IN

CRL MP(MD) No.18028 of 2023

in

CRL A(MD) No.308 of 2022

Date :24/01/2024

ED/ /SAR- (24/01/2024) 8P / 6C

RS/ /SAR- (08/02/2024) 8P / 6C

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