



CRL MP(MD) No.17713 of 2023 in CRL A(MD) No.1107 of 2023

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

Tuesday, the Twenty Seventh day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.17713 of 2023 in CRL A(MD) No.1107 of 2023
and

CRL MP(MD) No.442 of 2024 in CRL A(MD) No.49 of 2024
and

CRL MP(MD) No.2951 of 2024 in CRL A(MD) No.202 of 2024

SANTHOSH

... Petitioner / Accused No.1
in CRL MP(MD) No.17713 of 2023

CLIFF AUGUSTINE ROWE

... Petitioner / Accused No.3
in CRL MP(MD) No.442 of 2024

RAJAPANDI

... Petitioner / Accused No.2
in CRL MP(MD) No.2951 of 2024

Vs

THE INSPECTOR OF POLICE
KODAIKANAL POLICE STATION,
DINDIGUL DISTRICT.
(CRIME NO. 311 OF 2022)

... Respondent / Complainant
in all petitions

Prayer in CRL MP(MD). 17713/ 2023 :

To suspend the sentence imposed by the Judgment dt. 20.11.2023 in Special C.C No. 542 of 2023 passed by the learned Principal Special court for EC and NDPS Act cases, Madurai pending disposal of this appeal and release the petitioner on bail.

Prayer in CRL A(MD) No.1107 of 2023:



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To call for the records relating to the impugned judgment dated 20.11.2023 passed in Special C.C.No.542 of 2023 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai and acquit the appellant from all the charges by setting aside the said impugned judgment.

Prayer in CRL MP(MD). 442/ 2024 :

To Suspend the sentence imposed by the Judgment dt.20.11.2023 in Special CC No.542/2023 passed by the Learned Principal Special Judge for EC and NDPS Act Cases, Madurai pending disposal of this appeal.

Prayer in CRL A(MD) No.49 of 2024:

To call for the records relating to the impugned judgment dated 20.11.2023 passed in Special C.C.No.542 of 2023 on the file of the Principal Special Court for EC and NDPS Act cases, Madurai and acquit the appellant from all the charges by setting aside the said impugned judgment.

Prayer in CRL MP(MD). 2951/ 2024 :

To Suspend the sentence imposed by the Judgment dt.20.11.2023 in Special CC No.542/2023 passed by the Learned Principal Special Court for EC and NDPS Act Cases, Madurai, pending disposal of this appeal and release the petitioner on bail.

Prayer in CRL A(MD) No.202 of 2024:

To call for the record relating to the impugned judgment dated 20.11.2023 passed in Special C.C.No.542 of 2023 on the file of the Principal Special Court for EC and NDPS Act cases, Madurai and acquit the appellant from all the charges by setting aside the said impugned judgment.

Order : These criminal miscellaneous petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SELVAM.J, Advocate for the petitioner in all petitions and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent in all petitions, the Court made the following order:-

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed by the Principal Special Court for EC and NDPS Act, Madurai, in CC



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No.542 of 2023, dated 20/11/2023 and to enlarge the petitioners on bail pending disposal of the above said criminal appeals.

2.The case of the prosecution brief:-

On 19/11/2022 the police team comprising PW2, on secret information went to the Kalaiyaragam Bus Stop near Kodaikanal and they were watching the movement of the Narcotic Substance. At that time, at about 10.30 am, the accused persons on seeing the police team try to escape from that place. They were napped. Seizure was made after completing the formalities. On the basis of the confession of A1, 1.100 kgs of Ganja and 100 Psilocybine (Magic Mushroom) was seized. Sampling was undertaken as per the procedure. Upon the above said occurrence, a case in Crime No.311 of 2022 was registered for the offence under section 8(c) r/w 20(b)(ii) (B), 22(C), 29(1) of the 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 Special CC No.542 of 2023 by the Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai.

4.On the side of the prosecution, 3 witnesses were examined and 18 documents were marked. Apart from that, 4 material objects were exhibited. On the



side of the accused, no oral and documentary evidence was adduced.

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5. At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 8(c) r/w 20(b)(ii)(B), 29(l), 22(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 6 months Simple Imprisonment.

6. Challenging the conviction and sentence, all the accused preferred separate appeals. Pending appeals, these criminal miscellaneous petitions were taken out by the petitioners/ A1 to A3 seeking suspension of sentence.

7. Heard both sides.

8. Only short point was raised by the learned counsel appearing for the petitioners. He would submit that Magic Mushroom is a natural product as fungi, which is available naturally in the deep forest; Even though the chemical report received, after analysis shows that Mushroom contains Psilocybine; Even though, that substance is classified as Psilocybine categorized as narcotic substance, but so far the Magic Mushroom is concerned, it is not quoted under the category of psychotropic substance as defined under NDPS Act. Regarding psychotropic substances, the Central Government issued a new notification in this regard. So, it cannot be construed as psychotropic substance. So, according to him, no offence is made out against the petitioners and that was not properly considered by the trial



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9.Per contra, the learned Additional Public Prosecutor would submit that Magic mushroom contains Psilocybine substance, which is a banned contraband; Apart from that, they were found in possession of Ganja weighing about 1.100 kgs; Sufficient materials were placed before the trial court. Only on that account, conviction was rendered by the trial court. So, no interference is called for suspending the sentence.

10.No doubt that Magic Mushroom is not brought under the provisions of NDPS Act as a prohibited commodity. But Psilocybine is a narcotic drug, which is banned under the provisions of NDPS Act. Whether the provision of NDPS Act attracts to the facts and circumstances of the case is the only point to be decided in the main appeal.

11.The learned counsel appearing for the petitioners would draw the attention of this court to the development of law in such manner. He is drawing analogy to the present fungi or substance, as the case may be, to one 'Khat'. Twigs/Stems, which contain Cathine also known as (+) Pseudoephedrine. The prosecution was launched on the ground that the above said Twigs/stems contain narcotic substance under section 8(c) r/w 22, 23, 25, 28 and 29 of NDPS Act. That was challenged.

Argument was advanced before this court that, that article is neither a narcotic drug



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or psychotropic substance. No prosecution will lie. Substance was sent to the Lab, as mentioned above, which contains twigs/stems, it effect in Khat. It is listed as a psychotropic substance under item No.171 in the table prepared pursuant to Sub clause vii(a) and xxiii(a) of Section 2 of the NDPS Act. It was submitted before the court that Cathine could be derived from the khat plant and hence offence under the NDPS Act would stand attracted. Subsequently, the Central Government issued a notification in S.O.821(E), dated 27/02/2018 bringing the Cathine leaves under the provisions of NDPS Act. According to the learned counsel appearing for the petitioners, unless the magic mushroom is brought under the category of NDPS by notification, the prosecution itself is illegal.

12.He is also drawing the attention of this court the order passed by the Coordinate Bench of this court in Abdinasir Ugas Ali Vs. The Assistant Commissioner of Customs, Prosecution Unit (AIR), New Customs House, Meenambakkam, Chennai-600 027 (Crl.OP(MD)No.5607 of 2020, dated 24/07/2020) wherein Khat leaves was the subject matter. Since the occurrence took place after the notification, it was held that substance is psychotropic substance. Psilocybin is the substance as per the table and notification in No.145. Small quantity is mentioned as 2 grams and commercial quantity is mentioned as 50 grams. Now according to him, unless a concrete stand is taken and found in



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possession of the contraband, no offence is made out.

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13.No doubt that it is an arguable point. But considering the fact that not only the magic mushroom, but also Ganja was seized. So, I am of the considered view that it is not a fittest case to exercise the discretion.

14.In the result, all the Criminal Miscellaneous Petitions are dismissed.

sd/-
27/08/2024

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/10/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

1.The Additional District Judge,
Principal Special Court for EC and NDPS Act Cases, Madurai.

2.The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.

3.The Superintendent,
Central Prison, Madurai.

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

+1 CC to M/s.J.SELVAM, Advocate (SR-10504[I] dated 28/08/2024)



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ORDER
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and
CRL MP(MD) No.442 of 2024 in CRL A(MD) No.49 of 2024
and
CRL MP(MD) No.2951 of 2024 in CRL A(MD) No.202 of 2024
Date :27/08/2024

ED/ VR /SAR- (03/10/2024) 8P / 6C

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