

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.48 of 2017

IN CRL A.4/2017

MOHAMMED RIKAS @ RIKAZ

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

THE INTELLIGENCE OFFICER,

NCB-SOUTH ZONE

UNIT, CHENNAI.

(F.NO.48/1/15/2011-NCB/MDS)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.4/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by order dated 03.11.2016 in C.C.No.17 of 2012 on the file of the Learned Special Judge, II Additional Special Court under NDPS Act, Chennai-600 104 enlarge him on bail till the disposal of the appeal filed by the petitioner in C.A.No.4/2017 pending on the file of this Honble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.4/2017 on the file of the High Court and upon hearing the arguments of M/S.MAMTA PANDEY, Advocate for the petitioner and of MR. N.P. KUMAR, Spl. Public Prosecutor, for NDPS Cases, on behalf of the Respondent the court made the following order:-

It is the case of the prosecution that on 15.10.2011, on prior intelligence, the sleuths of Narcotic Control Bureau intercepted the petitioner herein at the Anna International Airport when the petitioner was bound for Colombo and searched his luggage from where they recovered 2.035 kgs. of heroin. The petitioner, a Sri Lankan, was enquired and his statement under Section 67 of the NDPS Act was recorded. Samples from the seized contraband were drawn and were sent for chemical examination. The petitioner was arrested and was remanded to

judicial custody. The chemical examination report showed that the substance answered positive for the presence of Diacetylmorphine heroin. Investigation was conducted and complaint was filed against five accused, of whom, two accused were shown as absconding accused.

2 It is the case of the prosecution in the complaint that all the five accused had conspired to traffic heroin from India to Sri Lanka, pursuant to which, the contraband was acquired and was handed over to the petitioner herein for onward transportation to Colombo. The complaint was taken on file as C.C.No.17 of 2012 by the Special Court for NDPS Act cases, Chennai. Charges were framed against the five accused and they pleaded not guilty. The prosecution examined 7 witnesses, marked 77 exhibits and 13 material objects. The accused were questioned under Section 313 Cr.P.C. and they denied the same. On behalf of the accused, Dr.E. Kathiravan, Civil Assistant Surgeon, Central Prison Hospital, Central Prison, Chennai, was examined as D.W.1 and health screening report of the accused was marked as Ex.D.1.

3 The trial Court, after considering the evidence on record, convicted and sentenced the petitioner herein, but, acquitted the other accused. The petitioner has been sentenced to undergo 10 years Rigorous Imprisonment and fine of Rs.1 lakh, in default to undergo 6 months Rigorous Imprisonment by judgment dated 03.11.2016, challenging which, the petitioner had filed the present appeal along with an application for suspension of sentence and bail.

4 Heard Ms.Mamta Pandey, learned counsel for the petitioner and Mr.N.P.Kumar, learned Special Public Prosecutor for NDPS Act cases.

5 Learned counsel for the petitioner vehemently contented that the petitioner has already been in prison both as an under trial and as a convict for 6-1/2 years, which is more than half the period of sentence imposed upon him. By placing strong reliance on the following judgments, she submitted that the case of the petitioner may be considered for grant of suspension of sentence and bail.

i Avtar Singh alias Tari and another vs. Narcotics Control Bureau [2017 (1) Drugs Cases (Narcotics) 264];

ii Kulwant Singh vs. State of Punjab [2005 Drugs Cases (Narcotics) 403] and

ii Shafi @ Gabba vs. Narcotics Control Bureau, Jodhpur Zonal Unit [2017 (1) Drugs Cases (Narcotics) 499]

6 Per contra, learned Special Public Prosecutor, placed strong reliance on the judgment of the Supreme Court in **Ratan Kumar Vishwas vs. State of U.P. and another [AIR 2009 SC 581]**.

7 This Court gave its anxious consideration to the rival submissions.

8 In **Dadu @ Tulsidas vs. State of Maharashtra [(2000) 8 SCC 437]**, the Supreme Court has held that the provisions of Section 37 of the NDPS Act will apply even for considering an application for suspension of sentence and bail. Therefore, this Court cannot grant bail unless the twin conditions set out in Section 37 of the NDPS Act stand satisfied. Except **Kulwant Singh** (supra), the other judgments that were relied upon by the learned counsel for the petitioner relate to reduction of sentence in appeal by various High Courts. Only in **Kulwant Singh** (supra), the Punjab and Haryana High Court granted suspension of sentence and bail on the ground that the convict had suffered 6-1/2 years of imprisonment and there is no likelihood of appeal being taken up for hearing.

9 In this case, the petitioner is a Sri Lankan national and if he is released on bail, he will not be available for undergoing the remaining period of sentence. That apart, 2.035 kgs. of heroin, which is a commercial quantity, has been recovered from the luggage of the petitioner at the Anna International Airport by the Officers of the NCB. His confession statement was recorded under Section 6 of the NDPS Act, wherein, he has disclosed about his involvement in the offence. In the teeth of such evidence and in the light of the fact that the trial Court has accepted the evidence and convicted the petitioner, this Court cannot hold that there are no reasonable grounds for believing that the petitioner is not guilty of the offence as required under Section 37 of the NDPS Act for grant of bail.

10 In view of the foregoing reasoning, this petition

which is devoid of merits, is liable to be dismissed and is accordingly dismissed.

The Registry is directed to call for the records and prepare the typed set of papers immediately and post the criminal appeal for final disposal expeditiously.

-sd/-
13/12/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE
II ADDITIONAL SPECIAL COURT UNDER NDPS ACT,
CHENNAI 600 104

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE BY
THE INTELLIGENCE OFFICER, NCB-SOUTH ZONE
UNIT, CHENNAI. (F.NO.48/1/15/2011-NCB/MDS)

C.C. to M/S.MAMTA PANDEY Advocate on payment of necessary charges

Order
in
CRL MP.48/2017
in
CRL A.4/2017
Date :13/12/2017

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

MD: 20/12/2017