

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Ninth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.8148 of 2019

IN CRL A.615/2018

MOHAMED RABEEK

[PETITIONER]

Vs

STATE REP. BY
THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CENTRAL ZONE UNIT,
CHENNAI-600 090.
(NCB F.NO.48/1/06/2014 NCB, MDS)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed in C.C.No.5 of 2015 dated 24.10.2017 passed by the Principal Special Judge, Under NDPS Act, Chennai and enlarge the petitioner on bail, pending disposal of the above Crl.A.No.615/2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner, and of M/S.N.P.KUMAR, Special Public Prosecutor, for NCB, Cases, on behalf of the Respondent, the court made the following order:-

Based on prior information, the office of the Narcotics Control Bureau intercepted Seshadri Rajendran (A1), Mohamed Ibrahim @ Raja (A2), Mohamed Rabeek (A3) and Vijayakumar @ Viji (A4) at the Anna International Airport while Seshadri Rajendran (A1) was embarking to Saudi Arabia by Flight No. G9 0472 and from his luggage, they seized 1.160 kgs. of heroin and 1.020 kgs. of methamphetamine. The statements of all the four accused were recorded under Section 67 of the NDPS Act and they were arrested and put on trial in C.C. No.5 of 2015 before the Special Court for NDPS Act Cases, Chennai.

2 The Trial Court, by order dated 24.10.2017 in C.C. No.5 of 2015, has convicted Mohamed Rabeek (A3), the petitioner herein, of

the offences under Sections 8(c) read with Section 29, 21(c), 22(c) and 28 of the NDPS Act and has sentenced him to undergo the minimum prescribed sentence of ten years rigorous imprisonment and fine of Rs.1 lakh, challenging which, the instant criminal appeal has been filed and suspension of sentence and bail have been sought in the present miscellaneous petition.

3 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr. N.P. Kumar, learned Special Public Prosecutor for NCB cases.

4 Mr. Sankarasubbu contended that the petitioner was not a beneficiary at all and that he had only arranged air tickets of Seshadri Rajendran (A1), which, by itself, is not an offence. He further contended that except the Section 67 statement of the petitioner, there is no other material to fix criminal liability on him. He developed his arguments by submitting that the validity of a statement recorded under Section 67 of the NDPS Act has been referred to a larger Bench in *Tofan Singh vs. State of Tamil Nadu*¹ and since the Supreme Court has not yet decided the issue, this Court should follow the observations in the referral order and eschew the statement of the petitioner under Section 67 of the NDPS Act. He further contended that the petitioner has got a right of speedy trial, which cannot be defeated as that would offend Article 21 of the Constitution of India. In support of this submission, he placed reliance on the judgments of the Supreme Court in *Kashmira Singh vs. State of Punjab*², *Akhtari Bi (Smt.) vs. State of M.P.*³, *Supreme Court Legal Aid Committee representing undertrial prisoners vs. Union of India and others*⁴ and *Shaheen Welfare Association vs. Union of India and others*⁵.

5 In *Dadu @ Tulasidas vs. State of Maharashtra*⁶, the Supreme Court has struck down a portion of Section 32-A of the NDPS Act as unconstitutional and has held that suspension of sentence and bail can be granted subject to Section 37 of the NDPS Act. Section 37 of the NDPS Act states that where the Public Prosecutor opposes the application, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the said offence and that he is not likely to commit any offence while on bail. This test would apply to an undertrial prisoner who is seeking bail and also for convicting the prisoner who is seeking suspension of sentence and bail. Distinguishably, in this case, the Trial Court has given a clear finding that the petitioner herein is guilty of the offences set out above. Now, this Court has to look out for materials to get over the aforesaid stipulation.

6 Mr. Sankarasubbu contended that the statement recorded under Section 67 of the NDPS Act should be taken out of

1 (2013) 16 SCC 31

2 (1977) 4 SCC 291

3 (2001) 4 SCC 355

4 1995 SCC (CrL) 39

5 1996 SCC (CrL) 366

<https://mcservices.ecourts.gov.in/mcservices/>

6 (2000) 8 SCC 437

consideration in view of Tofan Singh (supra). This Court is not able to agree with the said submission, because, it is trite that till the reference is answered one way or the other by the larger Bench of the Supreme Court, the High Court should follow the existing law laid down by the Supreme Court. As of today, the law is that a statement recorded under Section 67 of the NDPS Act by an officer of the NCB is admissible in evidence. Apart from the statement, the fact that the petitioner had arranged the tickets for Seshadri Rajendran (A1) and the petitioner was also present in the airport to see off Seshadri Rajendran (A1) who was carrying the contraband, is an incriminating circumstance against the petitioner. In such view of the matter, it will be too premature to hold that there are no prima facie materials to implicate the petitioner in the offence.

7 With regard to Shaheen (supra) and Supreme Court Legal Aid Committee representing undertrial prisoners (supra), there were orders passed by the Supreme Court for releasing undertrial prisoners who were in custody for more than 5 years. Even in those cases, the Supreme Court has clearly held that the orders passed are as an one time measure. In this case, the petitioner is not an undertrial prisoner, but, is undergoing conviction. Under such circumstances, the petitioner is not entitled to the relief of suspension of sentence and bail.

Ex consequenti, this Crl.M.P. fails and is accordingly dismissed.

-sd/-
09/08/2019

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

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

TO

1 THE PRINCIPAL SPECIAL
JUDGE, UNDER NDPS, ACT CHENNAI.

2 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CENTRAL ZONE UNIT,
CHENNAI-600 090.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
<https://hcservices.ecourts.gov.in/hcservices/>
CENTRAL PRISON, VELLORE DISTRICT.

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+1 C.C. to M/S.R.SANKARASUBBU Advocate on payment of
necessary charges SR.NO.17140

Order

in
CRL MP.8148/2019

in
CRL A.615/2018

Date :09/08/2019

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