

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fifteenth day of September Two Thousand Twenty

PRESENT

The Hon'ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.6109 of 2019

IN CRL.A.NO.245 OF 2019

C.C.NO.28/2016

[ON THE FILE OF THE SPECIAL JUDGE 1ST ADDITIONAL SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER NDPS ACT, CHENNAI]

B.V.JEEVANKUMAR

[PETITIONER]

Vs

THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI -77.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal A. No.245/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence appealed against in C.C.No.28 of 2016 on the file of the Special Judge, 1st Additional Special Court for exclusive Trial of case under NDPS ATC, CHENNAI pending disposal of the above appeal. [CRL.M.P.NO.6109/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. A. No.245/2019 on the file of the High Court and upon hearing the arguments of M/S.G.MURUGENDRAN Advocate for the petitioner and of MR.N.P.KUMAR SPECIAL PUBLIC PROSECUTOR on behalf of the Respondent, the court made the following order:-

This is a petition seeking suspension of sentence and bail.

2 The petitioner, Jeevan Kumar (A.4), faced prosecution along with Bala (A.1), Thameem Anwar (A.2) and Mohammed Zahir (A.3) in C.C. No.28 of 2016 in the I Additional Special Court for NDPS Act Cases, Chennai and vide judgment and order dated 06.12.2018, all the four accused were convicted and sentenced as under:

Accused name	Provision under which convicted	Sentence
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Bala - A.1	Section 8(c) r/w Section 29(1), 22(c) and 28 of the NDPS Act	Rigorous imprisonment for a period of 10 years for each of the offences and fine of Rs.1 lakh for each of the offences, in default to undergo 1 year rigorous imprisonment for each of the offences.
Thameem Anwar- A.2 Mohammed Zahir- A.3 Jeevan Kumar-A.4	Section 8(c) r/w Section 29(1) and 28 of the NDPS Act	Rigorous imprisonment for a period of 10 years for each of the offences and fine of Rs.1 lakh for each of the offences, in default to undergo 1 year rigorous imprisonment for each of the offences.

3 Challenging the aforesaid conviction and sentences, Jeevan Kumar (A.4) has preferred Crl.A. No.245 of 2019 along with the instant criminal miscellaneous petition, seeking suspension of sentence and bail.

4 Heard Mr. G. Murugendran, learned counsel for the petitioner and Mr.N.P. Kumar, Special Public Prosecutor for NDPS Act Cases, appearing for the respondent.

5 The prosecution story, in brief, is as under:

5.1 On information that one Jeevan of Nellore is supplying methamphetamine through Bala (A.1) to Thameem Anwar (A.2) and Mohammed Zahir (A.3), the officers of the Narcotics Control Bureau (NCB) intercepted Bala (A.1) on 21.12.2015 at Koyambedu Omnibus Bus Stand when he was to board a bus to Tuticorin and from his possession, they seized 5.150 kgs. of methamphetamine.

5.2 Bala (A.1), in his statement under Section 67 of the NDPS Act, narrated the sequence of events as to how the drug was handed over to him by Jeevankumar for onward transmission to Thameem Anwar (A.2) and Mohammed Zahir (A.3). As a follow up action, Thameem Anwar (A.2) and Mohammed Zahir (A.3) were located on 22.12.2015 and on 23.12.2015, Jeevankumar (A.4/petitioner herein) was located and his statement under Section 67 of the NDPS Act was recorded.

6 Investigation was conducted and after gathering sufficient materials, all the four were prosecuted in C.C. No.28 of 2016 before the I Additional Special Court for Exclusive Trial of NDPS Act Cases, Chennai and they were convicted and sentenced as stated in paragraph 2 supra.

7 Mr. Murugendran, learned counsel for the petitioner made the following submissions:

- i. The information that was received by the officers was only about Jeevan and not Jeevan Kumar (A.4/petitioner herein);
- ii. The arrest of the petitioner on 23.12.2015 at 14 hrs. is not true, because, the arrest intimation to the relatives was sent at 13.29 hrs. itself on 23.12.2015 vide Ex.C.1;
- iii. The statement of the petitioner under Section 67 of the NDPS Act is not voluntary, especially when Thameem Anwar (A.2) and Mohammed Zahir (A.3) have already disclosed about the involvement of Jeevan Kumar (A.4).
- iv. The car driver (P.W.5) did not identify the petitioner and therefore, there is no evidence to show that the petitioner had transported the contraband from Nellore to Chennai.
- v. There is no corroboration for the petitioner's statement.
- vi. No witness was examined from Hotel Residency where the petitioner is said to have stayed.
- vii. Inasmuch as the petitioner has been in prison for the last five years since the time of his arrest and has served 50% of the sentence, the relief of suspension of sentence and bail may be considered.

8 Per contra, Mr. N.P. Kumar refuted the contentions of Mr. Murugendran and placed strong reliance on the recent judgment of the Supreme Court in **State of Punjab vs. Rakesh Kumar**¹.

9 In **Dadu @ Tulsidas**², the Supreme Court has held that the appellate Court has the power to grant suspension of sentence and bail under Section 389(1) Cr.P.C., and the prohibition imposed by Section 32-A of the NDPS Act to that extent is unconstitutional. However, the Supreme Court has also categorically held that bail can be granted only if the twin test laid down in Section 37 of the NDPS Act is passed.

10 Even in respect of offences other than the ones under the NDPS Act, the law relating to the grant of relief of suspension of sentence and bail has been set out by the Supreme Court. In **Atul Tripathi vs. State of Uttar Pradesh**³, the Supreme Court has held that while considering an application for suspension of sentence, the Court should bear in mind the gravity of the offence, the nature of the crime, criminal antecedents of the convict and the impact on public confidence in the justice delivery system, etc.. Likewise, in **Sidhartha Vashisht vs. State (NCT of Delhi)**⁴ the Supreme Court has held that the relief of suspension of sentence is not an automatic one and that the presumption that the accused is innocent, which is

1 (2019) 2 SCC 466

2 (2000) 8 SCC 437

3 (2014) 9 SCC 177

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

4 (2008) 5 SCC 230

normally available for regular bail, is not available in the case of suspension of sentence and that the normal rule is jail and not bail.

11 As rightly contended by Mr. N.P. Kumar, this Court cannot go into the merits of the case while deciding the bail application. However, when the petitioner has raised certain points, it is imperative for this Court to scan the evidence to see whether there is perversity writ large in the findings of the trial Court.

12 The contention that the information that was received by the NCB referred to Jeevan and not Jeevan Kumar and therefore, the petitioner who is Jeevan Kumar is not Jeevan who is referred to in the information report, cannot hold water because usage of the short name in the information report, cannot, by itself, vitiate it, especially when there has been a seizure of 5.50 kgs. of contraband subsequently.

13 Next, the submission that the arrest intimation was sent at 13.29 hrs. on 23.12.2015, whereas, the arrest was effected at 14.00 hrs. itself on 23.12.2015 cannot lead to the inference that the accused is not guilty of the offence for surmounting Section 37 of the NDPS Act.

14 Coming to the confession statement of the petitioner, the trial Court has discussed it in detail in paragraphs 132 and 136 of its judgment and order and has held that the accused did not retract the statement when he was produced before the Magistrate for remand and retracted the statement only 13 days after the remand. Hence, for the purpose of bail, this ground also will be of no avail to the petitioner.

15 As regards the argument that the car driver (P.W.5) did not identify the petitioner in the witness box, the effect of the same can be considered only at the time of final disposal of the appeal.

16 With regard to corroboration aspect, under Section 30 of the Evidence Act, the confession of one accused will be relevant to some extent qua the co-accused when they are tried jointly and therefore, in this bail application a finding cannot be given that the statement is not worthy of acceptance.

17 Coming to the submission that the petitioner has been in incarceration for the last five years, there is no rule of law that the petitioner will be automatically entitled to bail especially when this Court is ready to take up this case for final hearing even if it is by video conferencing.

18 In view of the discussion aforemade, this Court holds that the case of the petitioner does not pass muster the twin condition in Section 37 of the NDPS Act warranting grant of suspension of sentence and bail.

19 It is made clear that whatever observation that has been made above is only for the limited purpose of deciding the instant criminal miscellaneous petition.

In the result, this criminal miscellaneous petition stands dismissed.

-sd/-

15/09/2020

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 I ADDITIONAL SPECIAL JUDGE
FOR TRIAL OF CASES UNDER THE NDPS ACT,
CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

3 THE SPL. PUBLIC PROSECUTOR
FOR NDPS CASES,
HIGH COURT, MADRAS.

4 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI -77.

C.C. to M/S.G.MURUGENDRAN Advocate on payment of necessary charges

WEB COPY

Order

in

CRL MP.6109/2019

IN CRL.A.NO.245 OF 2019

Date :15/09/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 16/09/2020