

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Thirteenth day of October Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.3094 of 2020

IN CRL.A.NO.630 OF 2018

K.JAGMAL

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONE, CHENNAI.
REPRESENTED BY ITS SPECIAL PROSECUTOR,
N.C.B.F.NO.48/1/3/2013-NCB/MDS).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.630 OF 2018 on the file of the High Court, the High Court will be pleased to suspend sentence imposed upon the petitioner in CC.No.2 of 2014 of the learned Principle Special Judge, Principle Special Court under NDPS Act cases, Chennai-600 104 and enlarge him on bail, pending disposal of the above Criminal appeal No.630/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.630 OF 2018 on the file of the High Court and upon hearing the arguments of Mr.VIPIN NARAYAN, Advocate for the petitioner and of MR.N.P.KUMAR SPECIAL PUBLIC PROSECUTOR FOR NDPS Act CASES on behalf of the Respondent the court made the following order:-

It is the case of the prosecution that the petitioner (A.1) had transported about 5.500 kgs. of opium from Rajasthan to Chennai and was intercepted by the NCB sleuths at the Egmore Railway Station and the contraband recovered. On the said allegation, the petitioner was prosecuted in C.C. No.2 of 2014 and was convicted by the Special Court for NDPS Act Cases, Chennai, on 27.03.2018 of the offence under Section 8(c) read with Section 18(b) of the NDPS Act and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1 lakh, in default to undergo one year rigorous imprisonment. Challenging the said conviction and sentence, the petitioner has preferred this petition seeking suspension of sentence and bail.

2 Mr. Vipin Narayan, learned counsel for the petitioner placed strong reliance on the following four judgments of the Supreme Court and contended that in all the said four cases, the Supreme Court had granted suspension of sentence and bail on the short ground

that the accused therein had served more than five years in prison and in this case also, the petitioner has been in incarceration from the date of his arrest on 04.07.2013 till date, which is over seven years and hence, he is entitled to the relief of suspension of sentence and bail.

- (i) Mansingh vs. Union of India
- (ii) Ramnik Singh vs. Intelligence Officer, Directorate of Revenue Intelligence
- (iii) Adam Khan vs. Narcotics Control Bureau and
- (iv) Mayuresh Nandkumar Purohit vs. Kaushik Manna and another

3 Per contra, Mr. N.P. Kumar, learned Special Public Prosecutor for NDPS Act Cases submitted that the relief of suspension of sentence and bail can be granted only if the twin test laid down under Section 37 of the NDPS Act is cleared.

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

5 In Dadu @ Tulsidas, 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, in the very same judgment, the Supreme Court has further categorically held that the relief of suspension of sentence and bail can be granted only if the twin test laid down in Section 37 of the NDPS Act is passed.

6 In this case, the quantity of opium seized is 5.500 kgms. In the aforesaid cases relied on by the learned counsel for the petitioner, be it noted that the Supreme Court has clearly returned a finding that the High Courts had not taken the appeal for final hearing and on that ground, the accused therein were granted the relief of bail. In the case at hand, this Court is ready even now to take up the appeal for final hearing even by video conferencing. However, the learned counsel for the petitioner is not ready for arguing the appeal. Hence, the aforesaid four judgments relied on by the learned counsel for the petitioner may not be of any avail to the petitioner for grant of suspension of sentence and bail.

Resultantly, this criminal miscellaneous petition seeking suspension of sentence and bail is dismissed.

-sd/-

13/10/2020

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 PRINCIPLE SPECIAL JUDGE,
PRINCIPLE SPECIAL COURT UNDER NDPS ACT CASES,
CHENNAI 600 104.

2 THE SPECIAL PUBLIC
PROSECUTOR FOR NDPS ACT, HIGH COURT, MADRAS.

3 INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONE, CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON,
PUZHAL, CHENNAI

C.C. to M/S.K.GOWTHAMKUMAR Advocate on payment of necessary
charges SR.7053

Order

in
CRL MP.3094/2020

IN CRL.A.NO.630 OF 2018

Date :13/10/2020

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copies of the BAIL/Anti.BAIL Orders in this format

RVR 23/10/2020

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