

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.09.2020

DELIVERED ON: 15.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.M.P. No.5039 of 2020 in Crl.A. No.404 of 2018

Rohit Balasubramaniam

Petitioner/A.1

vs.

The Intelligence Officer
Narcotics Control Bureau (NCB)
Chennai Zonal Unit
Chennai 600 090

Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. seeking to suspend the sentence imposed on the petitioner in C.C. No.36 of 2015 by the I Additional Special Court for trial of cases under the NDPS Act, Chennai, pending final disposal of the appeal and enlarge the petitioner on bail.

For petitioner Mr. Anand Grover, Sr. Counsel
for M/s. Ojas Law Firm

For respondent Mr. N.P. Kumar
Special Public Prosecutor for NDPS Act Cases

ORDER

This is a petition seeking suspension of sentence and bail.

2 It is the case of the prosecution that on prior information, the officers of the Narcotics Control Bureau (NCB) went to the room of Rohit Balasubramaniam (A1/petitioner herein), a IV year Engineering College student, and when they questioned him as to whether he had any drugs, he produced two packets of a powder and a pouch containing LSD blotters; on testing, the powder tested positive

for cocaine and the blotter tested positive for LSD; on measurement, the powder weighed 2 gms. and the blotter weighed 1 gm.; on the information provided by the petitioner, the NCB sleuths searched the premises of Roshan Nair (A.2), from where, they seized a huge contraband.

3 After completing the investigation, the petitioner (A.1) and Roshan Nair (A.2) were prosecuted in C.C. No.36 of 2015 before the I Additional Special Court for NDPS Act Cases, Chennai, in which, by judgment and order dated 31.05.2018, they both were convicted and sentenced as under:

Accused name	Provision under which convicted	Sentence
Rohit Balasubramaniam (A.1)	Section 21(a) of the NDPS Act	Rigorous imprisonment for a period of 1 year
	Section 29 of the NDPS Act	Rigorous imprisonment for a period of 10 years and fine of Rs.1,00,000/- in default to undergo one year rigorous imprisonment
	Section 22(c) of the NDPS Act	-Do-
	Section 27(a) of the NDPS Act	-Do-
	Section 28 of the NDPS Act	-Do-

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used name	Conviction	Sentence
Roshan Nair (A.2)	Section 29 of the NDPS Act	Rigorous imprisonment for a period of 10 years and fine of Rs.1,00,000/- in default to undergo one year rigorous imprisonment
	Section 22(c) of the NDPS Act	-Do-
	Section 27(a) of the NDPS Act	-Do-
	Section 28 of the NDPS Act	-Do-

4 Challenging the aforesaid conviction and sentences, Rohit Balasubramaniam (A.1) has preferred CrI.A.No.404 of 2018 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

5 Heard Mr. Anand Grover, learned Senior Counsel representing M/s.Ojas Law Firm, learned counsel on record for the petitioner and Mr.N.P.Kumar, learned Special Public Prosecutor for NDPS Act Cases appearing for the respondent.

6 Mr. Anand Grover, submitting that the petitioner has been in custody since the time of arrest on 10.02.2015 and has served 50% of the sentence, prayed for the suspension of sentence slapped on the petitioner and his release on bail.

7 Per contra, Mr.N.P. Kumar refuted the aforesaid contention of Mr.Anand Grover.

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

9 In Dadu @ Tulsidas¹, the Supreme Court has held that the appellate Court has the power to grant suspension of sentence and bail under Section 389 Cr.P.C., subject to the restrictions imposed by Section 37 of the NDPS Act.

10 From the statement of the petitioner given under Section 67 of the NDPS Act, it is seen that he is the only son to his parents Dr. Kishore Kumar and Supraja and their family hails from Tirupathi in Andhra Pradesh; he was pursuing his IV year B.Tech. course in a private university at Kattangulathur; when the NCB officials questioned him, he voluntarily produced the drugs and stated that he is an addict. He further gave information about Roshan Nair (A.2) from whom he was purchasing drugs for personal consumption. Pursuant to the disclosure made by the petitioner, the NCB officials were able to seize drugs from the premises of Roshan Nair (A.2).

11 In the opinion of this court, the petitioner who is a young boy, had unfortunately fallen into evil ways by getting addicted to

drugs and what he requires is therapeutic treatment and not punitive treatment. Of course, these considerations, by themselves, cannot be a ground for grant of suspension of sentence and bail in view of the restrictions imposed by Section 37 of the NDPS Act.

12 As regards the first condition under sub-clause (1) Section 37(1)(b) of the NDPS Act that there are reasonable grounds for believing that the accused is not guilty of such offence, prima facie, it appears that there is infraction of Section 42 of the NDPS Act, inasmuch as, Sheelbhadra Samrat, I.O., NCB, Chennai (P.W.1), has stated in his evidence: "I recorded the information in pen. I don't remember what happened to the information written by me in pen. I can't produce the information written by me in the Court." He has further stated as under:

"I have not seen the informer till today in connection with this case. I accept that the wordings in Ex.P.1 is the combination of what is informed by the informant and added by me. It is true that Ex.P.1 is not the verbatim reproduction of what is stated by the informant."

13 Mr.N.P. Kumar attempted to surmount the above statement of Sheelbhadra Samrat (P.W.1) by submitting that in the information report (Ex.P.1), apart from the information, there are other details which are required to be written by the officer while submitting a copy of the information recorded to his official superior as required under Section 42 of the NDPS Act which Sheelbhadra Samrat (P.W.1) has meant when he stated that the information report (Ex.P.1) is not the verbatim reproduction of what is stated by the informant.

14 In the opinion of this Court, in the absence of the witness explaining this in his evidence, the explanation offered by the learned Special Public Prosecutor at the Bar cannot be a substitute. Of course, this aspect would be gone into by this Court thoroughly at the time of final disposal of the case and this Court can arrive at a different finding. But, for the purpose of grant of bail to a young boy who has suffered five years of incarceration for the sin of getting addicted to drugs, this prima facie infraction of Section 42 of the NDPS Act would be sufficient to surmount the first condition under sub-clause (1) Section 37(1)(b) of the NDPS Act.

15 As regards the second condition that the petitioner is not likely to commit any offence while on bail, this Court does not find that the petitioner has the propensity to indulge in a drug offence, if released on bail. Further, there are no materials available before this Court to infer that he would indulge in drug trafficking.

16 This Court is conscious of the fact that the petitioner was in incarceration for the last five years and during that period, he would not have been exposed to drugs. Nevertheless, the dopamine in him may, at any time, trigger his craving for drugs and hence, in order to completely weed out all the possible dormant seeds in him,

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this Court deems it fit and proper to send him to a hospital for complete cure.

17 In view of the aforemade discussion, this Court is inclined to grant the relief of suspension of sentence and bail to the petitioner on the following conditions:

- i. The petitioner shall execute a bond for Rs.50,000/- with two sureties, of whom, one should be his parent, to the satisfaction of the trial Court. The bond shall contain an undertaking that the petitioner will not leave India. The petitioner shall deposit his passport in the trial Court, if not already deposited;
- ii. The sureties shall specifically undertake in the bond that they will admit the petitioner in TTK Hospital, No.17, IV Main Road, Indira Nagar, Adyar, Chennai 600 020, and bear the expenses to be incurred in the hospital towards de-addiction treatment.
- iii. The sureties shall affix their photographs and left thumb impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;
- iv. Upon release of the petitioner on bail, the sureties shall ensure that the petitioner is admitted to TTK Hospital, Adyar, Chennai, for taking de-addiction treatment and the petitioner's parents shall bear the expenses to be incurred thereto, until the petitioner is discharged from the hospital;
- v. If the petitioner is found misusing the bail conditions, it is open to the respondent to move an application for cancellation of bail before this Court;
- vi. After discharge from the hospital, the petitioner shall report before the trial Court every Monday at 10.30 a.m. until further orders.

18. While ordering release of the petitioner on bail on the aforesaid conditions, this Court should also keep in mind the ongoing COVID-19 pandemic and hence, this Court is keen to ensure that the petitioner undergoes the necessary de-addiction treatment in TTK Hospital, Chennai, without being affected by COVID-19 and also without being a carrier of the said pandemic. Hence, it will be in the fitness of things to observe and direct as under:

- i. At present, the petitioner is safe and is being taken care of by the Prison authorities against COVID-19. When he is released from the prison, he is bound to be received by his family members, who will take him to their house, in which event, there is every likelihood of he being exposed to the pandemic. After being with his family members for some time, if he is admitted in TTK Hospital, there is every likelihood for him to be a

carrier of the virus to the inmates of TTK Hospital, thereby putting them in peril.

- ii. Ergo, keeping his interest, as well the interest of the inmates of TTK Hospital in mind, it is desirable that on his release order being received by the Prison authorities, he be shifted by the Prison authorities direct from the prison to TTK Hospital in a duly sanitized Prison vehicle.
- iii. He shall not be allowed to mingle with his family members either en route to TTK Hospital or in TTK Hospital.
- iv. After reaching TTK Hospital, he shall be subjected to COVID-19 test and if it is found that he has no symptoms of the pandemic, de-addiction treatment can be commenced for him.
- v. If he is tested positive for COVID-19, he may be kept in Government quarantine and after he is tested negative post the quarantine period, he shall be given de-addiction treatment in TTK Hospital.
- vi. On receipt of the release order, the Superintendent, Central Prison, Puzhal, Chennai, shall ferry the petitioner directly to TTK Hospital without permitting him to mingle with anyone, including his kith and kin, en route to TTK Hospital.
- vii. The trial Judge, after accepting the sureties, shall mention in the release order, the aforesaid conditions contained clauses (i) to (vi) above imposed by this Court, so that the same are complied with by the Prison authorities.

19 TTK Hospital shall send a report to the respondent about the petitioner's admission and his discharge from the hospital and the respondent shall keep track of it. Further, the respondent shall issue a Look Out Circular to the Immigration authorities to ensure that the petitioner does not leave India.

20 It is made clear that the observations made in this order are only for the limited purpose of deciding the instant suspension of sentence and bail application and shall not have any bearing on the final disposal of the appeal. It is also made clear that the relief of suspension of sentence and bail granted to the petitioner herein cannot be cited as a precedent by the co-accused for his coming out on bail, inasmuch as, each bail application has to be tested on its own merits on the anvil of Section 37 of the NDPS Act.

This criminal miscellaneous petition stands ordered in the above terms.

-sd/-
15/09/2020

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

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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 SPECIAL PUBLIC PROSECUTOR
FOR NDPS ACT CASES, HIGH COURT, MADRAS.

4 THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU (NCB),
CHENNAI, ZONAL UNIT, CHENNAI-90.

5 THE TTK HOSPITAL
17, IV MAIN ROAD, INDIRA NAGAR,
ADYAR, CHENNAI-600 020.

+4 C.C. to M/S.OJAS LAW FIRM Advocate on payment of necessary charges sr.no.6265

Order

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in
CRL MP.5039/2020

in
CRL A.404/2018

Date :15/09/2020

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RD 15/09/2020