



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty First day of December Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.5006 of 2021
in
Crl.A(MD)No.308 of 2021

RONALD SATEESH @ ANAND

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

STATE REP.BY
THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
REGIONAL INTELLIGENCE UNIT,
TRIVANDRUM.
(NCB, O.R.NO.1/08/NCB/RIU/TVM)

... RESPONDENT/ RESPONDENT/
RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the Petitioner / Appellant / Accused namely Ronald Sateesh @ Anand, S/o.Arulappan passed by the Learned II- Additional Special Court for NDPS Act Cases, Madurai in C.C.No.128 of 2010 dated 08/07/2010 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

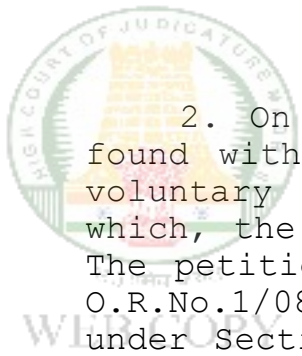
PRAYER IN Crl.A(MD)No.308 of 2021:

To call for the records in C.C.No.128 of 2010 dated 08.07.2021 on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.JEGADEESH PANDIAN, Advocate for the petitioner and of Mr.C.ARUL VADIVEL @ SEKAR, Special Public Prosecutor for NCB Cases on behalf of the Respondent, the court made the following order:-

Reserved on : 03.12.2021
Pronounced on : 21.12.2021

This petition has been filed to suspend the sentence imposed by the II Additional Special Court for NDPS Act Cases, Madurai in CC.No.128/2010 dated 08.07.2010, till the disposal of the appeal.

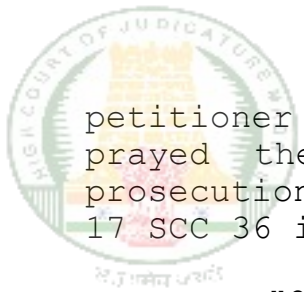


2. On 06.09.2008, at about 06.45 pm, one accused Dayaram was found with one kg of Heroine in two bags of 500 grams each. The voluntary statement of the accused Dayaram was recorded, based on which, the petitioner and one another person were added as accused. The petitioner and other accused were absconding. A case in NCB, O.R.No.1/08/|NCB/RIU/TVM was registered against all the accused under Sections 8(c) r/w 21(c), 28 and 29(1) of NDPS Act. The case was taken on file as CC.No.196/2009. Since Non Bailable Warrant was issued against the petitioner and another accused, the case against them was split up as CC.No.128/2010. The petitioner was produced on Non bailable Warrant. Non bailable Warrant is pending against the other accused Lal @ Lal Kumar. Hence, against the absconding accused, the case was split up as CC.No.248/2020.

3. In CC.No.128/2010, the II Additional Special Court for NDPS Act Cases, Madurai found the petitioner guilty under Section 8(c) r/w 21(c) of NDPS Act and sentenced the petitioner to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for a period of one year. Against the conviction and sentence, the petitioner has filed an appeal in Crl.A(MD)No.308/2021. Along with the appeal, the petitioner filed this petition for suspension of sentence.

4. On the side of the petitioner it is stated that the petitioner was acquitted under Sections 28 and 29(1) of NDPS Act. The reason for acquittal under Sections 28 and 29(1) of NDPS Act is applicable to other Section also. The contraband was seized only from A1 and not from this petitioner. This petitioner was roped into this case only based on the confession statement given by A1. The confession of co-accused is binding on the petitioner, only when there is a joint trial. Section 67 of the NDPS Act and Section 30 of the Indian Evidence Act is in support of the petitioner. The petitioner was acquitted for the offence of conspiracy and hence the petitioner cannot be convicted, when no contraband was seized from him. The call details are not sufficient to prove the nexus between the offences and the petitioner. There is no previous case against the petitioner and prayed the sentence to be suspended.

5. On the side of the prosecution, it is stated that the petitioner was absconding for a period of 12 years. He was arrested on Non Bailable Warrant and absconding accused is not entitled for suspension of sentence, that too, after the conviction. Under the NDPS Act, suspension of sentence can be granted only when there is reasonable ground to believe that the petitioner is not guilty and when the Court is sure that he will not commit any offence again. The petitioner was already found guilty by the competent Court and there is no question of claiming innocence at this stage. The presumption of innocence is not available to the petitioner. As Non Bailable Warrant was pending against the petitioner for a period of



petitioner was having regular phone talk with the prime accused and prayed the petition to be dismissed. On the side of the prosecution, a Judgment of Hon'ble Supreme Court reported in (2015) 17 SCC 36 is cited. The relevant portion is as follows.

"2...The bail was granted to the respondent without assigning any reason. In this view of the matter, the order of the High Court is not sustainable in law which is, accordingly, set aside..."

Another Judgment of the Hon'ble Supreme Court reported in (2020) 12 SCC 122 is cited, wherein, it is decided as follows.

"18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under *NDPS Act*. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under: "7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the *NDPS Act*, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95] as under:

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.



8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the [NDPS Act](#) should not be released on bail during trial unless the mandatory conditions provided in [Section 37](#), namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socioeconomic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

19. The scheme of [Section 37](#) reveals that the exercise of power to grant bail is not only subject to the limitations contained under [Section 439](#) of the CrPC, but is also subject to the limitation placed by [Section 37](#) which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of [Section 37](#) that in addition to the limitations provided under the [CrPC](#), or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the [NDPS Act](#) is indeed uncalled for.

21. We may further like to observe that the learned



Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act."

Another Judgment of the Hon'ble Supreme Court reported in 2021 SCC Online SC 178 is cited, wherein, it is decided as follows.

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"9. While considering the rival submissions, we must at the outset advert to the manner in which the learned Single Judge of the High Court has dealt with the application for suspension of sentence under Section 389(1) of CrPC. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the NDPS Act. The findings of the learned Special Judge which have been arrived at after a trial on the basis of evidence which has been adduced indicate that the respondent who was a proprietor of a courier agency was complicit with a foreign national in the booking of two parcels which were found to contain 325 grams of heroin and 390 grams of pseudoephedrine. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail". Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will refer to the decision of a two-Judge Bench of this Court in Preet Pal Singh v State of Uttar Pradesh³ where Justice Indira Banerjee, speaking for the Court, observed as follows:

"35. There is a difference between grant of bail under [Section 439](#) of the CrPC in case of pre-trial arrest and suspension of sentence under [Section 389](#) of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court



in *Dataram Singh v. State of U.P. and Anr.* (supra). However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in *Section 389(1) of the Cr.P.C.*" "

6. It is seen that the petitioner was found guilty by the Special Court. The contraband involved is heroine in commercial quantity. The offence is serious in nature. There is no reasonable ground to believe that the petitioner is innocent after he was found guilty by the Special Court. It is seen that the petitioner was absconding at the time of trial and the case against the petitioner was subsequently split up and the petitioner was produced before the Court on Non Bailable Warrant. If the sentence is suspended, there is possibility of the petitioner to abscond again. In the above circumstances, this Court is not inclined to suspend the sentence. Therefore, this Criminal Miscellaneous Petition is dismissed.

sd/-

21/12/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1 THE II- ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES,
MADURAI.

2 THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
REGIONAL INTELLIGENCE UNIT, TRIVANDRUM.



3 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR FOR NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-9587[I] dated
22/12/2021)

ORDER

IN

CRL MP(MD) No.5006 of 2021 in

CrI.A(MD)No.308 of 2021

Date :21/12/2021

MBI

MS/CN/SAR-1/27.12.2021/7P.6C