



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

**Crl.M.P.No.435 of 2023 in
Crl. A No.41 of 2023**

Ramkumar

... Petitioner

Vs.

State rep by
The Inspector of Police,
NIB CID,
Chennai.
(Crime no.116 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed on the petitioner by judgment dated 03.01.2023 passed in C.C.No.81 of 2020 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of this Criminal Appeal.

For Petitioner : Mr.G.Murugendran for
Mr.M.S.Charles

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

ORDER

The petitioner, who is A1 in C.C.No. 81 of 2020 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, seeks suspension of his sentence of imprisonment.

2. The Trial Court, vide its judgment dated 03.01.2023, acquitted A1 to A4 for the offence under Sections, 8(c) r/w.27A & 8(c) r/w.29(1) of the NDPS Act. However, convicted and sentenced them under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act as under:

Rank of the accused	Conviction under Section	Sentence
A1	8(c) r/w.20(b)(ii)(C) of the NDPS Act	The accused shall undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 6 months.

3. Challenging the conviction and sentence slapped by the Trial Court, the petitioner/A1 is before this Court.



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

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4. The learned counsel for the petitioner submitted that the petitioner/accused is A1 in CC.No.81 of 2020 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. The respondent Police prosecuted the petitioner along with other accused for the offences alleged under Sections 8(c) r/w.20(b)(ii)(C) of the NDPS Act. After trial, the trial Court vide judgment dated 03.01.2023 found guilty and sentenced the accused to the undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in fault, to undergo rigorous imprisonment for a period of six months. Now, the petitioner /A1 has filed an appeal and there are arguable points in favour of the accused in this Appeal. He further submitted that the petitioner/A1 has been under judicial custody from 21.12.2019 till date and therefore, since he has been under judicial custody for more than 3 years, he prayed for suspension of sentence.

5.Further, the learned counsel for the petitioner referred to a decision of the Hon'ble Supreme Court reported in (2022) 10 SCC 51:



Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023

WEB COPY (2023) 1 SCC (Cri) 1 : 2022 SCC Online SC 825 under Section 436 -A

Cr.PC, in the case of “**Satender Kumar Antil Vs. Central Bureau of Investigation and Another**” (Miscellaneous Application no.1849 of 2021 in SLP (Crl.) no.5191 of 2021). The relevant portion of paragraph nos.63 & 64 are extracted below:

"63. Section 436-A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an under trial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word “trial” will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436-A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

“64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that “bail is the rule and jail is an exception” coupled with the principle governing the



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

WEB COPY

presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This Court in *Bhim Singh v. Union of India* [*Bhim Singh v. Union of India*, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663], while dealing with the aforesaid provision, has directed that : (SCC pp. 606-07, paras 5-6)

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of under trial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the under trial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such under trial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate



WEB COPY



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

Therefore, the learned counsel for the petitioner submitted that Section 436 -A Cr.PC is also applicable to the present appeal also. Hence, the learned counsel prayed to suspend the sentence till the disposal of the appeal.

6.The learned Government Advocate (Crl. side) appearing for the respondent has submitted that on 21.12.2019 at about 6.00 hrs, on receiving secret information about the illegal possession of 54 kgs of Ganja, the respondent police arrested the petitioner and others and seized Ganja from the accused including the petitioner. Therefore, he objected to the grant of bail by suspending the sentence to the petitioner/A1.



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

WEB COPY

7. Heard the learned Government Advocate (Crl. side) appearing for the respondent and perused the impugned judgment and the materials placed on record.

8. On a perusal of records, it is seen that on 21.12.2019 at about 6.00 hrs, on receiving secret information about the illegal possession of 54 kgs of Ganja, the same has been seized from the petitioner/A1 by the respondent Police. The respondent Police prosecuted the petitioner along with other accused for the offences alleged under Sections 8(c) r/w.20(b)(ii)(C) of the NDPS Act. After trial, the trial Court vide judgment dated 03.01.2023 found the petitioner guilty and sentenced to the undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in fault, to undergo rigorous imprisonment for a period of six months. Now, the petitioner /A1 has preferred an appeal as against his conviction and sentence and according to the learned counsel, there are arguable points in favour of the accused in this Appeal and there is a fair chances to succeed in the appeal. Further, the petitioner/A1 has been under custody from 21.12.2019 till date and



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

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hence, in the present circumstances, the judgment rendered by the Hon'ble Supreme Court in the case cited supra dealing with Section 436-A, in the opinion of this Court, will hold good to the present appeal also.

9.Considering the fact that the petitioner/A1 has been under judicial custody from 21.12.2019 till date and also taking into consideration of the submissions of the learned counsels appearing on both sides, this Court finds that the petitioner has raised substantial grounds in this Criminal Appeal, which require detailed appraisal. Therefore, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

10. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, I Additional Special Court



*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

WEB COPY

for Exclusive Trial of Cases under NDPS Act, Chennai.

(ii) The petitioner and 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.

(iii) The petitioner shall appear before the Trial Court, as and when required.

21.02.2023

Index:Yes/No
Internet:Yes/No
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To

1. The learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai

2.The Superintendent, Central Prison, Puzhal, Chennai.

3.The Inspector of Police,
NIB CID,
Chennai.

(Crime no.116 of 2019)

4. The Public Prosecutor,High Court of Madras, Chennai.

V.SIVAGNANAM, J.



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*Crl.M.P.No.435 of 2023 in
Crl.RC No.41 of 2023*

dn

**Crl.M.P.No.435 of 2023 in
Crl.A No.41 of 2023**

21.02.2023