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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.M.P.No.2332 of 2023

in

Crl.A.No.158 of 2023

K. Saran Kumar

... Petitioner

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai
Respondent

...

Criminal Miscellaneous Petition filed under Section 389 (1) and 439 of Cr.P.C., to release the petitioner on bail by suspending the sentence imposed on the petitioner, by judgment dated 03.08.2022 made in C.C.No.07 of 2019 on the file of the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, pending disposal of the above appeal.

For Petitioner : Mr.G. Murugendran

For Respondent : Mr.Rajendra Kumar
Spl. Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.07 of 2019, dated 03.08.2022 on the file of the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, pending disposal of the above appeal.

2. Totally there were two accused in S.C.No. 07 of 2019 and the petitioner is A2. The trial court, by its judgment dated, 03.08.2022 made in S.C.No.07 of 2019 ordered as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A2	U/s.8(c) r/w.20(b)(ii)(C) of NDPS Act	To undergo RI for 10 years and to pay a fine of Rs.1,00,000/-, in default in payment of fine, to undergo RI for further period of 6 months.

3. Aggrieved over the judgment of conviction and sentence imposed by the trial court, the petitioner/accused has filed the present criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.



4. The learned counsel for the petitioner submitted that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. The respondent police prosecuted the petitioner along with A1 for having committed the offence punishable under section 8(c) r/w.20(b)(ii)(C) of NDPS Act. The petitioner is an acting driver and it is not disputed by the prosecution. In the absence of any evidence to show knowledge of contents kept in the bag, the petitioner cannot be tagged along with other accused for transporting the contraband. In the circumstances, Section 37 of NDPS Act could not be invoked. The petitioner's explanation has been explained to the trial court during questioning him under section 313 Cr.P.C. Further, the prosecution tagged A2 with A1 in the offence only upon the confession statement given by A1 and confession of A2 was also obtained from him, but the same cannot be used against him without disclosing a new fact. Further any statement recorded by the department officers is also hit by section 25 of the Indian Evidence Act and the same is settled by the judgment of Supreme Court reported in **Tofan Singh's case reported in 2020 SCC Online SC 8852**. Therefore, in the absence of any evidence that the petitioner is having knowledge about the contraband in the bag kept in the dicky of the car, he cannot be implicated in the offence. The trial court over-looking the above fact, has erroneously convicted and sentenced the petitioner. Therefore, there is a good case for the



appellant. Thus, he prayed for granting suspension of sentence imposed on him by the trial court till the disposal of the appeal.

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5. The learned Special Public Prosecutor, NCB Cases appearing for the respondent objected for suspending the sentence stating that this petitioner is travelling along with A1 from Andhrapradesh to Chennai and he is having knowledge about the contraband kept in the bag in the dickey of the car. Therefore, the trial court rightly found the petitioner guilty and convicted him accordingly. In support of his contention, he also relied upon the judgments of the Supreme Court reported in the following cases viz., **(i) Dadu Vs. State of Maharashtra reported in 2000(3)ACR2573 (SC) (ii) Budh Singh Vs State of Haryana and (iii) The State of Punjab vs. Rakesh Kumar reported in 2013(1)ACR 975.**

6. Heard both sides and perused the impugned order and materials available on record.

7. It is not disputed that the petitioner-A2 is an acting driver engaged by A1. Further there is no direct evidence to attribute knowledge to the petitioner that what was kept in the bag containing the contraband which was seized by



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the respondent police. The entire prosecution relied upon the confession of A1 and A2 also gave a confession, but it does not meet the parameters laid down by the Supreme Court in **Tofan Singh's case reported in 2020 SCC Online SC 8852**. As per the above decision, the confession statement is inadmissible evidence and based upon the same, the petitioner cannot be implicated and convicted. Apart from that, the prosecution has not placed any evidence before the trial court. In such circumstances, the learned counsel for the petitioner prays for suspension of sentence. On perusal of the impugned judgment and the evidence, it appears that the seized contraband, i.e., 144.500 kgs of Ganja was kept in a closed bag and was placed in the dickey of the car. It is exposed in the Mahasar -Ex.P.2 seized by PW1. PW1, in his evidence also disclosed that the contraband has been taken from a bag kept in the dickey of the car. This petitioner, being an acting driver of the car, in the absence of any evidence, cannot be prosecuted that he is having knowledge of the possession of the contraband, merely for the reason that he also accompanied with A1 at the time of commission of offence. The ingredients of Section 37 of NDPS cannot be strictly complied with in the instant case on hand. In the circumstances, there is a good case for the petitioner before this court. Therefore, I find prima facie, the petitioner is entitled for suspension of



sentence. In such view of the matter, this Court is inclined to grant the relief of suspension of sentence and bail.

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8. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

(i) The petitioner is ordered to be released on bail on executing a bond for a sum of Rs.25,000/-(Rupees twenty five thousand only) along with two sureties, each for a like sum, to the satisfaction of the Special Judge, I Additional Special Court 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 bonds and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;

(iii) The petitioner shall surrender before the trial Court on every first working day of every month at 10.30 a.m., until further orders.



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(iv) **The petitioner shall pay the fine amount imposed by the trial court within a period of one month from the date of receipt of a copy of this order.**

21.06.2023

msr

To

1. The Special Judge,
I Additional Special Court for Exclusive
Trial of Cases under NDPS Act, Chennai,
2. The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit, Chennai-77.
3. The Special Public Prosecutor, NCB Cases,
High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai.



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V.SIVAGNANAM, J.

msr

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