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Crl.M.P.No.3975 of 2023 in Crl.A.No.284 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.3975 of 2023

in

Crl.A.No.284 of 2023

1. Kottaisamy

2. Udayakumar

... Petitioners

/vs/

The State represented by
The Inspector of Police,
NIB CID,
Chennai.
(Cr.No.80 of 2019)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 397(1) & 439 of Cr.P.C., to suspend the sentence imposed by the Principal Special Court under EC & NDPS Act, Chennai in C.C.No.189 of 2019 and enlarge the petitioner on bail pending Criminal Appeal.

For petitioner

... Mr. S.Senthilvel

For Respondent

... Mr.R.Vinothraja
Government Advocate(Crl.side)



ORDER

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This Criminal Miscellaneous Petition has been preferred seeking to release the petitioner on bail by suspending the sentence in C.C.No.189 of 2019, dated 30.01.2023 on the file of the Principal Special Judge, EC & NDPS Court, Chennai, pending disposal of the above appeal.

2. The Trial Court, by its judgment dated 30.01.2023 made in C.C.No.189 of 2019 convicted and sentenced the petitioners/ appellants to undergo rigorous imprisonment for 12 years each and to pay a fine of Rs.1,20,000/-each for the offence under Section 8(c) r/w.20(b)(ii)(C) of the NDPS Act, in default of payment of fine thereof to undergo further period of 6 months R.I and sentenced to undergo rigorous imprisonment rigorous imprisonment for 5 years each and to pay a fine of Rs.50,000/- each for the offence under Section 8(c) r/w.29(1) of NDPS Act, in default of payment of fine thereof to undergo further period of 6 months R.I and also sentenced to undergo rigorous imprisonment rigorous imprisonment for 12 years each and to pay a fine of Rs.1,20,000/- each for the offence under Section 25 of NDPS Act, in default of payment of fine thereof to undergo further period of 6 months R.I .



3. Aggrieved over the judgment of conviction and sentence imposed, the petitioners had filed the present criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.

4. The learned counsel for the petitioners submitted that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. The learned counsel appearing for the petitioners submitted that there is strong suspicious circumstances in this case. P.W.1, who seized and sent the samples to the chemical analysis, in his evidence deposed that he sent 50 grams of two samples for chemical analysis, but the Chemical Examiner P.W.3 deposed that he had received 55.6 grams and 60.0 grams for analysis. This contradiction goes to the root of the case and strong suspicion arose against the prosecution and therefore, Chemical analysis report cannot be relied on. Thus, he prayed for granting suspension of sentence imposed on them by the trial court for a period of three months.

5. The learned Additional Public Prosecutor strongly opposed to grant suspension to the petitioners.



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6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. On a perusal of the impugned judgment and the evidence, it is noticed that P.W.1 in his evidence deposed that he had sent 50 grams of samples for chemical analysis. But the Expert P.W.3 deposed that he had received 55.6 and 60 grams of two samples for analysis. Hence, there is suspicion in the case of the prosecution, which goes to the root of the case. Under these circumstances, this Court is inclined to grant suspension of sentence imposed on the petitioners on payment of fine amount.

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

- (i) The petitioners are ordered to be released on bail on executing a bond for a sum of Rs.25,000/-(Rupees twenty five thousand only) each with two sureties, each for a like sum, to the satisfaction of the Principal Special Court under EC & NDPS Act, Chennai
- (ii) The petitioners shall pay the fine amount to the credit of C.C.No.189 of 2019 on the file of the Principal Special Court under EC & NDPS Act, Chennai within a period of one month;



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- (iii) The petitioners 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;
- (iv) The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 p.m., until further orders.

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Note : Issue order copy on 21.06.2023

To

1. The Principal Special Judge,
Special Court under EC and NDPS Act cases,
Chennai
2. The Inspector of Police,
NIB CID, Chennai.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison, Puzhal-I, Chennai.



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V. SIVAGNANAM, J.

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