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Crl.M.P.No.4293 of 2023 in Crl.A.No.319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.4293 of 2023

in

Crl.A.No.319 of 2023

1.Chandra sekar
2.Ashish
3.Akshaya Kumar

... Petitioners

/vs/

The State, represented by
the Deputy Superintendent of Police,
NIB CID,
Chennai

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389 (1) of Cr.P.C., to suspend the sentence imposed in CC.No.18 of 2018, dated 17.03.2023 by the I Additional Special Court under EC and NDPS Act, Chennai and enlarge the petitioners on bail.

For Petitioners ... Mr. R.C.Paul Kanagaraj

For Respondent ... Mr. A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner in C.C.No.18 of 2018, dated



17.03.2023 passed by I Additional Special Court under EC and NDPS Act,
Chennai.

2. The petitioners are A1 to A3 in C.C.No.18 of 2018. The trial court, by its judgment dated 17.03.2023, convicted and sentenced the petitioners/A1 to A3 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	U/s. 8(c) r/w.22(b) of NDPS Act	to undergo 4 years RI and to pay a fine of Rs.40,000/- in default, to undergo RI for six months.
A2	U/s.8(c) r/w.22(b) of the NDPS Act	to undergo 3 years RI and to pay a fine of Rs.30,000/-, in default, to undergo RI for a period of six months
A3	U/s.8(c) r/w.22(b) of the NDPS Act	to undergo 3 years RI and to pay a fine of Rs.30,000/-, in default, to undergo RI for a period of six months.

The fine amount is not paid before the trial court. However, the petitioners were acquitted for the offence under section 8(c), r/w.29(1) of NDPS Act.

3. Aggrieved over the judgment of conviction and sentence imposed by the trial court, the petitioners have preferred the present criminal appeal along with the instant miscellaneous petition, seeking suspension of sentence and bail till the disposal of the appeal.



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 respondent police prosecuted the petitioners/accused for the offence under sections 8(c) r/w.29(1), 8(c) r/w.22(b) of NDPS Act in C.C.No.18 of 2018 on the file of I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. After trial, all are found guilty for the offence under section 8(c) r/w.20(b) (ii)(C) of NDPS Act and they were convicted and sentenced by the trial court as stated above. He further submitted that the provision of Section 42 of the NDPS Act was not properly complied with and the absence of examination of independent witnesses vitiates the case of prosecution. Further, PW3-Chemical Analyst had not explained the details of the test conducted by her to conclude that the contraband is Lysergide. There is a delay in sending the contraband and the reasons for the delay has not been properly explained by the prosecution. Hence, there is arguable point in favour of the petitioners and the petitioners are having every chance to succeed in the appeal. Thus, he prayed for suspension of sentence imposed on the petitioners till the disposal of the appeal.

5. When the matter is taken up for hearing, the learned Additional



Public Prosecutor appearing for the respondent objected for suspension of sentence and bail.

6. I have considered the arguments of both sides and perused the impugned order and the entire material evidence placed on record.

7. On perusal of records, the fact reveals that the petitioners are accused in C.C.No.18 of 2018 on the file of I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. The respondent police prosecuted the petitioners/accused for having committed the offence punishable under sections 8(c) r/w.29(1), 8(c) r/w.22(b) of NDPS Act . After considering the evidence of witnesses and exhibits, the trial court found the petitioners guilty and convicted and sentenced them as stated above. Considering the submissions of learned counsel for petitioner and perusal of materials available on record, this court is of the view that the petitioner has raised substantial grounds in the appeal which require detailed appraisal and there is arguable point in favour of the petitioners. Further, the appeal is not likely to be taken up in the near future and the petitioners are now under judicial custody. In such view of the matter, this Court is of the view that the petitioners are entitled to the relief of suspension of sentence and bail.



8. Accordingly, the relief of 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 their executing a bond for a sum of Rs.25,000/-(Rupees twenty five thousand only) each 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 petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the above said Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;
- (iii) Each of the petitioners shall pay the fine imposed by the trial court within one month from the date of receipt of a copy of this order.
- (iv) petitioners shall appear before the trial Court as and when required.

19.04.2023

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To



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- 1.The Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
- 2.The Deputy Superintendent of Police,
NIB CID,
Chennai
3. The Superintendent of Prison,
Central Prison, Puzhal-1, Chennai.
4. The Public Prosecutor, High Court, Madras.

V.SIVAGNANAM, J.



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