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CRL.MP.NO.4961 OF 2023 IN CRL.A.NO.386 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.MP.NO.4961 OF 2023

IN

CRL.A.NO.386 OF 2023

M.Bakrutheen

... Petitioner

Vs.

State rep. By
Inspector of Police
D3, Ice House Police Station
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C., to suspend the sentence imposed in C.C.No.30 of 2019 on the file of Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner ... Mr.M.Anandaraj

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



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ORDER

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This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed in C.C.No.30 of 2019 on 21.02.2023 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2.The Trial Court, by its judgment dated 21.02.2023 in C.C. No.30 of 2019 convicted and sentenced the petitioner/accused as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	8(c) read with 20(b)(ii)(B) of NDPS Act	Five years Rigorous Imprisonment and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine thereof to undergo further period of six months Rigorous Imprisonment
The period of remand already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.		

3.The petitioner, who is the sole accused in C.C.No.30 of 2019, aggrieved over the judgment of conviction and sentence imposed on



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him, has filed the present Criminal Appeal along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and to enlarge him on bail.

4.The learned counsel for the petitioner submitted that the petitioner is the accused in Crime No.487 of 2016 on the file of the respondent police for having found in illegal possession of 1.150 Kgs of Ganja. After completion of trial, the Trial Court based upon the evidence, found the petitioner guilty of the offence under Section 8(c)r/w 20(b)(ii)(B) of NDPS Act and convicted and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine thereof, to undergo further period of six months Rigorous Imprisonment

5.The learned counsel for the petitioner submitted that in this case, there are many material contradictions in the prosecution evidence. In the special report which was marked as Ex.P4, the respondent police has recorded that the accused was identified at 06.00 am on 17.03.2016 and enquired the accused at about 06.30 am. But in the alleged Seizure



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Mahazar, which was marked as Ex.P3, it was recorded that the contraband has been seized from the accused on 18.03.2016 at 07.00 am, which creates a doubt. Apart from this, after sending the seized contraband to laboratory, the remaining contraband was not produced before the Trial Court as Material Object. Even though the seized contraband was not produced before the Trial Court for marking as Material Object, the accused was convicted by the Trial Court and therefore, there are some arguable points in favour of the petitioner in the Criminal Appeal. The petitioner is now confined at Central Prison, Puzhal.

6.The learned Additional Public Prosecutor for the respondent objected to suspend the sentence. He has also admitted that the petitioner is confined at Central Prison, Puzhal.

7.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused the entire materials available on record.



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8. On perusal of the records, the fact reveals that the petitioner is the sole accused in Crime No.487 of 2016 on the file of the respondent police for having found in illegal possession of 1.150 Kgs of Ganja. After completion of trial, the Trial Court found the petitioner guilty of the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and convicted and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine thereof, to undergo further period of six months Rigorous Imprisonment. Further, there are many material contradictions in the prosecution evidence. In the special report which was marked as Ex.P4, the respondent police has recorded that the accused was identified at 06.00 am on 17.03.2016 and enquired the accused at about 06.30 am. But in the alleged Seizure Mahazar, which was marked as Ex.P3, it was recorded that the contraband has been seized from the accused on 18.03.2016 at 07.00am. Apart from this, after sending the seized contraband to laboratory, the remaining contraband was not produced before the Trial Court for marking it as Material Object. There is a huge delay in recovering the contraband from the accused after his arrest. Further, it is recorded in para 2 of the impugned judgment, as under:



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“2..... In the meantime, PW4 had transferred to some other station and he had handed over entire case records to Mr.Krishnamoorthy (PW5), Inspector of Police, D3. Ice House Police Station. The remaining contraband and the samples are not marked as material object before this Court.....”

After completion of trial, the Trial Court found the petitioner guilty of the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and convicted and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine thereof, to undergo further period of six months Rigorous Imprisonment.

9.The petitioner has raised substantial grounds in the Criminal Appeal which require detailed appraisal. Further, the Criminal Appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.



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10. Accordingly, till the disposal of the Criminal Appeal, the suspension of sentence and bail are granted, on the following conditions:-

- (i) The petitioner is ordered to be released on bail on his 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 Trial Court;
- (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 appear before the trial Court as and when required.

11. The Criminal Miscellaneous Petition is ordered accordingly.

26.04.2023

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To

- 1.The Principal Special Judge
Principal Special Court under EC & NDPS Act
Chennai.
- 2.The Inspector of Police
D3, Ice House Police Station, Chennai.
- 3.The Superintendent
Central Prison, Puzhal.
- 4.The Public Prosecutor
High Court of Madras.

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V.SIVAGNANAM, J.

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