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*Crl.M.P.No.17520 of 2023
in Crl.A.No.1245 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.17520 of 2023
in
Crl.A.No.1245 of 2023

Gowtham

... Petitioner/A1

Vs.

The Inspector of Police,
C-3, Seven Wells Police Station,
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Criminal Procedure Code to suspend the sentence dated 29.09.2023 passed by the Principal Special Court under EC & NDPS Act, Chennai convicting the appellant under Section 8(c) r/w 29(1), 20(b)(ii)(B) of NDPS Act, imposing the sentence of rigorous imprisonment for five years and to pay a fine of Rs.50,000/- with default sentence of 6 months R.I. And enlarge the petitioner on bail.

For Petitioner : Mr.P.N.Vignesh

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai by judgment dated 29.09.2023 made in C.C.No.28 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner along with two others were tried by the Trial Court for offence under Sections 8(c) r/w 29(1), 20(b)(ii)(B) of NDPS Act. The Trial Court by judgment dated 29.09.2023 convicted the petitioner and sentenced him to undergo five years rigorous imprisonment and to pay fine of Rs.50,000/- for offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. The petitioner as well as the other two accused were acquitted for offence under Section 8(c) r/w 29(1) of NDPS Act and A2 and A3 were acquitted for offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. Aggrieved against the conviction, the petitioner/accused has filed Crl.A.No.1245 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3.The contention of the petitioner is that the petitioner along with two others were tried together and on the evidence adduced by the prosecution, found that there was no conspiracy and further acquitted him of charges. The case is that all the three accused joined together conspired for having ganja for peddling. When the conspiracy was not proved, further when other two accused were acquitted, the petitioner ought to have been acquitted. The only ground on which the Lower Court convicted the petitioner is the petitioner was found in possession of 1.2 kgs of Ganja and MO1 seized from the petitioner.

4.The specific case of the petitioner is that the petitioner belongs to an outfit, which was celebrating Ganesh Pooja, due to which, there was some confrontation with police higher officials and he has been falsely implicated in this case. In fact, the entire case of the prosecution is demolished as could be seen from Ex.D1 to D5. The photographs were marked through PW1/Sub Inspector of Police, who came to the house of the petitioner and dragged him out by force. The Trial Court not given any reason for not considering the photographs. The prosecution proceeds as though the petitioner along with



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two others were standing near the Government Press near Mint Street having Ganja for sale and on secret information received, PW1 along with one Manohar and PW2/Head constable came to the scene of occurrence. On identification of the informant, searched the petitioner and others and MO1 seized. The photographs would show that it is at night hours the photographs have been taken near the petitioner's house and from where he was taken forcibly and taken to the police station and thereafter he was remanded. Hence, the very foundational fact of the case becomes shaky. This fact not considered by the Trial Court.

4.1.He further submitted that there are contradictions in the evidence of PW1 and PW2, with regard to the manner of search, seizure and arrest. The report under Section 57 of the NDPS Act is contrary to the F.I.R. In this case only four witnesses examined. PW1 and PW2 are Police raiding party visited the scene of occurrence and arrested the accused. According to the police, the occurrence took place during bright day light in public road, no public witnesses examined. Though it is projected that two public witnesses called for enquiry and they refused, no materials produced to substantiate the same. Since the foundational fact and seizure are doubtful, the Lower Court ought



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to have acquitted the petitioner. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Additional Public Prosecutor strongly opposed this petition stating that in this case on receiving secret information PW1/S.I. of Police along with PW2 went to the scene of occurrence. On identification of the accused by the informant, all the three accused were searched and from petitioner/A1 MO1 bag was seized, which contained 1.2 kgs. of Ganja. After taking samples, the same was sealed and the samples were sent to PW3/Expert, who confirmed that the contraband was Ganja. In this case, all the statutory provisions followed. Prior information written and the same was submitted to PW4 as per Section 42(2) of the NDPS Act and thereafter Section 50 of NDPS Act complied with. After arrest the accused brought to the police station and Section 57 of the NDPS Act submitted. In this case, the petitioner questions the arrest and recovery, the same considered by the Trial Court and rejected the petitioner's contention and convicted him. Hence, he opposed granting of bail.



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6.Considering the submissions made and on perusal of the material, it is seen that Exs.D1 to D5 marked through PW1. According to the petitioner, the petitioner was forcibly taken from his residence, which was objected by the neighbours and others. The photographs not referred in the judgment. Further, no public witnesses examined, further no materials produced to show that public witnesses refused. In view of the same, the occurrence and recovery become doubtful. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.



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8. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

24.11.2023

rsi

Note: Issue Order Copy on 24.11.2023.

To

1. The Inspector of Police,
C-3, Seven Wells Police Station,
Chennai.
2. The Principal Special Judge,
Special Court under EC & NDPS Act,
Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.



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M. NIRMAL KUMAR, J.

rsi

4.The Public Prosecutor,
High Court, Madras.

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