



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Eighth day of April Two Thousand and Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5678 of 2023
in
CRL A(MD) No.308 of 2021

RONALD SATEESH @ ANAND ... PETITIONER/APPELLANT/SOLE ACCUSED

AT PRESENT CONFINED IN CENTRAL PRISON,
MADURAI AS CONVICTED PRISONER.

Vs

THE STATE REPRESENTED BY
THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU, REGIONAL
INTELLIGENE UNIT, TRIVANDRUM.
(NCB, O.R.NO.1/08/NCB/RIU/TVM) ... RESPONDENT/RESPONDENT/COMPLAINANT

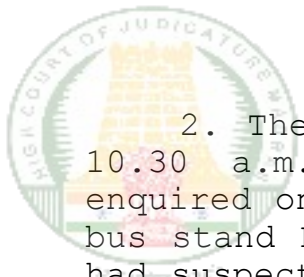
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed on the petitioner appellant accused no.1, by the Learned II Additional Special Court for NDPS Act Cases Madurai in C.C.No.128/2010 dt 08.07.2021 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.308 of 2021:

To call for the records in C.C.No.128 of 2010 dated 08.07.2021 on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.JEGADEESH PANDIAN M, Advocate for the petitioner and of Mr.C.ARUL VADIVEL @ SEKAR, Senior Counsel for NCB Cases on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/accused by the learned Additional District Judge, II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.128 of 2010, dated 08.07.2021, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 06.09.2008 at about 10.30 a.m., on receipt of secret information, the respondent enquired one Dayaram, who was standing adjacent in front of the new bus stand Kanniyakumari, that during enquiry, the respondent police had suspected him and made a search upon him and during the search, they have found one white bag containing 1 kg of contraband Heroin and the same was seized by taking samples and that they arrested the said Dayaram and obtained confession statement from him and on the basis of the confession statement, the present petitioner and another accused Lal @ Lal Kumar were arrested and on the basis of which, a case came to be registered in NCB.O.R.No.1/08/NCB/RIU/TVM for the offences under Sections 8(c) r/w 21(c), 28 and 29 of NDPS Act.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in C.C.No.196 of 2009. Since Non-Bailable Warrant was pending against the petitioner and another accused Lal @ Lal Kumar, the case was ordered to be split up against them in C.C.No.128 of 2010. The petitioner was produced on Non Bailable Warrant. Since Non Bailable Warrant was pending against the accused Lal @ Lal Kumar, the case was again ordered to be split up as against him in C.C.No.248 of 2020.

4. During trial in C.C.No.128 of 2010, the prosecution has examined 1 witness as P.W.1, exhibited 44 documents as Ex.P.1 to Ex.P.44 and marked 13 material objects as M.O.1 to M.O.13. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 08.07.2021 convicting the petitioner for the offence under Sections 8(c) r/w 21(c) of NDPS Act and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo 1 year Rigorous Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal.

6. The learned counsel appearing for the petitioner would contend that the confession statement before the respondent is not admissible in accordance with Section 25 of Indian Evidence Act and there is no corroboration between the evidence of prosecution witnesses and that no steps were taken by the prosecution to prove the allegations through the independent witnesses.

7. No doubt, as rightly contended by the learned counsel appearing for the petitioner, the petitioner was acquitted under Sections 28 and 29(1) of NDPS Act.

8. The learned counsel appearing for the petitioner would further contend that the contraband was recovered only from the



first accused and not from this petitioner, that the petitioner has been implicated only on the basis of the confession alleged to have taken from the first accused, that Section 67 of NDPS Act and Section 30 of Indian Evidence Act are in support of the petitioner, that there is no previous cases pending against the petitioner and that therefore, the petitioner may be granted suspension of sentence.

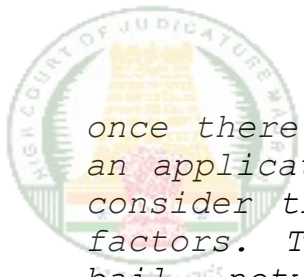
9. The learned Special Public Prosecutor for NCB Cases appearing for the respondent would submit that the petitioner has been absconding for a period of 12 years, that subsequently, he was arrested on executing a Non-Bailable Warrant and as such, he is not entitled to get the relief of suspension of sentence, that the petitioner was already found guilty by the competent Court and there is no question of claiming innocent at this stage, that the petitioner having regular phone talk with the prime accused and that therefore, the trial Court, considering the evidence available on record, has rightly convicted the petitioner. He would further submit that the petitioner was arrested earlier on 07.03.2020 and that the investigating officer of NCB had filed a detailed report and sent it to the Superintendent, NCB, Madurai on 07.03.2020.

10. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Narcotic Control Bureau Vs. Lokesh Chadha reported in 2021 SCC Online SC 178**,

"9.Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will refer to the decision of a two-Judge Bench of this Court in Preet Pal Singh v State of Uttar Pradesh³ where Justice Indira Banerjee, speaking for the Court, observed as follows:

"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra).

However, in case of post-conviction bail, by suspension of sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted,



once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

10. The principles which must guide the grant of bail in a case under the NDPS Act have been reiterated in several decisions of this Court and we may refer to the decision in *State of Kerala v Rajesh*⁴. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS 3 (2020) 8 SCC 645 4 (2020) 12 SCC 122 Act. On the basis of the material which emerged before the learned Special Judge and which forms the basis of the order of conviction, we are of the view that no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside."

11. In the case on hand, it is the specific case of the prosecution that contraband of 1 kg of Heroin was recovered. Admittedly, the contraband involved is of commercial quantity.

12. The learned Special Public Prosecutor for NCB Cases appearing for the respondent would mainly contend that if the petitioner is granted the relief of suspension of sentence, then there is every possibility for the petitioner to abscond and it will be difficult to secure him subsequently.

13. Considering the above facts and circumstances and also the seriousness and gravity of the offences allegedly proved and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

14. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

28/04/2023

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/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

csm

TO



2 THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
REGIONAL INTELLIGENE UNIT, TRIVANDRUM.

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR
FOR NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.5678 of 2023
in
CRL A (MD) No.308 2021
Date :28/04/2023

SS/CG/07/06/2023/5P/5C