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Crl.M.P.No.3828 of 2024
in Crl.A.No.263 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.3828 of 2024
in Crl.A.No.263 of 2024

Priyan Shu Mishra

... Petitioner

Vs.

The Inspector of Police,
NIBCID,
Kancheepuram

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence passed in judgment dated 28.12.2023 by the learned Principal Special Court under EC & NDPS Act, Chennai in C.C.No.19 of 2020 and enlarge the petitioner on bail.

For Petitioner : Mr.R.John Sathiyar, Senior counsel
for Mr.N.Nazid Ahmed

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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ORDER

This petition has been filed to suspend the sentence imposed on the petitioner passed in C.C.No.19 of 2020 dated 28.12.2023 on the file of learned Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioner on bail till pending disposal of Criminal Appeal.

2. The petitioner/accused has been convicted by the Trial Court in C.C.No.19 of 2020 and sentenced him to undergo Rigorous imprisonment for 5 years and to pay fine of Rs.50,000/-, in default to undergo further period of 6 months R.I., for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. Challenging the same, the petitioner preferred an appeal before this Court and seeks suspension of sentence.

3. During trial, on the side of the prosecution PW.1 to PW.12 were examined and marked 3 material objects. On the defence side, no witness was examined and no exhibit was marked.



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4. The case of the prosecution is that the petitioner /accused is a student of SRM Institute of Science and Technology, Kattankulathur, Chengalpattu District studying B.Tech (EEE). He hails from the State of Odisha. The respondent police, on 12.10.2019 along with police team reached the scene of occurrence, had enquired the petitioner and one green and yellow colour bag was seized from him and in which Ganja weighing around 1.5 kgs have been seized.

5. The contention of the petitioner is that the petitioner is new to that area and basically hail from Odisha. He along with his friends had gone to the stall at night hours. The respondent police came to enquire the petitioner and the petitioner was unable to understand the language of tamil and does not know the language, but the respondent police insisted and asked him question. Thereafter, he was shown as accused in this case. Apart from the petitioner, there were some other persons whom are also a student and the petitioner has no bad antecedents. Further, in this case the provisions of Sections 42, 50 and 52 A has not been followed, all have been written in



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tamil.

6. The learned counsel for the petitioner submitted that the petitioner is not conversant in tamil. There is no reference to show that it was read over and explained to petitioner, on the contrary everything done at the police station on the convenience of the police, no independent witness examined. In this case all the witnesses are police personal, despite the scene of occurrence is near a gated community, wherein several residents available and it is a busy place. He further submitted that trial Court not considered the petitioner's contention, despite finding petitioner is from Odisha, but had convicted. The petitioner after completion of decree was employed in a decent job at Bangalore in software firm and now due to detention, he has lost his job, further getting new job would become a herculean task. He further submitted that the person who knew hindi translated to the petitioner not examined as witness. The petitioner is only conversant in Odiya language.

7. The learned Additional Public Prosecutor filed counter and stated that based on the above complaint, a case was registered in NIBCID,



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Kancheepuram in Crime No.42 of 2019 under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 on 13.10.2019 at about 00.30 hours, by Tr.Prabakar, the then Inspector of Police, and he took up the case for further investigation.

7.1.It is submitted that on the same day (i.e) 13.10.2019, the then Inspector of Police have produced the arrested accused before Judicial Magistrate No.II, Chengalpattu, and remanded him into judicial custody.

7.2.It is submitted that after completion of an elaborate and detailed investigation, on 31.01.2020, the then Inspector of Police have filed a charge sheet before the Principal Special Judge, EC & NDPS Court, Chennai and the same was taken on file and assigned C.C.No.19/2020 dated 03.02.2020.

7.3.It is submitted that the trial Court framed charges against the accused. During trial, the prosecution has examined 4 witnesses and marked 12 exhibits and 3 material objects were marked. On defence side no witness, no exhibits and no material object were marked.



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7.4.It is submitted that after conclusion of due trial, the trial Court by its judgment in C.C.No.19 of 2020 dated 28.12.2023 on the file of Principal Special Judge, EC & NDPS Court, Chennai and convicted the petitioner/accused and sentenced him as follows:-

U/s.235(2) Cr.P.C. for offences under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985	Sentenced her to undergo 5 years Rigorous Imprisonment and fine Rs.50,000/- i/d.6 months S.I.
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Hence, prays to dismiss the petition.

8. Considering the submissions and perused the materials, this Court finds that the petitioner hail from Odisha. In this case all the documents are in tamil. The person who translated to the petitioner one Shaid Irfan [LW.4] not examined as witness. Further, in this case though Form 95 prepared on 13.10.2019, same received with property only on 10.02.2020 with inordinate delay, no explanation is found. The petitioner is a student, now he is employed and he has no bad antecedent. The arrest, recovery and seizure is doubtful. In view of the same, this Court is inclined to grant



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suspension of sentence.

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9. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused 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 Court under EC & NDPS Act, Chennai

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in six months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the



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M. NIRMAL KUMAR., J.

rpl

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