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1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.4570 of 2024

in

Crl.A.No.307 of 2024

Shuaib

... Petitioner

-Vs-

The State,
Represented by The Inspector of Police,
NIB CID, Chennai.
(Crime No.31 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, to suspend the sentence of imprisonment to the petitioner as ordered by the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai vide judgment dated 26.02.2024 passed in C.C.No.131 of 2021 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Sivakumar

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

O R D E R



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The criminal miscellaneous petition has been filed by the petitioner to suspend the sentence imposed on the petitioner, vide judgment dated 26.02.2024 passed in C.C.No.131 of 2021 by the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The petitioner was convicted for the offence under Section 8(c) r/w 20 (b)(ii)(C) of NDPS Act and the petitioner was sentenced to undergo twelve years rigorous imprisonment and to pay a sum of Rs.1,20,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months. Challenging the same, the appellant has filed the criminal appeal and the present miscellaneous petition seeking suspension of sentence.

3. The learned counsel for the petitioner / accused submitted that there are lot of material contradictions in the evidence of the prosecution



and the prosecution evidence is also highly unbelievable and the petitioner is now confined in the prison for nearly four years. He further submitted that the petitioner is ready to abide any condition imposed by this Court. Accordingly, he prayed for appropriate orders.

4. On the above contentions, heard the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

5. Normally, offences under NDPS Act are offences against society and therefore, the Courts should be very circumspect while granting suspension of sentence. However, when the accused have been under incarceration for sometime and when there are points in the appeal, which favour the accused, then the Courts should not shy from granting suspension of sentence, as the liberty of the individual would be at stake if the appeal results in acquittal at a later point of time. In this regard, the decision of the Hon'ble Supreme Court of India in the case of ***Rabi Prakash Vs. The State of Odisha*** reported in ***2023 Live Law (SC) 533*** is of relevance and the material portion of the said judgment is quoted



hereunder :-

“4. As regard to the two conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

6. Having regard to the fact that there are arguable points involved in the criminal appeal and further, the appeal is not likely to be taken up for final hearing in the near future and also considering the fact that the quantity involved in this case is not commercial in nature and that the accused has been under incarceration nearly four years, applying the decision of the Hon'ble Supreme Court, I am of the considered opinion



that the petitioner is entitled for the relief of suspension of sentence.

7. Accordingly, the Criminal Miscellaneous Petition is ordered and the substantive sentence of imprisonment alone imposed as against the petitioner is hereby suspended and the petitioner is directed to be released on bail on the following conditions:

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the learned II Additional Special Judge, Special Court under NDPS Act, Chennai along with two sureties for a like sum;

b) the petitioner shall report before the Court below at 10.30 a.m., on the first working day of every English Calender month, pending disposal of the appeal.

c) The petitioner is directed to deposit the entire fine amount to the credit of C.C.No.131 of 2021 on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

8. It is made clear that, if the petitioner indulges in similar offence in the future, the suspension of substantive sentence alone granted today



6

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will automatically stand dismissed without any further reference to this Court.

24.07.2024

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Note: Issue order copy on 24.07.2024

To



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



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8

M.DHANDAPANI, J.

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