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Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.6781 of 2024

In

Crl.A.No.462 of 2024

D.Tamizharasan

... Petitioner

Vs.

The Assistant Commissioner of Customs,
Prosecution Unit, (AIR)
New Customs House,
Meenambakkam,
Chennai – 600 027.

... Respondent

Prayer :

Criminal Miscellaneous Petition filed under Section 389 (3) read with 439 of Criminal Procedure Code praying to suspend the sentence imposed on the petitioner herein by the learned Special Judge, I – Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai made in C.C.No.128 of 2018 by dated 31.01.2024 and enlarge the petitioner on bail pending disposal of the above appeal on the file of this Hon'ble Court.

For Petitioner : Mr.S.Anburaja
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

ORDER

This miscellaneous petition is filed to suspend the sentence of imprisonment imposed in the judgment dated 31.01.2024 passed by the learned Special Judge, I – Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai in C.C.No.128 of 2018 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.Appellant was convicted for the offence under Sections 8(c) r/w 22(c) of NDPS Act (2 counts) r/w 53 and 58 of NDPS Rules; 8(c) r/w 22(b) (3 counts) of NDPS Act r/w 53 and 58 of NDPS Rules; and 8(c) r/w 28 of NDPS Act r/w 53 and 58 of NDPS Rules and was sentenced to undergo, ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- for each count in default to undergo six months rigorous imprisonment for each count for the offence under Section 8(c) r/w 22(c) of NDPS Act (2 counts) r/w 53 and 58 of NDPS Rules; three years rigorous imprisonment and to pay a fine of Rs.30,000/- for each count in default to undergo three months rigorous imprisonment for each count for the offence under Section 8(c) r/w 22(b) (3 counts)



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

of NDPS Act r/w 53 and 58 of NDPS Rules; and ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo six months rigorous imprisonment for the offence under Section 8(c) r/w 28 of NDPS Act r/w 53 and 58 of NDPS Rules under judgment in C.C.No.128 of 2018 dated 31.01.2024. The sentences were ordered to run concurrently. Hence, the appellant seeks suspension of sentence.

3.The learned counsel for the appellant submitted that the petitioner is in prison for more than six years and his family members are suffering without the petitioner and further submitted that there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable. He would further submit that the appellant is now confined in Central Prison, Puzhal, Chennai.

4.The learned Special Public Prosecutor submitted that though there is no previous case as against the petitioner, the allegations levelled against the appellant is heinous one. The petitioner illegally



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

exported 40 parcels of psychotropic substances to foreign countries like USA, United Kingdom, Australia, France etc. and Mahazer is marked as Ex.P1 and the case is proved beyond reasonable doubt and if the appellant is enlarged on bail there would be no progress in the appeal.

5.The learned Special Public Prosecutor further submitted that as per Section 32 (A) of NDPS Act, 'no suspension, remission or communication in any sentence awarded under this Act – notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being on force but subject to the provisions of Section 37, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.' Section 32A of NDPS Act was challenged before the Apex Court in Dadu alias Tulsidas Vs. State of Maharashtra and the same was ordered on 02.10.2000 holding that Section 32 A as void in so far as it takes the right of the Courts to suspend the sentence awarded to a convict under the Act, would neither entitle such convict to ask for suspension of the sentence as a matter of right in all cases



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

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it absolve the Courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed under Sections 37 and 37b of the Act.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts in the present case is not in dispute. The allegation against the petitioner/ appellant that he possessed pharmaceutical licence however it is alleged that he illegally exported 40 parcels of psychotropic substances to foreign countries like USA, United Kingdom, Australia, France etc. has to be decided in the appeal. Admittedly, the petitioner suffered more than 50% of the sentence i.e., he is in prison for more than six years and his family members have suffered without Kartha. Hence, considering the period of incarceration undergone by the appellant, I am of the considered opinion that the appellant is entitled for the relief of suspension of sentence.



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

8. Accordingly, the substantive sentence of imprisonment alone

is

suspended and the appellant is directed to be enlarged on bail, on condition that the appellant shall deposit the entire fine amount as ordered by the trial Court i.e., a sum of Rs.3,90,000/- (Rupees Three Lakhs Ninety Thousand Only) to the credit of C.C.No.128 of 2018 before the learned Special Judge, I – Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and on further condition that the appellant 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 Special Judge, I – Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and on further condition that the appellant shall appear before the respondent on every Friday at 10.30 a.m., till the disposal of the appeal.

9. This criminal miscellaneous petition is ordered accordingly.

13.06.2024

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Index: Yes/No

Speaking Order: Yes/No

6/8



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

NCC: Yes/No

WEB COPY

To

- 1.The Special Judge,
I – Additional Special Court for Exclusive Trial of Cases
under NDPS Act, Chennai.
- 2.The Assistant Commissioner of Customs,
Prosecution Unit, (AIR)
New Customs House,
Meenambakkam,
Chennai – 600 027.
- 3.The Central Prison,
Puzhal,
Chennai.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



WEB COPY



Crl.M.P.No.6781 of 2024 In Crl.A.No.462 of 2024

M.DHANDAPANI,J.

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