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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.8494 of 2023

in

Crl.A.No.241 of 2023

Jaya @ Jayanila

... Petitioner

-Vs-

State Represented by its,
The Inspector of Police,
NIBCID Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, 1973, to suspend the sentence imposed by the learned Principal Special Judge, EC & NDPS Court, Chennai vide judgment dated 21.02.2023 in C.C.No.188 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

For petitioner : Mr.R.C.Paul Kanagaraj

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



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ORDER

The criminal appeal has been filed as against the judgment and sentence passed by the learned Principal Special Judge, EC & NDPS Court, Chennai, in C.C.No.188 of 2019 dated 21.02.2023 in and by which, the petitioner / A1 was convicted for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of NDPS Act. The petitioner was sentenced to undergo 12 years rigorous imprisonment and to pay a fine of Rs.1,20,000/- for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act, in default, to undergo further period of six months rigorous imprisonment. Further, the petitioner / A1 was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- for the offence under Section 8(c) r/w 29(1) of the NDPS Act, in default, to undergo further period of six months rigorous imprisonment. The above said sentences shall run concurrently. Challenging the same, the appellant has filed the above criminal appeal and the present miscellaneous petition seeking suspension of sentence of imprisonment.

2. The learned counsel for the petitioner submitted that already this



Court, by order, dated 09.03.2023 in CrI.M.P.No.3557 of 2023 in CrI.A.No.241 of 2023 suspended the sentence in respect of A3, however dismissed the sentence in respect of the petitioner / A1 on the ground that the petitioner was involved in a similar type of case and convicted in S.T.C.No.664 of 2017 on the file of the learned Judicial Magistrate-I, Namakkal. Hence, the petitioner has again filed the present petition seeking suspension of sentence.

3. The learned counsel further submitted that the earlier case was disposed of by the trial Court and fine amount was also paid and no imprisonment was awarded. Further, in the present case, the petitioner is undergoing imprisonment for nearly four and half years.

4. The learned counsel for the petitioner has raised several arguable grounds insofar the appeal is concerned and it will take some more time for this Court to take up the criminal appeal and to dispose of the same.

5. The learned Additional Public Prosecutor for the respondent has vehemently opposed to release the petitioner. Though the earlier case



registered against the petitioner was disposed of imposing fine, in the present case, the petitioner was convicted for the illegal possession of 40 kgs of Ganjas and sentenced to undergo rigorous imprisonment for a period of 12 years. She further submitted that the incarceration is not a material to decide the suspension of sentence and hence, the sentence imposed on the petitioner need not be suspended.

6. Considering the facts and circumstances of the case and the fact that the petitioner is in incarceration for more than four and half years, the Criminal Miscellaneous Petition is ordered and the punishment of imprisonment imposed as against the petitioner is hereby suspended and he 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/- to the satisfaction of the learned Principal Sessions Judge for NDPS Cases, Chennai along with two sureties for a like sum;

b) the petitioner shall report before the All Women



Police Station, Paramathi, Vellore Taluk, Namakkal District on every Friday at 10.00 a.m., pending disposal of the appeal.

7. Post the main appeal in the usual course and as per the seniority.

20.06.2024

vji

Note: Issue order copy on 20.06.2024

To

1. The Central Prison,
Puzhal (Women),
Chennai.
2. The learned Principal Sessions Judge for NDPS Cases,
Chennai.
3. The Inspector of Police,
NIBCID Chennai.
4. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

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