



WEB COPY



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.10536 of 2024

in

Crl.A.No.962 of 2024

Ashraf Shariff

...

Petitioner

Vs.

State rep.by
Intelligence Officer
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai.

...

Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C, praying to suspend the sentence passed in C.C.No.115 of 2019 dated 20.02.2019 on the file of the Principal Special Court under EC and NDPS Act, Chennai and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor (NCB)



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

WEB COPY

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in C.C.No.115 of 2019 dated 20.02.2019 on the file of the Principal Special Court under EC and NDPS Act, Chennai and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The case of the prosecution is that on 01.01.2019, the respondent had received an information that some contraband was hidden for sale at the premises of the petitioner and that on a search conducted, they found a cell phone in which there were 20 pre-cut sheets of LSD and a case was registered thereafter.

3. The petitioner/Accused in C.C.No.115 of 2019 was convicted by the Trial Court by judgment dated 20.02.2024 under Section 235(2) Cr.P.C. to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1,20,000/- for the offence u/s 8(c) r/w 22(c) of the NDPS Act and in default of payment of fine thereof, to undergo further period of 6 months S.I. Aggrieved by the same, the petitioner/Accused filed Crl.A.No.962 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

WEB COPY

4. The learned counsel for the petitioner would submit that the prosecution has not established its case beyond reasonable doubt and that there are several infirmities such as the exact place or location from where the cell phone was seized has not been stated in the mahazar ; that the cell phone does not belong to the petitioner; that the contraband weighed 0.4 grams and that the witness for the search and seizure were stock witnesses and that there motive for false implication.

5. The learned Special Public Prosecutor (NCB) appearing for the respondent, per contra, submitted that the the prosecution had established its case beyond reasonable doubt; that the infirmities pointed out by the learned counsel has been considered by the Trial Court and the Trial Court found the petitioner guilty and that the petitioner is facing a case before the District & Sessions Judge, Panaji for a similar offence and considering his antecedents, strongly opposed for granting suspension of sentence.

6. The learned counsel for the petitioner, in reply would submit that the petitioner is in custody from 01.01.2019 and has served almost half the period



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

of sentence imposed by the trial court, i.e. 5 years and 10 months and that he is on bail in the other case.

7. Heard the learned counsel for the petitioner as well as learned Special Public Prosecutor (NCB) appearing for the respondent and perused the records.

8. On perusal of the records, it is seen that the petitioner is on bail in the case that is pending before the District & Sessions Judge, Panaji. The Hon'ble Supreme Court in SLP (Crl) No.7162 of 2024 in Jitendra & Ors. Vs. State of Uttar Pradesh has observed as follows -

“11.That apart, mere pendency of the other trial where the appellant-Narendra Singh is an accused (on bail) cannot be regarded as sufficient for denying him the benefit of suspension of sentence in this case. After all, he is presumed to be innocent till found guilty”.

9. Considering the submissions made by the learned counsel for the petitioner and the period of incarceration, without adverting to the merits on the contention made by either sides and taking into consideration the fact that



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

the petitioner is in custody for almost half the period of sentence, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions :

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court under EC and NDPS Act, Chennai ;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.
- (iv) The petitioner shall surrender his passport before the trial court



WEB COPY



*Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024*

SUNDER MOHAN, J.

rgt

Crl.M.P.No.10536 of 2024
in Crl.A.No.962 of 2024

20.11.2024