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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.Nos.9709 and 9710 of 2024

in

Crl.A.No.701 of 2023

M.Shanmuga Priya
W/o.Murugan

... Petitioner in Crl.M.P.No.9709 of 2024

M.A.Srimanikandan
S/o.Ashokan

... Petitioner in Crl.M.P.No.9710 of 2024

-Vs-

The Union of India,
Represented by Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai -600 077.

... Respondent
in both petitions

COMMON PRAYER: Criminal Miscellaneous Petitions filed under Section 389 (1) of the Criminal Procedure Code, to suspend the sentence of imprisonment to the petitioners as ordered by the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai vide judgment dated 22.06.2023 passed in C.C.No.17 of 2020 and enlarge the petitioners / appellants on bail, pending disposal of the criminal appeal.



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For Petitioners : Mr.G.Murugendran
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

C O M M O N O R D E R

The criminal miscellaneous petitions have been filed by the petitioners to suspend the sentences imposed on the petitioners, vide judgment dated 22.06.2023 passed in C.C.No.17 of 2020 by the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioners / appellants on bail, pending disposal of the above criminal appeal.

2. The case of the prosecution is that on secret information, the respondent Police went to the scene of occurrence and found the petitioners in illegal possession of 62.600 Kgs of Ganja and thereafter, the respondent Police have registered a case against them. After completion of investigation, the respondent Police filed a charge sheet and the same was taken on file in C.C.No.17 of 2020. After full-fledged trial, the petitioners were convicted for the offences under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29 of NDPS Act. In respect of Section 8(c) r/w 20(b)(ii)(C) of



NDPS Act, the petitioners were sentenced to undergo ten years rigorous imprisonment and to pay a sum of Rs.1,00,000/- each towards fine, in default to undergo rigorous imprisonment for a further period of six months and in respect of Section 8(c) r/w 29 of NDPS Act, the petitioners were sentenced to undergo ten years rigorous imprisonment and to pay a sum of Rs.1,00,000/- each towards fine, in default to undergo rigorous imprisonment for a further period of six months. Challenging the same, the appellants have filed the criminal appeal and the present miscellaneous petitions seeking suspension of sentence.

3. The learned counsel for the petitioners / accused submitted that except NDPS case, no other cases are pending against the petitioners / accused. He further submitted that there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable and that the petitioners are now confined in prison for more than five years and that they have undergone 50% of the punishment. Accordingly, he prays for suspension of sentence.

4. The learned Special Public Prosecutor for the respondent has



vehemently opposed to release the petitioners. The petitioners were convicted for the illegal possession of 62.600 kgs of Ganjas and sentenced to undergo rigorous imprisonment for a period of 10 years. He further submitted that the incarceration is not a material to decide the suspension of sentences and hence, the sentences imposed on the petitioners need not be suspended.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. 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.”

7. 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 petitioners have been under incarceration for more than five years,



applying the decision of the Hon'ble Supreme Court, I am of the considered opinion that the petitioners are entitled for the relief of suspension of sentences.

8. Accordingly, the Criminal Miscellaneous Petitions are ordered and the punishment of imprisonment imposed as against the petitioners are hereby suspended and the petitioners are directed to be released on bail on the following conditions:

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

b) the petitioners shall report before the Court below on the first working day of every month, pending disposal of the appeal.

16.07.2024

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Note: Issue order copy on 18.07.2024



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 Jail,
Puzhal,
Chennai.
3. The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai -600 077.
4. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

vji

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