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Crl.M.P.No.9835 of 2024
in Crl.A.No.1521 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.07.2024**

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

Crl.M.P.No.9835 of 2024
in
Crl.A.No.1521 of 2023

Mohamed Irfan

... Petitioner

Vs.

State, Rep by Inspector of Police,
NIB CID, Chennai.

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Sections 389(1) of Criminal Procedure Code, praying to suspend the sentence imposed on the petitioner made in C.C.No.82 of 2020 on the file of Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai by a judgment dated 21.04.2023 and to release the petitioner on bail, pending disposal of the Criminal Appeal.

For Petitioner : Mr.I.Kowser Nissar

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

ORDER



Crl.M.P.No.9835 of 2024
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WEB COPY This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence of imprisonment imposed in C.C.No.82 of 2020 dated 21.04.2023 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge him on bail.

2. The petitioner/appellant was convicted for the offences u/s 8(C) r/w 22(c) of the NDPS Act and was sentenced to undergo rigorous imprisonment of 10 years with a fine of Rs.1,00,000/-, in default to pay the fine amount, was sentenced to undergo rigorous imprisonment for a further period of 6 months vide judgment dated 21.04.2023 made in C.C.No.82 of 2020 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. Aggrieved by the same, the petitioner has filed the above appeal along with this petition seeking suspension of sentence.

3. The learned counsel appearing for the petitioner 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 petitioner is in jail for a period of four years and seven months and now, he is confined in jail in Puzhal Prison I, Chennai. Accordingly, he prays for suspension



Crl.M.P.No.9835 of 2024
in Crl.A.No.1521 of 2023

WEB COPY

of sentence.

4. The learned Special Public Prosecutor appearing for the respondent police submitted that the contraband seized from the petitioner is a commercial quantity. She further submitted that the trial court after full-fledged and due trial convicted the petitioner and imposed the above mentioned sentence. Hence, she vehemently opposed to grant of suspension of sentence.

5. Heard the learned counsel on both side.

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 LiveLaw (SC) 533** is of relevance and the material portion of the said judgment is quoted hereunder :-



Crl.M.P.No.9835 of 2024
in Crl.A.No.1521 of 2023

WEB COPY

“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 petitioner/A1 has been under incarceration for more than 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.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, on condition that the petitioner



Crl.M.P.No.9835 of 2024
in Crl.A.No.1521 of 2023

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 petitioner shall appear before the respondent police on every Monday at 10.30 a.m., pending appeal. Further, the petitioner is directed to pay the entire fine amount as ordered by the trial court, within a period of two (2) weeks from the date of receipt of a copy of this order, failing which, the suspension of substantive sentence of imprisonment alone granted today, shall stand automatically vacated, without any further reference to this Court.

9. Further, it is made clear that, if the petitioner indulges in similar offence in the future, the suspension of substantive sentence alone granted today will automatically stand dismissed without any further reference to this Court.



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Crl.M.P.No.9835 of 2024
in Crl.A.No.1521 of 2023

M.DHANDAPANI, J.

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10. This criminal miscellaneous petition is ordered accordingly.

11. Post the main appeal in Crl.A.No.1521 of 2023 as per seriatum.

23.07.2024

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To

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

Crl.M.P.No.9835 of 2024
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