



Crl.M.P.No.10272 of 2024
in Crl.A.No.926 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **31.07.2024**

CORAM:

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

Crl.M.P.No.10272 of 2024

in

Crl.A.No.926 of 2024

Sheikh Ahmed,
S/o.Sheikh Mohamed

... Petitioner/A2

Vs.

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

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Sections 389(1) of Criminal Procedure Code, praying to suspend the sentence passed in C.C.No.13 of 2019 order dated 26.04.2023 on the file of Court of Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, pending disposal of the above Appeal.

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



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence of imprisonment imposed in C.C.No.13 of 2019 dated 26.04.2023 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, pending disposal of the above Appeal.

2. The petitioner/appellant was convicted for the offence u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act and was sentenced to undergo rigorous imprisonment of 12 years with a fine of Rs.1,20,000/-, in default to pay the fine amount, was sentenced to undergo rigorous imprisonment for a further period of 6 months and he was also convicted for the offence u/s 8(c) r/w 29(1) of the NDPS Act and was sentenced to undergo rigorous imprisonment of 12 years with a fine of Rs.1,20,000/-, in default to pay the fine amount, was sentenced to undergo rigorous imprisonment for a further period of 6 months, vide judgment dated 26.04.2023 made in C.C.No.13 of 2019 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.



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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 from the year 2018 onwards and now, he is confined in jail in Central Prison I, Puzhal, Chennai. Accordingly, he prays for suspension of sentence.

4. The learned Special Public Prosecutor appearing for the respondent has filed the counter stating that as per Section 32(A) of NDPS Act, *No Suspension, remission or communication in any sentence awarded under this Act – Notwithstanding anythin 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 57) shall be suspended or remitted or commuted.* It is further stated that Section 32A of NDPS Act was challenged before Supreme Court in **Dadu @ Tulsidas Vs. State of Maharashtra** and the same ordered on 2.10.2000 holding that Section 32A as void insofar as it takes the right of the courts to suspend the sentence awarded to a @@jjjjjj convict under the Act, would neither entitle such convicts @@ JJJJ to ask for suspension of the sentence as a matter of right in all cases nor would it absolve



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the courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed u/s 37b of the Act. In the present case, the petitioner has not satisfied the Section 37 of NDPS Act, the lower court already given a finding that he is involved in this offence and convicted him. The ground raised by the petitioner not satisfied Section 37 of NDPS Act. He further relied upon the judgments reported in **2009 (1) SCC 482** in the case of **Ratan Kumar Vishwas Vs. State of UP, 2021 (0) Supreme (SC) 360** in the case of **The State (GNCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha, 2019 (2) SCC 466** in the case of **State of Punjab Vs. Rakesh Kumar, 2018 (13) SCC 813** in the case of **Satpal Sing Vs. The State of Punjab, 2020 (0) Supreme (SC) 69** in the case of **State of Kerala Vs. Rajesh** and **2024 (0) Supreme (SC) 386** in the case of **Shivani Tyagi Vs. State of UP & Anr.** Accordingly, he 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



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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 :-

“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



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in the near future and also considering the fact that the petitioner/A2 has 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 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 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



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the future, the suspension of substantive sentence alone granted today will automatically stand dismissed without any further reference to this Court.

10. This criminal miscellaneous petition is ordered accordingly.

11. Post the main appeal in Crl.A.No.926 of 2024 as per seriatum.

31.07.2024

sp

To

- 1.The Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
- 2.The Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit, Chennai.
- 3.The Central Prison – I, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court of Madras, Chennai.



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M.DHANDAPANI, J.

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