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Crl.MP.No.10334 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM:

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

Crl.MP.No.10334 of 2024

in

Crl.A.No.931 of 2024

L.Ravi

...Petitioner

Vs.

Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai-77.

...Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence passed by the Principal Special Judge for Exclusive trial of cases under NDPS Act, Chennai in C.C.No.39 of 2020 by judgment dated 09.05.2024 and to enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Ms.M.Roselet Helen

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.39 of 2020 by the



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learned Principal Special Judge for Exclusive trial of cases under NDPS Act, Chennai, vide order dated 09.05.2024 and to consequently enlarge the petitioner on bail.

2. The petitioner/appellant was convicted for the offence u/s 8(c) r/w 20(b)(ii)(C), 8(c) r/w 28 and 8(c) r/w 29 of the NDPS Act and in respect of the conviction u/s 8(c) r/w 20(b)(ii)(C) of NDPS Act, the petitioner was sentenced to undergo rigorous imprisonment for a period of 12 years and was ordered to pay a fine of Rs.1,20,000/-, in default of payment of the fine amount, to undergo rigorous imprisonment for a further period of 6 months and in respect of the conviction u/s 8(c) r/w 28 of NDPS Act, the petitioner was sentenced to undergo rigorous imprisonment for a period of 12 years and was ordered to pay a fine of Rs.1,20,000/-, in default of payment of the fine amount, to undergo rigorous imprisonment for a further period of 6 months and in respect of the conviction u/s 8(c) r/w 29 of NDPS Act, the petitioner was sentenced to undergo rigorous imprisonment for a period of 5 years and was ordered to pay a fine of Rs.50,000/-, in default of payment of the fine amount, to undergo rigorous imprisonment for a further period of 6 months, vide order dated 09.05.2024 made in C.C.No.39 of 2020 by the learned Principal Special Judge for Exclusive trial of cases under



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NDPS Act, Chennai. Aggrieved by the same, the petitioner has filed the above

appeal along with this petition seeking suspension of sentence.

3. Learned counsel appearing for the petitioner submitted that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Further, 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 under incarceration for about five years and the petitioner had already undergone almost 50% of the minimum punishment and he is now confined in Central Prison, Puzhal, Chennai. Accordingly, he prays for suspension of sentence.

4. Learned Special Public Prosecutor appearing for the respondent submitted that the contraband i.e., Ganja seized from the petitioner and other accused persons weighs about 303 Kgms, which is a commercial quantity as envisaged u/s.37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the petitioner may indulge in such offences if he comes out. Hence, he vehemently opposed to grant of suspension of sentence.



5. Heard the learned counsel on both side and perused the material

documents placed 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 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



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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 accused has been under incarceration for about 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 of whom, one should be a blood related surety, each for a like sum to the satisfaction of the Principal Special Judge 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 and on further condition that, the petitioner shall pay the entire fine amount as ordered by the trial court within a period of two weeks from the date of receipt of a copy of this order.

9. Further, it is made clear that, if the petitioner indulge 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.

01.08.2024

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Note to office: Issue order copy on 01.08.2024.

To

1. The Principal Special Judge for Exclusive trial of cases under NDPS Act,
Chennai.
2. The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai-77.
3. The Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.

M.DHANDAPANI, J.



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