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Crl.M.P.No.10160 of 2024
in Crl.A.No.640 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.07.2024**

CORAM:

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

Crl.M.P.No.10160 of 2024

in

Crl.A.No.640 of 2023

Siva

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
J-4, Kotturpuram Police Station,
Chennai.

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Sections 389 of Criminal Procedure Code, praying to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.138 of 2021 by the Principal Special Court for Exclusive Trial of cases under the NDPS Act, Chennai and enlarge the petitioner on bail pending determination of the Criminal Appeal No.640 of 2023, pending before the Court.

For Petitioner : Mr.C.Rajan

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



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ORDER

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This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.138 of 2021 by the Principal Special Court for Exclusive Trial of cases under the NDPS Act, Chennai and enlarge the petitioner on bail pending determination of the Criminal Appeal No.640 of 2023.

2. The petitioner/appellant was convicted for the offences u/s 8(c) r/w 20 (b)(ii)(C) of 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 further the petitioner was convicted for the offence u/s.8(c) r/w 20(b) (ii) (B) of the NDPS Act and was sentenced to undergo five years rigorous imprisonment with a fine of Rs.50,000/- and in default to undergo six months rigorous imprisonment vide order dated 10.05.2023 made in C.C.No.138 of 2021 by the learned Principal Special Court under EC & 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 under incarceration for three years and 8 months and now he is confined in Central Prison, Puzhal-I, Chennai. Accordingly, he prays for suspension of sentence.

4. The learned Additional Public Prosecutor appearing for the respondent police submitted that the contraband i.e., Ganja seized from the petitioner is 74 Kgs which is a commercial quantity. 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 :-

“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 accused has been under incarceration for nearly 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.



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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 Principal Special Court for Exclusive Trial of cases under the NDPS Act, Chennai and on further condition that the petitioner shall appear before the respondent on every Monday at 10.30 a.m., pending appeal and on the first working day of every English Calendar month at 10.30 am before the trial Court.

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

10. This criminal miscellaneous petition is ordered accordingly. Post the main appeal as per seriatum.

18.07.2024

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M.DHANDAPANI, J.

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To

1. The Principal Special Court for Exclusive
Trial of cases under the NDPS Act, Chennai
2. The The Inspector of Police, J-4, Kotturpuram Police Station,
Chennai.
3. The Central Prison, Puzhal – I, Chennai.
4. The Public Prosecutor, High Court of Madras.

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