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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.10074 of 2024

in

Crl.A.No.282 of 2021

Somu Muthiah
S/o.Periyakaruppan

... Petitioner

-Vs-

The State,
Represented by
The Inspector of Police,
NIBCID, Coimbatore.
(Crime No.202 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, to suspend the sentence of imprisonment to the petitioner as ordered by the Special Court under EC/NDPS Act, Coimbatore vide judgment dated 24.03.2021 passed in C.C.No.40 of 2020 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

For Petitioner : Mr.S.Jayaprakash

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



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ORDER

The criminal miscellaneous petition has been filed by the petitioner to suspend the sentence imposed on the petitioner, vide judgment dated 24.03.2021 passed in C.C.No.40 of 2020 by the Special Court under EC/NDPS Act, Coimbatore and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The petitioner was convicted for the offence under Section 8(c) r/w 20 (b)(ii)(C) of NDPS Act and sentenced to undergo ten years rigorous imprisonment and to pay a sum of Rs.1,00,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months. Challenging the same, the appellant has filed the criminal appeal and the present miscellaneous petition seeking suspension of sentence.

3. The learned counsel for the petitioner / accused submitted that there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable and the petitioner is now confined in the prison nearly five years. He further



submitted that the petitioner is ready to abide any condition imposed by this Court. Accordingly, he prayed for appropriate orders.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that there is one previous case pending against the petitioner and the incarceration is not a material to decide the suspension of sentence and hence, the sentence imposed on the petitioner need not be suspended.

5. 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.”

6. 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 accused has been under incarceration nearly 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.

7. Accordingly, the Criminal Miscellaneous Petition is ordered and the substantive sentence of imprisonment alone imposed as against the petitioner is hereby suspended and the petitioner is directed to be released on bail on the following conditions:

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of NDPS Court, Coimbatore along with two sureties for a like sum;

b) the petitioner is directed to appear before the respondent Police daily at 10.30 a.m., pending disposal of the appeal.

c) The petitioner is directed to deposit the entire fine amount to the credit of C.C.No.40 of 2020 on the file of the Special Court under EC / NDPS Act.



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8. 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.

24.07.2024
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Note: Issue order copy on 25.07.2024



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To

1. The Special Court for the Trial of NDPS Act Cases,
Coimbatore.
2. The Central Prison,
Coimbatore.
3. The Inspector of Police,
NIBCID,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

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