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Crl.M.P.No.10397 of 2024
in Crl.A.No.937 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.08.2024**

CORAM:

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

Crl.M.P.No.10397 of 2024
in Crl.A.No.937 of 2024

Patina Venkata Krishna

... Petitioner

Vs.

State represented by,
The Inspector of Police,
NIB CID, Kancheepuram.
(Crime No.25 of 2021)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Sections 389 of Criminal Procedure Code, praying to suspend the sentence imposed in the judgment in order passed by the learned Special judge, II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, in C.C.No.49 of 2022 vide his order dated 15.04.2024 sentencing the appellant to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- and in default thereof to undergo imprisonment for a period of 6 months for offence u/s.8(c) r/w.20(b)(ii)(c) of the NDPS Act and enlarge the petitioner on bail.

For Petitioners : Mr.B.S.Manikandan for M/s.Murali law Firm

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

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed in the judgment passed by the learned Special judge, II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, in C.C.No.49 of 2022 vide his order dated 15.04.2024 sentencing the appellant to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- and in default thereof to undergo imprisonment for a period of 6 months for offence u/s.8(c) r/w.20(b)(ii)(c) of the NDPS Act and enlarge the petitioner on bail.

2. 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 petitioners are confined in jail for past two years eight months and now, he is confined in Puzhal Prison, Chennai. Accordingly, he prays for suspension of sentence.

3. The learned Additional Public Prosecutor appearing for the respondent police submitted that the contraband seized from the petitioners is a commercial quantity (22 Kgs.) and the petitioner is native of Andhra Pradesh. If bail is granted to the petitioner, he may abscond. Hence, she vehemently opposed to



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grant of suspension of sentence.

4. Heard the learned counsel on both side.

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 *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



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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 accused has been under incarceration for more than two 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 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 **local sureties** each for a like sum to the satisfaction of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and on further condition that the petitioner shall appear before the respondent on every week at 10.30 a.m., pending appeal.



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8. 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.

9. This criminal miscellaneous petition is ordered accordingly.

01.08.2024

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To

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



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M.DHANDAPANI, J.

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