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CrI.MP.No.10497 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM:

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

CrI.MP.No.10497 of 2024

in

CrI.A.No.451 of 2023

Raju Ram Vishnoi

...Petitioner

Vs.

State rep. by,
The Inspector of Police,
NIB CID, Chennai.
Cr.No.65 of 2019.

...Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence passed in C.C.No.128 of 2019 in order dated 12.04.2023 on the file of the Principal Special Judge under EC and NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mrs.G.V.Kasthuri
Addl. 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.128 of 2019 by the learned Principal Special Judge under EC and NDPS Act, Chennai, vide order dated 12.04.2023 and to consequently enlarge the petitioner on bail.

2. The petitioner/appellant was convicted for the offences u/s 8(c) r/w 21(c) of the NDPS Act and 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, vide order dated 12.04.2023 made in C.C.No.128 of 2019 by the learned Principal Special Judge under EC and 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



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that the petitioner is under incarceration for more than five years and two months and the petitioner had already undergone almost 50% of the punishment imposed on him and he is now confined in Central Prison, Salem. Accordingly, he prays for suspension of sentence.

4. Learned Additional Public Prosecutor appearing for the respondent submitted that the contraband i.e., Heroin seized from the petitioner weighs about 500 gms, 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, she 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 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 and a half 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 of whom, one should be a blood related surety, each for a like sum to the satisfaction of the Principal Special Judge under EC and 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 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.

25.07.2024

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Note to office: Issue order copy on 30.07.2024.



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M.DHANDAPANI, J.

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To

1. The Principal Special Judge under EC and NDPS Act,
Chennai.
2. The Inspector of Police,
NIB CID, Chennai.
3. The Central Prison, Salem.
4. The Public Prosecutor,
High Court of Madras.

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