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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 24.07.2024**

**CORAM**

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

**Crl.M.P.No.17022 of 2023**

**in**

**Crl.A.No.1188 of 2023**

Sheik Ansar

S/o.Sheikh Sattar

... Petitioner

**-Vs-**

The Intelligence Officer,  
Narcotics Control Bureau (NCB),  
Chennai Zonal Unit.

... 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 learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai vide judgment dated 26.04.2023 passed in C.C.No.13 of 2019 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

For Petitioner : Mr.Mamta Pandey

For Respondent : Mr.N.P.Kumar  
Special 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 26.04.2023 passed in C.C.No.13 of 2019 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The petitioner was convicted for the offence under Sections 8(c) r/w 20 (b)(ii)(C) and 29(1) of NDPS Act. In respect of Section 8(c) r/w 20 (b)(ii)(C) of NDPS Act, the petitioner was sentenced to undergo twelve years rigorous imprisonment and to pay a sum of Rs.1,20,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months and in respect of Section 8(c) r/w 29(1) of NDPS Act, the petitioner was sentenced to undergo twelve years rigorous imprisonment and to pay a sum of Rs.1,20,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months. The sentences imposed against the petitioner is ordered to run concurrently. 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 is no previous case against the petitioner. He further 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 for 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 Special Public Prosecutor has relied upon paragraph Nos.8 and 9 of the counter affidavit, which reads as under:

*"8. As per Sec.32(A) of NDPS Act, "No Suspension, remission or communication in any sentence awarded under this Act - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being on force but subject to the provisions of Section 37, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or*



*commuted.*

*9. The Sec.32A of NDPS Act was challenged before Supreme Court in Dadu alias Tulsidas -vs- State of Mahasathra and the same ordered on 2.10.2000 holding that Section 32A as void insofar as it takes the right of the courts to suspend the sentence awarded to a @@jjjjj convict under the Act, would neither entitle such convicts @@JJJ to ask for suspension of the sentence as a matter of right in all cases nor would it absolve the courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed under Section 37b of the Act. Section 37 of the Act provides, in this case, the petitioner has not satisfied the Sec.37 of NDPS Act, the lower court already given a finding that he is involved in this offence and convicted him. The petitioner has raised a lot of grounds in the appeal but not satisfied the Sect.37 of NDPS Act. As per the judgment reported in 2009(1) SCC Pg.482 in Ratan Kumar Vishwas - Vs- State of UP in which the Apex Court categorically stated that "A sentence awarded under the Act can be suspended by the Appellate Court only and strictly subject to the conditions as spelt out in Section 37 of the Act" and followed by judgment reported in 2021 (0) Supreme (SC) in The State (GNCT of Delhi) Narcotics Control Bureau -*



*Vs - Lokesh Chadha, pg.360 and Supreme Court categorically reported in 2019 (2) SCC pg.466 in State of Punjab -Vs- Rakesh Kumar held that "when during pendency of appeal accused approaches High Court for suspension of conviction, it would not be proper for High Court for commenting on merit. 2018 (13) SCC 813, Satpal Sing -vs- The State of Panjab ORDER COULD NOT BE PASSED BY HIGH COURT U/S.438 OR 439 CR.P.C WITHOUT REFERENCE TO S.37 AND WITHOUT ENTERING A FINDING ON THE REQUIRED LEVEL OF SATISFACTION - IMPUGNED ORDER SET ASIDE and followed by in 2020 (0) Supreme (SC) 69 in State of Kerala - Vs- Rajesh, grant of bail limitations under in addition to S.439, Cr.P.C recording of satisfaction that accused is not guilty, mandatory, 2024 (0) Supreme (SC) 386, Shivani Tyagi -vs- State of UP & Anr, In case of short-term imprisonment for conviction of offence suspension of sentence is normal rule and its rejection is exception. However position should be vice-versa in case of conviction for serious offences when invocation of power under S.389 is invited, (3) Mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed cannot be a reason for invocation of power under S.389 Cr.P.C.*



*without referring to relevant factors. Hence the Respondent submits that the Petitioner is not entitled for suspension of Sentence and Bail pending Appeal."*

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 five years 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 1<sup>st</sup> condition stands complied with. So far as the 2<sup>nd</sup> 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 the learned I Additional Special Judge, Special Court under NDPS Act, Chennai along with two sureties for a like sum;

b) the petitioner shall report before the Court below at 10.30 a.m., on the first working day of every English Calender month, pending disposal of the appeal.

c) The petitioner is directed to deposit the entire fine amount to the credit of C.C.No.13 of 2019 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

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 24.07.2024**

To

1. The learned Special Judge,  
I Additional Special Court for Exclusive Trial of Cases  
under NDPS Act,  
Chennai.
2. The Central Prison,  
Puzhal-I,  
Chennai.
3. The Intelligence Officer,  
Narcotics Control Bureau (NCB),  
Chennai Zonal Unit.
4. The Public Prosecutor,  
High Court of Madras,  
Madras.



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**M.DHANDAPANI, J.**

vji

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