

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

DATED : 29.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.MP.No.10663 of 2024
and Crl.A No.1432 of 20231. Puthu Raja
2. Periya Karuppan

... petitioners

-Vs-

The Inspector of Police,
T4 Maduravoyal Police Station,
Chennai.
Cr. No.1139/2021

... Respondent

Prayer: Criminal Miscellaneous Petition has been filed under Sections 389 (i) of the Criminal Procedure Code, to suspend the sentence imposed on the petitioners by order dated 23.11.2023 in CC.No.158/2022 on the file of the learned I Additional Special Court under Ec & NDPS Act, Chennai and release the petitioners on bail till the disposal of the appeal.

For petitioners : Mr.M.S.Charles
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor**ORDER**

The Criminal Appeal has been filed as against the Judgment passed by the learned Principal Special Court under EC & NDPS Act, Chennai dated 23.11.2024 in CC.No.158 of 2022 convicted the petitioners



for the commission of offence under Section 8(c) read with 20(b)(ii)(C) of the NDPS Act and sentenced them to undergo RI for 10 years and to pay a fine of Rs.1,00,000/- each in default, to undergo six months RI. Challenging the said judgment, the petitioners have filed the above appeal and miscellaneous petition seeking suspension of sentence of imprisonment.

2. The case of the prosecution is that on 27.09.2021, on search, the petitioners were found in a possession of 186 Kgs. Ganja and the same were seized after drawing necessary samples and it was sealed and put a cover. After completing the investigation, the respondent filed a complaint against the accused for the offence under sections 8(c) read with 20(b)(ii)(C) of NDPS Act.

3. The learned counsel appearing for the petitioners 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 from 28.09.2021 and now, he is confined in Puzhal Prison, Puzhal, Chennai and accordingly, he prays for suspension of sentence.



4. The learned Additional Public Prosecutor appearing for the respondent police submitted that the contraband seized, which was seized from the petitioners, 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



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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 have been under incarceration from 28.09.2021, applying the decision of the Hon'ble Supreme Court, I am of the considered opinion that the petitioners are entitled for the relief of suspension of sentence.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail, on the following conditions:

"(a) The petitioner 1 and 2 are directed to deposit the entire fine amount which was ordered by the



Special Court under EC & NDPS Act, Chennai to the credit in CC.No.158 of 2022 before the same Court within a period of two weeks from the date of receipt of copy of this order.

(b) The petitioners shall execute a separate bail bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned learned Special Court under EC & NDPS Act, Chennai. This bail bond shall be entertained only after the deposit of the money specified in clause (a).

(c) The petitioners shall appear before the respondent police on the first working day of every month at 10.30 a.m. before the learned I Additional Special Court for EC & NDPS Act, Chennai, until further orders; and

(d) If the petitioners fail to deposit the amount and execute the bail bond as stipulated in Clause (a) and (b), the order of interim suspension of sentence shall stand cancelled automatically without reference to this Court and the learned Judge, shall immediately issue non-bailable warrant and secure the petitioners to serve the



sentence imposed against the petitioners."

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9. Further, it is made clear that, if the petitioners 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.

29.07.2024

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Note: Issue order copy on 30.07.2024

To

1. The Inspector of Police,
T4 Maduravoyal Police Station,
Chennai.

2. The I Additional Special Court under Ec & NDPS Act, Chennai

3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent
Central Prison, Puzhal, Chennai.



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7



M.DHANDAPANI.,J

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