



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.M.P.No.10751 of 2024

in

Crl.A.No.453 of 2023

Durairaja

S/o.Thangadurai

... Petitioner/A2

Vs.

State rep. by:

The Inspector of Police,

NIB-CID, Chennai.

(Crime No.4 of 2021)

... Respondent

Prayer : Criminal Miscellaneous Petition filed u/s 389(1) of Cr.P.C. seeking to suspend the sentence imposed on the petitioner by order dated 13.04.2023 in C.C.No.172 of 2021 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and release the petitioner on bail till the disposal of the above Crl.A.No.453 of 2023.

For Petitioner : Mr.M.S.Charles

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



WEB COPY

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.172 of 2021 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai dated 13.04.2023 and enlarge the petitioner on bail.

2. The petitioner/A2 was convicted for the offence under Sections 8(c) r/w 20(b) (ii) (C) of the NDPS Act and was sentenced to undergo rigorous imprisonment for 10 years each and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of fine, to undergo rigorous imprisonment for another six months, vide order dated 13.04.2023 made in C.C.No.172 of 2021. Aggrieved by the same, the above appeal has been filed along with this petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that, the petitioner is an innocent person and he has been falsely implicated in this case. Further, he submitted that the mandatory provision u/s 42, 50, 55 and 52A of NDPS Act was not complied with by the prosecution. He further



WEB COPY

submitted that, there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable and petitioner is in jail for three years and six months and now, he was confined in Central Prison, Puzhal, Chennai. Further, this court has already suspended the sentence in respect of A1/Nallaperumal in CrI.M.P.No.10306 of 2024 in CrI.A.No.453 of 2023 vide order dated 23.07.2024. Accordingly, he prayed for suspension of sentence.

4. Learned Additional Public Prosecutor appearing for the respondent submitted that, on 21.01.2021 the petitioner along with A1 were found in illegal possession of 155 Kgs of ganja. She further submitted that, since the contraband seized from the petitioner and A2 was commercial quantity, she vehemently opposed for suspension of sentence imposed on the petitioner.

5. Having regard to the fact that there are arguable points involved in the appeal and further, the appeal is not likely to be taken up for final hearing in the near future and considering the period of incarceration and also considering the fact that already this court has suspended the



WEB COPY

sentence in respect of A1, I am of the considered opinion that the petitioner is entitled for the relief of suspension of sentence.

6. 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 each for a like sum to the satisfaction of the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and on further condition that the petitioner shall appear before the trial Court twice in a week i.e., on Monday and Friday of every week at 10.30 am, pending appeal. Further, the petitioner is directed to pay the entire fine amount as ordered by the trial court, within a period of two (2) weeks from the date of receipt of a copy of this order, failing which, the suspension of substantive sentence of imprisonment alone granted today, shall stand automatically vacated, without any further reference to this Court.

7. Further, it is made clear that, if the petitioner indulges in similar



WEB COPY

offence in the future, the suspension of substantive sentence alone granted today will automatically stand dismissed without any further reference to this Court.

8. Accordingly, this criminal miscellaneous petition is ordered.

9. Post the main appeal in CrI.A.No.453 of 2023 as per seriatum.

31.07.2024

sp

To

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



WEB COPY



M.DHANDAPANI, J.

sp

Crl.M.P.No.10751 of 2024
in
Crl.A.No.453 of 2023

31.07.2024