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Crl.M.P.No.10907 of 2024
in Crl.A.No.231 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.10907 of 2024
in Crl.A.No.231 of 2023

Elayaraja

... Petitioner

Vs.

State represented by,
The Inspector of Police,
NIB CID, Coimbatore.
(Crime No.17 of 2020)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Sections 389 of Criminal Procedure Code, praying to suspend the sentence in the judgment dated 09.05.2022 in C.C.No.41 of 2020 passed by the Court of the learned Additional District Judge, Special Court under EC&NDPS Act, Coimbatore and enlarge the petitioner on bail.

For Petitioners : Mr.M.S.Ramesh
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners seeking to suspend the sentence in the judgment dated 09.05.2022 in C.C.No.41 of 2020 passed by the Court of the learned Additional District Judge, Special Court under EC&NDPS Act, Coimbatore.



Crl.M.P.No.10907 of 2024
in Crl.A.No.231 of 2024

2. The petitioner/appellant was convicted for the offences u/s 8(C) r/w 20(b) (ii)(C) of NDPS Act and was sentenced to undergo rigorous imprisonment of 10 years with a fine of Rs.1,00,000/-, in default to pay the fine amount, was sentenced to undergo rigorous imprisonment for a further period of two years vide judgment dated 09.05.2022 made in C.C.No.41 of 2020 by the learned learned Additional district and Presiding officer, Special Court under EC Act/NDPS Act, Coimbatore. Aggrieved by the same, the petitioner has filed the above appeal along with this petition seeking suspension of sentence.

3. 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 petitioner is confined in jail for more than four years. Accordingly, he prays for suspension of sentence.

4. The learned Additional Public Prosecutor appearing for the respondent police submitted that the petitioner was found in a possession of 23 Kgs. Of Ganja and the contraband seized from the petitioner is a commercial quantity. Hence, she vehemently opposed to grant of suspension of sentence.



Crl.M.P.No.10907 of 2024
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WEB COPY

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 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



Crl.M.P.No.10907 of 2024
in Crl.A.No.231 of 2024

WEB COPY

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 more than four 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.

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

"(a) The petitioner is directed to deposit the entire fine amount which was ordered by the Special Court under EC & NDPS Act, Coimbatore to the credit in CC.No.41 of 2020 before the same Court within a period of two weeks from the date of receipt of copy of this order.

(b) The petitioner shall execute a bail bond for a



Crl.M.P.No.10907 of 2024
in Crl.A.No.231 of 2024

WEB COPY

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

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

(d) If the petitioner fails 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."

9. 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.



Crl.M.P.No.10907 of 2024
in Crl.A.No.231 of 2024

WEB COPY

10. This criminal miscellaneous petition is ordered accordingly.

01.08.2024

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Note: Issue order copy on 02.08.2024

To

- 1.The Additional District Judge, Special Court under EC&NDPS Act, Coimbatore.
- 2.The Inspector of Police, NIB CID, Coimbatore.
- 3.The Central Prison, Madurai.
- 4.The Public Prosecutor, High Court of Madras.



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Crl.M.P.No.10907 of 2024
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M.DHANDAPANI, J.

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Crl.A.No.231 of 2023

01.08.2024