



Crl.M.P.No.12294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM:

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

Crl.M.P.No.12294 of 2023

in

Crl.A.No.868 of 2023

Sivakumar

...Petitioner

Vs.

The Intelligencer Officer,
Narcotic Control Bureau,
Central Zonal Unit,
Chennai – 90.

Crime No.NCB F.No.48/1/3/2019-NCB/MDS

...Respondent

Criminal Miscellaneous Petition filed under Sections 327 r/w 439 of Cr.P.C., to suspend the sentence imposed on the petitioner in C.C.No.139 of 2019 by the I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai by its judgment dated 29.03.2023 and release the petitioner on bail pending determination of this Criminal Appeal No.868 of 2023 by this Hon'ble Court.

For Petitioner : Ms.M.Roselet Helen

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the



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sentence of imprisonment imposed on the petitioner in C.C.No.139 of 2019 by the

I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai, vide order dated 29.03.2023 and to consequently enlarge the petitioner on bail.

2. The petitioner/appellant was convicted for the offences u/s 8(c) r/w 22(c) of the NDPS Act and was sentenced to undergo rigorous imprisonment for a period of 10 years and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of the fine amount, he was sentenced to undergo rigorous imprisonment for a further period of 6 months, vide order dated 29.03.2023 made in C.C.No.139 of 2019 by the learned I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai. 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 under incarceration for about five and a half years and now he is confined in Central Prison, Chennai. Accordingly, he prays for suspension of sentence.



4. Learned Special Public Prosecutor appearing for the respondent submitted that the contraband i.e., Methamphetamine seized from the petitioner is 460 gms, which is a commercial quantity. Further, the contraband seized 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, he 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 :-



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“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.

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 each for a like sum to the satisfaction of the I Additional NDPS Court, Chennai and on further condition that the petitioner shall appear before the



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respondent police on every Monday at 10.30 a.m., pending appeal.

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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. Further, the petitioner is directed to pay the entire fine amount within a period of two weeks from the date of receipt of a copy of this order.

10. This criminal miscellaneous petition is ordered accordingly. Post the main appeal as per seriatum.

18.07.2024

skt

Note to office: Issue order copy on 24.07.2024.

To

1. The I Additional Special Court for Exclusive Trial of Cases under NDPS,
Chennai.
2. The Intelligencer Officer,
Narcotic Control Bureau,
Central Zonal Unit,
Chennai – 90.
3. The Central Prison,



Chennai.

4. The Public Prosecutor,
High Court of Madras.



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M.DHANDAPANI, J.

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