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Crl.M.P.No.11892 of 2024 in Crl.A.No.413 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.11892 of 2024
in Crl.A.No.413 of 2023

Ranganathan,
S/o.Veerapa

... Petitioner

Vs.

State Rep By,
Inspector of Police,
NIBCID,
Chennai.
(Crime No.33 of 2020).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(i) of Code of Criminal Procedure/430(1) of BNSS, to grant suspension of sentence imposed upon the petitioner/appellant in C.C.No.132/2021 on 02.03.2023 on the file of the Principal Special Court under EC and NDPS and release the petitioner on bail pending disposal of the Criminal Appeal No.413 of 2023.

For Petitioner	:	Mr.P.Govindarajan
For Respondent	:	Dr.C.E.Pratap, Government Advocate (Crl. Side)



ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in C.C.No.132 of 2021, dated 02.02.2023 by the learned Principal Special Judge, EC & NDPS Court, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that PW1 on secret information went to the spot along with the Police team with NDPS kit and intercepted Bolero Pickup Vehicle bearing Reg.No.KA-51-A-1482 and found that the petitioner along with another person (A2) in the car; that on search, the 1st petitioner was found in possession of four white colour gunny bags each weighing 20 kgs and A2 was found in possession of four white colour gunny bags each weighing 20 kgs; and that thereafter a case in Crime No.33 of 2020 was registered for offence under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic Substances Act.

3.The petitioner/A1 was convicted for offence under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic



Substances Act and in respect of the conviction under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, the petitioner was sentenced to undergo 12 years Rigorous Imprisonment and to pay a fine of Rs.1,12,000/- in default to undergo six months Rigorous Imprisonment and in respect of the conviction under Section 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic Substances Act, the petitioner was sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.50,000/- in default to undergo six months Rigorous Imprisonment *vide* judgment, dated 02.02.2023 made in C.C.No.132 of 2021.

4.Heard Mr.P.Govindarajan, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl. Side) appearing for the respondent/State.

5.The learned counsel for the petitioner would submit that the petitioner is in custody from 26.11.2020; that this Court had granted suspension of sentence for A2 by order, dated 30.07.2024; and that on parity the sentence imposed on the petitioner/A1 may be suspended.



6.The learned Government Advocate (Crl. Side) *per contra* would submit that the sentence imposed on A2 was suspended by this Court in Crl.M.P.No.10759 of 2024 in Crl.A.No.413 of 2023; and that the role of the petitioner is not different from that of A2.

7.Though this Court had dismissed the petitioner's first bail application on 08.07.2024, subsequently on the petition filed by A2 this Court had suspended the sentence imposed on A2 in Crl.M.P.No.10759 of 2024 in Crl.A.No.413 of 2023 by order, dated 30.07.2024 and observed as follows:

“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 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 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 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.”

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 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.In view of the change in circumstances and since the petitioner's role is not different from that of A2's role, this Court is inclined to grant



suspension of sentence to the petitioner/A1 till the disposal of the appeal.

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9. Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

(i) 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 learned Principal Special Judge, EC & NDPS Court, Chennai;

(ii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

(iii) The petitioner is directed to deposit the entire fine amount to the credit of C.C.No.132 of 2021 on the file of the Principal Special Judge, EC & NDPS Act, Chennai.



Crl.M.P.No.11892 of 2024 in Crl.A.No.413 of 2023

22.11.2024

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To

- 1.The Principal Special Judge, EC & NDPS Court,
Chennai.
- 2.The Inspector of Police,
NIBCID, Chennai.
- 3.The Central Prison-I,
Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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