



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.14694 of 2023

in

Crl.A.No.1007 of 2023

Kurella Bhanu Chandar
S/o.Subbarao

... petitioner

-Vs-

The Superintendent of Customs,
RSI AIR, New Custom House,
Meenambakkam,
Chennai - 600 002.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, to suspend the sentence imposed by the learned Special Judge, I Additional Special Court for Exclusive Trail of Cases under NDPS Act, Chennai, vide judgment dated 22.08.2023 in C.C.No.06 of 2021 and enlarge the petitioner on bail.

For petitioner : Mr.V.Ramamurthy

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor (NDPS)



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ORDER

The Criminal Appeal has been filed as against the judgment and sentence passed by the learned I Additional Judge for Exclusive Trail of Cases under NDPS Act, Chennai, in C.C.No.06 of 2021, dated 22.08.2023.

2. The case of the prosecution is that the appraiser of Customs, PAD-AIR, Commissionerate-I, New Customs House, Meenambakkam had intercepted a parcel bearing Tracking No.CL13871818NL consigned to one Krishnakanth, MR Residence, RH Road, 406 Bhimavaram, Andhrapradesh was found to contain tablets suspected to be MDMA. The parcel was examined by RSI team and the parcel was found to be 626 grams in total and the sender's address found in the parcel was Van Vliet, West, Bogaardstraat 4, 2011 WX HAARLEM. On opening the box, it was found to contain one educational game box and inside that, two types of tablets containing yellow green colour and pink colour respectively were packed in two separate polythene bags. Both the tablets were found to be MDMA. The petitioner ordered the same through Empire Market website and purchased it through Bitcoin and booked the parcel in the name of



Krishnakanth citing the above residential address. After investigation, the Law Enforcing Agency filed a complaint against the petitioner under Section 8(c) r/w 29, 8(c) r/w 22(c), 8(c) r/w 23(c) and 8(c) r/w 28 of NDPS Act and the case was taken on file in C.C.No.06 of 2021. In order to prove the same, the petitioner examined 13 witnesses and marked 36 documents. The learned Special Judge, convicted the petitioner for the offence under Sections 8(c) r/w 22(c) and 8(c) r/w 23(c) of NDPS Act. The petitioner was sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for a period of six months for the offence under Section 8(c) r/w 22(c) of NDPS Act and to undergo ten years of rigorous imprisonment and pay a fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for a period of six months for the offence under Section 8(c) r/w 23(c) of NDPS Act. The above said sentences shall run concurrently. Challenging the same, the appellant has filed criminal appeal and the present miscellaneous petition seeking suspension of sentence of imprisonment.

3. The learned counsel for the petitioner submitted that admittedly



the parcel was not booked in the name of the petitioner, the same was consigned to one Krishnakanth. However, the petitioner was implicated based on the statement given by the owner of the residence. Except the statement, owner of the residence was not examined before the trial Court. The trial Court based on the statement recorded by the Law Enforcing Agency, falsely convicted the petitioner. The petitioner has undergone about 4^{1/2} years of imprisonment. He further submitted that apart from this, no other previous case is pending against him.

4. The learned counsel for the appellant has raised several arguable grounds insofar the appeal is concerned and it will take some more time for this Court to take up the criminal appeal and to dispose of the same.

5. The learned Special Public Prosecutor would submit that the incarceration is not a material to decide the suspension of sentence and hence, the sentence imposed on the petitioner need not be suspended. In support of his contention, he relied upon the judgments of the Apex Court in the case of *The State (GNCT of Delhi) Narcotics Control Bureau vs. Lokesh Chadha* reported in 2021 (0) SCC 360 and *The State of Punjab*



vs. Rakesh Kumar in 2018 (0) SCC 1202.

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6. Considering the facts and circumstances of the case, the petitioner is in incarceration for more than 4^{1/2} years and that no previous case is pending against the petitioner, the Criminal Miscellaneous Petition is ordered and the punishment of imprisonment imposed as against the appellant is hereby suspended and he is directed to be released on bail on the following conditions:

a) the appellant shall execute a bond for a sum of Rs.10,000/- to the satisfaction of the learned I Additional Judge for Exclusive Trial of Cases under NDPS Act, Chennai, along with two sureties for a like sum;

b) the appellant shall report before the Deputy Commissioner of Customs, Kakinada on the first working day of every Monday and Friday at 10.00 a.m., pending disposal of the appeal.



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7. Post the main appeal in the usual course.

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Note: Issue order copy on 10.06.2024

To

1. The Central Prison,
Puzhal,
Chennai.
2. The learned I Additional Judge
for Exclusive Trial of Cases
under NDPS Act,
Chennai.
3. The Deputy Commissioner of Customs,
Kakinada.
4. The Superintendent of Customs,
RSI AIR, New Custom House,
Meenambakkam,
Chennai - 600 002.
5. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

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