



Crl.M.P.No.13546 of 2024 in Crl.A.No.1219 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.13546 of 2024
in Crl.A.No.1219 of 2024

Jayaprakash

... Appellant / Accused - 2

Vs.

The State Represented by:-
The Inspector of Police,
NIB – CID, Kancheepuram,
Kancheepuram District.
(Cr.No.6/2021)

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of the BNSS, to suspend the sentence imposed in C.C.No.148/2021 dated 30.07.2024 on the file of the Principal Special Court under EC and NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.D.Prasanna Kumar

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/A2 by judgment and order dated 30.07.2024 passed in C.C.No.148 of 2021 on the file of the



Principal Special Court under the EC and NDPS Act, Chennai, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the respondent received secret information on 13.02.2021 at about 7.30 a.m., and pursuant to the information, they apprehended the petitioner at the bus stand and conducted a search and found that the petitioner, along with other accused, was found in possession of 16 kgs of Ganja.

3. The petitioner, who was arrayed as Accused No. 2 in the above Calender Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
8(c) r/w 20(b)(ii) (B) of the NDPS Act	To undergo RI for five years and to pay a fine of Rs.50,000/- in default to undergo RI for six months.
8(c) r/w 29(1) of the NDPS Act	To undergo RI for three years and to pay a fine of Rs.25,000/- in default to undergo RI for six months.

4. Heard Mr.D.Prasanna Kumar, learned counsel for the petitioner; Mr.C.E.Pratap, learned Government Advocate (Crl.Side), for the respondent.



5. The learned counsel for the petitioner/A2 would submit that although the alleged search and seizure were made in a public place, no independent witnesses were examined to prove the seizure; that the mandatory provisions under Sections 42(1), 50 and 52-A of the NDPS Act, 1985 were not complied with and the report under Section 57 also was not sent in accordance with the said provision, and therefore, the petitioner would be entitled to suspension of sentence pending disposal of the appeal.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the prosecution had established its case beyond reasonable doubt and therefore the petition for suspension of sentence would be dismissed.

7. Considering the maximum period of imprisonment imposed on the petitioner, namely five years and that the petitioner has raised arguable points in the appeal, namely that the mandatory provisions have been violated and the period of incarceration, this Court is inclined to suspend the sentence imposed on the petitioner/A2.



8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner/A2 is suspended and the petitioner/A2 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/- with two sureties, each for a like sum, to the satisfaction of the learned Principal Special Judge, Court of Special Court under EC and NDPS Act, Chennai;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal 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.

12.11.2024

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Issue order copy by 14.11.2024
Upload the order copy forthwith.



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To
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- 1.The Principal Special Judge,
EC and NDPS Court, Chennai.
2. The The Inspector of Police,
NIB – CID, Kancheepuram,
Kancheepuram District.
3. The Superintendent of Prisons,
Central Prison, Puzhal -1, Chennai.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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