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Crl.M.P.No.15245 of 2024
in Crl.A.No.1337 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.15245 of 2024
in Crl.A.No.1337 of 2024

Shahul Hameed

... Petitioner

Vs.

State represented by
The Inspector of Police,
NIBCID, Chennai,
Chennai District.
(Crime No.5 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(2) of Cr.P.C./430 of BNSS, to suspend the sentence imposed on the petitioner by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai in C.C.No.29 of 2023 dated 25.06.2024 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner : Mr.S.Kasirajan

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 the judgment, dated 25.06.2024 in C.C.No.29 of 2023 passed by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai.

2.It is the case of the prosecution is that the petitioner/A2 was found in possession of 60 grams of Methamphetamine on 19.07.2022 at 6.30 hours near Kaladipettai Bus Stop, Thiruvottriyur. The respondent, on information, went to the spot and thereafter intercepted three persons including the petitioner and found that the petitioner was found in possession of the aforesaid contraband, A1 was in possession of 69 grams and A3 was in possession of 12 grams of same Methamphetamine.

3.The petitioner was convicted and sentenced to undergo twelve years rigorous imprisonment and to pay a fine of Rs.1,20,000/-, in default to undergo six months rigorous imprisonment for the offence under Section 8(c) r/w. 22(c) of NDPS Act and to undergo five years rigorous



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imprisonment and to pay a fine of Rs.50,000/-, in default to undergo six months rigorous imprisonment for the offence under Section 8(c) r/w. 29(1) of the NDPS Act.

4.The learned counsel appearing for the petitioner would submit that the contraband was produced before the Court 66 days after the alleged seizure; that there was also a delay in giving a report by the Forensic Science Laboratory; that the petitioner is aged about 71 years and he was in custody during trial for nearly 1 year 9 months and he is now in custody for the past six months and that there is no previous case against the petitioner.

5.The learned Government Advocate (Crl. Side), on instructions, would submit that there is no previous case against the petitioner and that the petitioner was in custody during trial as well.

6.On perusal of the grounds of appeal and the judgment of the Trial Court, it is seen that the petitioner has substantial grounds with regard to the violation of mandatory provisions and had also pointed out the



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contradictions in the evidence of P.W.1 and P.W.4 as to the manner in which the secret information was received and recorded in the general diary. That apart, as could be seen from the evidence of P.W.4, the contraband was sent to the Court 66 days after the alleged seizure. Admittedly there is no previous case against the petitioner and the petitioner is now aged about 71 years. It is also seen that the sentence imposed on the co-accused has been suspended by this Court in Crl.M.P.No.10922 of 2024 in Crl.A.No.994 of 2024 dated 02.08.2024 and the observations made by this Court reads 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 LiveLaw (SC) 533** is of relevance and the material



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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 accused has been in possession of only 12 grams of methamphetaime which is of intermediate quantity, I am of the considered opinion that the petitioner is entitled for the relief of suspension of sentence.”



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6.Considering the above facts; that the petitioner has made out a prima facie case and has fair chances of success in the appeal; that there are no previous cases and there is nothing to suggest that the petitioner is likely to commit another offence, this Court is inclined to grant the relief of suspension of sentence.

7.Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner, is suspended till the disposal of the criminal appeal and he 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 Sessions Judge, Principal Sessions Court under EC & 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;



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(iii)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.

28.11.2024

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To

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

SUNDER MOHAN, J.

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