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Crl.M.P.No.16978 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.16978 of 2023

in

Crl.A.No.821 of 2023

1. Mohammed Farith

2. Ziaul Haque

...Petitioners

Vs.

Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 090.
...Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in C.C.No.139 of 2019 dated 29.03.2023 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai and enlarge the petitioners on bail till the disposal of Crl.A.No.821 of 2023.

For Petitioners : Mr.G.Sriram

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



Crl.M.P.No.16978 of 2023

ORDER

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This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioners in C.C.No.139 of 2019 by the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai, vide order dated 29.03.2023 and to consequently enlarge the petitioners on bail.

2. The petitioners/appellants were convicted for the offences u/s 8(c) r/w 22(c) of the NDPS Act and were sentenced to undergo rigorous imprisonment for a period of 10 years each and were ordered to pay a fine of Rs.1,00,000/- each, in default of payment of the fine amount, they were sentenced to undergo rigorous imprisonment for a further period of 6 months each, 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 petitioners have filed the above appeal along with this petition seeking suspension of sentence.

3. Learned counsel appearing for the petitioners 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 petitioners are under incarceration for about five and a half years and now they are confined in Central Prison, Puzhal. 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 petitioners are 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 petitioners may indulge in such offences if they 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 :-

“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 petitioners are entitled for the relief of suspension of sentence.



Crl.M.P.No.16978 of 2023

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties each for a like sum to the satisfaction of the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS, Chennai and on further condition that the petitioners shall appear before the respondent police on every Monday at 10.30 a.m., pending appeal.

9. Further, it is made clear that, if the petitioners 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 petitioners are 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
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Crl.M.P.No.16978 of 2023

To

1. The Special Judge,
I Additional Special Court for Exclusive Trial of Cases under NDPS,
Chennai.
2. Th Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 090.
3. The Central Prison,
Puzhal.
4. The Public Prosecutor,
High Court of Madras.



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M.DHANDAPANI, J.

skt

Crl.M.P.No.16978 of 2023

in

Crl.A.No.821 of 2023

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