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Crl.M.P.No.18347 of 2023

in

Crl.A.No.1313 of 2023

M.DHANDAPANI,J.

Today, when the matter is taken up for hearing on being mentioned, learned Additional Public Prosecutor submitted that this Court vide order dated 16.07.2024 has granted suspension of sentence to the petitioner without imposing the condition to deposit the entire fine amount to the credit of C.C.No.10 of 2020. Therefore, necessary correction be made to paragraph No.6 of the order dated 16.07.2024.

2. In view of the above, an additional clause is added to paragraph 6 of the order dated 16.07.2024 and the same shall stand replaced with the following:-

“c) Further, the petitioner is directed to deposit the entire fine amount to the credit of C.C.No.10 of 2020 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial Cases under NDPS Act, Chennai, failing which the suspension of sentence granted by this Court shall stand dismissed automatically without any further reference to this Court.”



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M.DHANDAPANI,

J.

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3. Registry is directed to carry out the necessary correction in the order dated 16.07.2024 and issue fresh copy of the order to the learned counsel for the parties.

4. In other respects, the order dated 16.07.2024 shall remain unaltered.

24.07.2024

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Note to Office: Issue order copy today i.e,24.07.2024

Crl.M.P.No.18347 of 2023

in

Crl.A.No.1313 of 2023



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.18347 of 2023

in

Crl.A.No.1313 of 2023

M.Amsath Khan
S/o.Kader Meera

... Petitioner

-Vs-

The Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar,
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (2) of the Criminal Procedure Code, to suspend the sentence of imprisonment to the petitioner as ordered by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai vide judgment dated 19.04.2023 passed in C.C.No.10 of 2020 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.



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For Petitioner : Mr.G.Murugendran
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

The criminal miscellaneous petition has been filed by the petitioner to suspend the sentence imposed on the petitioner, vide judgment dated 19.04.2023 passed in C.C.No.10 of 2020 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The petitioner was convicted for the offence under Sections 8(c) r/w 22(c) and 28 of NDPS Act. In respect of Section 8(c) r/w 22(c) of NDPS Act, the petitioner was sentenced to undergo ten years rigorous imprisonment and to pay a sum of Rs.1,00,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months and in respect of Section 8(c) r/w 28 of NDPS Act, the petitioner was sentenced to undergo ten years rigorous imprisonment and to pay a sum of Rs.1,00,000/- towards fine, in default to undergo rigorous imprisonment for a further period of six months. The sentences imposed against the petitioner is ordered to run concurrently. Challenging the



same, the appellant has filed the criminal appeal and the present miscellaneous petition seeking suspension of sentence.

3. The learned counsel for the petitioner / accused submitted that except NDPS case, no other cases are pending against the petitioner / accused. He further submitted that the petitioner / accused was arrested in the year 2019 and that he has undergone 50% of the punishment and hence, this Court may suspend the sentence.

4. The learned Special Public Prosecutor has relied upon paragraph No.8 of the counter affidavit, which reads as under:

"8. It is respectfully submitted that the Sec.32A of NDPS Act was challenged before Supreme Court in Dadu alias Tulsidas -vs- State of Mahasathra and the same ordered on 2.10.2000 holding that Section 32A as void insofar as it takes the right of the courts to suspend the sentence awarded to a @@@jjj convict under the Act, would neither entitle such convicts @jjj to ask for suspension of the sentence as a matter of right in all cases nor would it absolve the courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed under Section 37b of the Act.



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Section 37 of the Act provides, in this case, the petitioner has not satisfied the Sec.37 of NDPS Act, the lower court already given a finding that he is involved in this offence and convicted him. The petitioner has raised a lot of grounds in the appeal but not satisfied the Sect.37 of NDPS Act. As per the judgment reported in 2009(1) SCC Pg.482 in Ratan Kumar Vishwas - Vs- State of UP in which the Apex Court categorically stated that "A sentence awarded under the Act can be suspended by the Appellate Court only and strictly subject to the conditions as spelt out in Section 37 of the Act" and followed by judgment reported in 2021 (0) Supreme (SC) in The State (GNCT of Delhi) Narcotics Control Bureau - Vs - Lokesh Chadha, pg.360 and Supreme Court categorically reported in 2019 (2) SCC pg.466 in State of Punjab -Vs- Rakesh Kumar held that "when during pendency of appeal accused approaches High Court for suspension of conviction, it would not be proper for High Court for commenting on merit. 2018 (13) SCC 813, Satpal Sing -vs- The State of Panjab ORDER COULD NOT BE PASSED BY HIGH COURT U/S.438 OR 439 CR.P.C WITHOUT REFERENCE TO S.37 AND WITHOUT ENTERING A FINDING ON THE REQUIRED LEVEL OF SATISFACTION - IMPUGNED ORDER SET ASIDE and followed by in 2020 (0) Supreme (SC) 69 in State of Kerala - Vs- Rajesh, grant of bail limitations under in addition to S.439, Cr.P.C recording of satisfaction that accused is not guilty, mandatory, 2024 (0) Supreme (SC) 386, Shivani



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Tyagi -vs- State of UP & Anr, In case of short-term imprisonment for conviction of offence suspension of sentence is normal rule and its rejection is exception. However position should be vice-versa in case of conviction for serious offences when invocation of power under S.389 is invited, (3) Mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed cannot be a reason for invocation of power under S.389 Cr.P.C. without referring to relevant factors. Hence the Respondent submits that the Petitioner is not entitled for suspension of Sentence and Bail pending Appeal."

5. The learned counsel for the petitioner 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.

6. In the facts and circumstances of the case, the Criminal Miscellaneous Petition is ordered and the punishment of imprisonment imposed as against the petitioner is hereby suspended and the petitioner is directed to be released on bail on the following conditions:

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the learned Special Judge, I Additional Special Court for Exclusive Trial Cases under NDPS Act, Chennai along with



two sureties for a like sum;

b) the petitioner shall report before the Court below on the first working day of every month, pending disposal of the appeal.

16.07.2024

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Note: Issue order copy on 16.07.2024



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M.DHANDAPANI, J.

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