

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 29.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.MP.No.17601 of 2023
in Crl.A No.920 of 2023

Nazeer

... petitioner

-Vs-

The Inspector of Police,
NIBCID, Chennai.

... Respondent

Prayer: Criminal Miscellaneous Petition has been filed under Sections 389 (i) of the Criminal Procedure Code, to suspend the sentence imposed by the learned II Additional Special Court for Exclusive Trial of cases under NDPS Act cases, Chennai in CC.No.173/2021 dated 04.08.2023 and release the petitioner on bail till the disposal of the appeal.

For petitioner : Mr.R.Rajan

For Respondent : Mrs.G.V.Kasthuri

Additional Public Prosecutor

ORDER

The Criminal Appeal has been filed as against the Judgment passed by the learned II Additional Special Court under EC & NDPS Act, Chennai dated 04.08.2023 in CC.No.173 of 2021 convicting the petitioner for the commission of offence under Section 8(c) read with 20(b)(ii)(C) of the NDPS Act and sentencing him to undergo RI for 10 years and to pay a



fine of Rs.1,00,000/- in default, to under six months RI. Challenging the said judgment, the petitioner has filed the above appeal and miscellaneous petition seeking suspension of sentence of imprisonment.

2. The case of the prosecution is that on 29.01.2019, on search, the petitioner was found in possession of 40 Kgs. Ganja in his bag and the same were seized after drawing necessary samples and it was sealed and put a cover. After completing the investigation, the respondent filed a complaint against the accused for the offence under sections 8(c) read with 20(b)(ii)(C) of NDPS Act.

3.The learned counsel for the petitioner submitted that the appellant is aged about 37 years. The appellant is incarcerated in jail and he is suffering from throat cancer, which requires continuous treatment. Further the appellant is ready to abide by any condition that may be imposed by this Court.

4. The learned Additional Public Prosecutor appearing for the respondent police submitted that the contraband seized, which was seized from the petitioner, is a commercial quantity. Hence, she vehemently



opposed to grant of suspension of sentence.

5. Heard the learned counsel on both side.

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



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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.”

8. On the earlier occasion, this Court directed Dean, Rajiv Gandhi Hospital to examine the petitioner. Today, the said report is filed before this Court and stating that the petitioner is suffering from the last stage of throat cancer. 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 is in jail from 04.08.2023 and considering the health condition of the petitioner and applying the decision of the Hon'ble Supreme Court, I am of the considered opinion that the petitioner is entitled for the relief of suspension of sentence.

9. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, on the following conditions:



"(a) *The petitioner is directed to deposit the entire fine amount which was ordered by the learned II Additional Judge, Special Court under EC & NDPS Act, Chennai to the credit in CC.No.173 of 2021 before the same Court within a period of two weeks from the date of receipt of copy of this order.*

(b) *The petitioner shall execute a bail 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 II Additional Judge, Special Court under EC & NDPS Act, Chennai. This bail bond shall be entertained only after the deposit of the money specified in clause (a).*

(c) *The petitioner shall appear before the respondent police on the first working day of every month at 10.30 a.m. before the learned II Additional Judge, Special Court under EC & NDPS Act, Chennai, until further orders; and*

(d) *If the petitioner fails to deposit the amount and execute the bail bond as stipulated in Clause*



(a) and (b), the order of interim suspension of sentence shall stand cancelled automatically without reference to this Court and the learned Judge, shall immediately issue non-bailable warrant and secure the petitioner to serve the sentence imposed against the petitioner."

10. Further, it is made clear that, if the petitioner indulges 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.

11. This criminal miscellaneous petition is ordered accordingly.

29.07.2024

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Note: Issue order copy on 30.07.2024



To

1. The Inspector of Police,
NIBCID, Chennai.
2. The Principal Special Court
under Ec & NDPS Act, Chennai
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent
Central Prison, Puzhal, Chennai.



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M.DHANDAPANI.,J
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