



Crl.M.P.No.17048 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.17048 of 2023

in

Crl.A.No.1194 of 2023

Manikandan

...Petitioner

Vs.

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

...Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in C.C.No.86 of 2018 dated 16.08.2023 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner on bail pending disposal of the Criminal Appeal No.1194 of 2023.

For Petitioner : Mr.Abudu Kumar, Sr.C,
for Mr.G.Sriram

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



CrI.M.P.No.17048 of 2023

ORDER

WEB COPY

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioner in C.C.No.86 of 2018 by the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, vide order dated 16.08.2023 and to consequently enlarge the petitioner on bail.

2. The petitioner/appellant was convicted for the offences u/s 8(c) r/w 21(c) and 8(c) r/w 28 of the NDPS Act and in respect of the conviction u/s 8(c) r/w 21(c), the petitioner was sentenced to undergo rigorous imprisonment for a period of 10 years and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of the fine amount, he was sentenced to undergo rigorous imprisonment for a further period of 6 months, and in respect of the conviction u/s 8(c) r/w 28, the petitioner was sentenced to undergo rigorous imprisonment for a period of 10 years and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of the fine amount, he was sentenced to undergo rigorous imprisonment for a further period of 6 months, vide order dated 16.08.2023 made in C.C.No.86 of 2018 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. Aggrieved by the same, the petitioner has filed the above appeal along with this petition seeking suspension of sentence.



3. Learned counsel appearing for the petitioner 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 petitioner is under incarceration for more than six years and the petitioner had already undergone 50% of the punishment imposed on him and he is now confined in Central Prison, Puzhal. Accordingly, he prays for suspension of sentence.

4. Learned Special Public Prosecutor appearing for the respondent submitted that totally 2450 strips of codeine sulphate tablets weighing 2817.50 grams and 320 bottles of Eskuf syrup each containing 100 ml were were seized from the petitioner and the petitioner may indulge in such offences if he 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 petitioner is entitled for the



Crl.M.P.No.17048 of 2023

10. This criminal miscellaneous petition is ordered accordingly. Post the

main appeal as per seriatum.

18.07.2024
(2/2)

skt

To

1. The I Additional Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.
2. The Intelligence Officer,
Directorate of Revenue Intelligence,
27, G.N. Chetty Road,
T.Nagar, Chennai.
3. The Central Prison,
Puzhal.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.M.P.No.17048 of 2023

M.DHANDAPANI, J.

skt

Crl.M.P.No.17048 of 2023

in

Crl.A.No.1194 of 2023

(2/2)

18.07.2024