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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.18931 of 2023
in
Crl.A.No.1130 of 2023

Abi @ Abilash ... Petitioner

-Vs-

The State,
Represented by The Inspector of Police,
Ramanathapuram Police Station,
Coimbatore District.
Crime No.1476 of 2020 ...
Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, to suspend the sentence of imprisonment to the petitioner as ordered by the learned Additional District Judge / Presiding Officer, Special Court under EC Act / NDPS Act, Coimbatore vide judgment dated 12.07.2023 passed in C.C.No.132 of 2022 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

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For petitioner : Mr.S.N.Arunkumar

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

O R D E R

The criminal miscellaneous petition has been filed by the petitioner to suspend the sentence imposed on the petitioner, vide judgment dated 12.07.2023 passed in C.C.No.132 of 2022 by the learned Additional District Judge / Presiding Officer, Special Court under EC Act / NDPS Act, Coimbatore and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The case of the prosecution is that on secret information, the respondent Police went to the scene of occurrence and on seeing the respondent Police, the petitioner tried to escape but was apprehended by the Police. The respondent Police have recovered 1.250 Kgs of Ganja and registered FIR in Crime No.1476 of 2020. After completion of investigation, the respondent Police filed a charge sheet and the same was taken on file in C.C.No.132 of 2022. After full-fledged trial, the petitioner was convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of

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NDPS Act and 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 one year. The period of remand already undergone by the petitioner / accused from 22.06.2020 to 28.07.2020 is ordered to be set off under Section 428 of Cr.P.C. 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 there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable and that the petitioner is now confined in prison for more than one year. Accordingly, he prays for suspension of sentence.

4. On the above contentions, heard the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

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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 Live Law (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*

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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 quantity involved in this case is not commercial in nature and that the accused has been under incarceration for more than one year, 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.

7. Accordingly, the Criminal Miscellaneous Petition is ordered and the substantive sentence of imprisonment alone imposed as against the petitioner is hereby suspended and the petitioner is directed to be released on bail on the following conditions:

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a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the learned Additional District Judge / Presiding Officer, Special Court under EC Act / NDPS Act, Coimbatore 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 18.07.2024

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To

1. The learned Additional District Judge
   / Presiding Officer,
   Special Court under EC Act / NDPS Act,
   Coimbatore.

2. The Central Prison,
   Coimbatore.

3. The Inspector of Police,
   Ramanathapuram Police Station,
   Coimbatore District.

4. The Public Prosecutor,
   High Court of Madras,
   Madras.

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M.DHANDAPANI, J.

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