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Crl.M.P.19287, 16761, 8648 & 3595 of 2023
in Crl.A.Nos.197, 491, 666 & 257 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.19287, 16761, 8648 & 3595 of 2023
in
Crl.A.Nos.197, 491, 666 & 257 of 2023

1.Anand B	... Petitioner in Crl.M.P.No.19287 of 2023/A2
2.Warren Graig Ghani	... Petitioner in Crl.M.P.No.16761 of 2023/A1
3.P.Kiran Kumar	... Petitioner in Crl.M.P.No.8648 of 2023/A4
4.A.Mumtaz Hussain	... Petitioner in Crl.M.P.No.3595 of 2023/A3

Vs.

State rep by,
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 077.

... Respondent in all petitions

Prayer in all Petitions : Criminal Miscellaneous Petitions filed under Sections 389(1) & (2) of Criminal Procedure Code, praying to suspend the sentence imposed in C.C.No.146 of 2019 dated 07.02.2023 by the Principal Special Judge, Special Court under EC & NDPS Act, Chennai and enlarge the petitioners on bail, till the disposal of the Criminal Appeals.



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For Petitioner : Mr.R.C.Paul Kanagaraj
(in Crl.M.P.No.19287 of 2023)

For Petitioner : Mr.K.Sivakumar
(in Crl.M.P.No.16761 of 2023)

For Petitioner : Mr.G.Murugendran
(in Crl.M.P.No.8648 of 2023)

For Petitioner : Mr.D.Mario Johnson
(in Crl.M.P.No.3595 of 2023)

For Respondent : Mr.N.P.Kumar
(in all Crl.O.P.s) Special Public Prosecutor

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed by the petitioners seeking to suspend the sentence of imprisonment imposed in C.C.No.146 of 2019 dated 07.02.2023 on the file of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai and enlarge them on bail.

2. A1 to A3 were convicted for the offence u/s 8(C) r/w 20(b) (ii)(C) of the NDPS Act and were sentenced to undergo rigorous imprisonment of 12 years each with a fine of Rs.1,00,000/- each, in default to pay the fine



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amount, they were sentenced to undergo rigorous imprisonment for a further period of 6 months and A1, A2 and A4 were convicted for the offence u/s 8(c) r/w 29 of the NDPS Act and were sentenced to undergo rigorous imprisonment for 5 years each with a fine of Rs.50,000/- each, in default to pay the fine amount, they were sentenced to undergo rigorous imprisonment for a further period of 6 months and A1 to A4 were convicted for the offence u/s 8(c) r/w 23 of the NDPS Act and were sentenced to under rigorous imprisonment for 12 years each with a fine of Rs.1,00,000/- each, in default to pay the fine amount, they were sentenced to under rigorous imprisonment for a further period of 6 months and A3 and A4 were convicted for the offence u/s 8(c) r/w 27A of the NDPS Act and were sentenced to undergo rigorous imprisonment for 12 years each with a fine of Rs.1,00,000/- each, in default to pay the fine amount, they were sentenced to undergo rigorous imprisonment for a further period of 6 months and A3 was convicted for the offence u/s 8(c) r/w 25 of the NDPS Act and was sentenced to undergo rigorous imprisonment of 5 years with a fine of Rs.50,000/-, in default to pay the fine amount, he was sentenced to undergo rigorous imprisonment for a further period of 6 months vide judgment dated 07.02.2023 made in



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C.C.No.146 of 2019 by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai. Aggrieved by the same, the petitioners have filed the above appeals along with these petitions seeking suspension of sentence.

3. The learned counsel appearing for the respective 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 now confined in respective prisons for about 5 years. Accordingly, he prays for suspension of sentence.

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

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



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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.”



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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 accused has been under incarceration for more than four 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.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail, on condition that each of the petitioners shall execute a 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 Principal Special Judge, Special Court under EC & NDPS Act, Chennai and on further condition that the petitioners shall appear before the respondent on every Monday at 10.30a.m., pending appeals.



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8. 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.

9. These criminal miscellaneous petitions are ordered accordingly.

04.07.2024

sp

To

- 1.The Principal Special Judge, Special Court under EC & NDPS Act, Chennai.
- 2.The Central Prison Puzhal – I, Chennai.
- 3.The Central Prison Puzhal, Chennai.
- 4.The Special Prison for Womem, Puzhal, Chennai.
- 5.The Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit, Chennai – 600 077.
- 6.The Public Prosecutor, High Court of Madras.



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M.DHANDAPANI, J.

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