



CRL MP(MD) No.9468 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Second day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.9468 & 13647 of 2023

in

CRL A(MD) No.126 of 2022 and 880 of 2023

A.D.ARUN

... PETITIONER/ APPELLANT
IN CRL MP(MD).9468/2023

RAVI

... APPELLANT/ ACCUSED NO.2
IN CRL MP(MD).13647/2023

Vs

THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI DISTRICT.
(NCB F.NO.48/1/07/2018/NCB/MDU)

... RESPONDENT/RESPONDENT
IN CRL MP(MD).9468/2023

... RESPONDENT/COMPLAINANT
IN CRL MP(MD).13647/2023

Prayer in CRL MP(MD).9468/2023 in CRL A(MD).126/2022 :

To Suspend the Sentence of Imprisonment imposed by the Additional District Judge, I-Additional Special Court for NDPS Cases,Madurai in CC.No.20 of 2019 by the Judgment dated 25.01.2022 and enlarge the Petitioner on bail, pending disposal of the above said Criminal Appeal.



CRL MP(MD) No.9468 of 2023

Prayer in CRL A(MD).126/2022 :

To call for records and set aside the judgment dated 25.01.2022 made in C.C.No.20/2019 in the Court of the Hon'ble I Additional Special Court for NDPS Act Cases, Madurai and allow the above Criminal Appeal.

Prayer in CRL MP(MD). 13647/ 2023 :

To suspend the sentence of Imprisonment imposed by the Learned I Additional Special Court for NDPS Act Cases, Madurai, (FAC), in C.C.No.20 of 2019 by the judgment dated 25.01.2022 and enlarge the petitioner /appellant on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD).880/2023 :

To call for the records and set aside the Judgment and conviction dated 25.01.2022 by the Learned I Additional Special Court for NDPS Act Cases, Madurai (FAC) in C.C.No.20 of 2019 and acquit the Appellant.

Common Order : These Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.K.SUNDARAVEL, Advocate for the petitioner in CRL MP(MD). 9468/2023 and MR.S.MAHENDRAPATHY, Advocate for the petitioner in CRL MP (MD).13647/2023 and of MR.C.ARUL VADIVEL @ SEKAR, Special Public Prosecutor for NCB on behalf of the Respondent in both CRL MP's, the court made the following order:-

Reserved on	28.02.2024
Delivered on	22.03.2024

The petitioners have filed these Criminal Miscellaneous Petitions praying to suspend their sentence imposed on them by the learned Additional District Judge, I Additional Special Court for NDPS Act cases (FAC), Madurai, in C.C.No.20 of 2019 dated 25.01.2022 and to enlarge them on bail, pending disposal of the Criminal Appeals.



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2. The brief facts of the case is as follows:

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a) On 11.06.2018 at about 10.30 p.m., the respondent intercepted the vehicle Tata Safari bearing registration No.TN 72 AJ 9000 which was coming from Batlagundu towards Dindigul near tollgate and on check up, they found that the petitioners herein along with one Sriram were in possession of 114 packets of ganja weighing 251.500 kgs. In this background, the petitioners were arrested by the respondent police and 12 witnesses were examined, 99 exhibits and 27 material objects have been marked on the side of the prosecution. On considering the oral and documentary evidences, the trial Court held the accused guilty for the offences and convicted and sentenced them as follows:

S.No.	Offences	Punishment
1	8(c) r/w.20(b)(ii)(c) of the NDPS Act r/w.34 of IPC.	Sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh and in default, to undergo one year rigorous imprisonment.



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2	8(c) r/w.20(b)(ii)(c) of the NDPS Act r/w.25 of NDPS Act.	Sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh and in default, to undergo one year rigorous imprisonment.
3	8(c) r/w.20(b)(ii)(c) of the NDPS Act r/w.29 of NDPS Act.	Sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh and in default, to undergo one year rigorous imprisonment.

3. Aggrieved over the same, the petitioners herein / accused 1 and 2 have preferred the present Criminal Miscellaneous Petitions seeking suspension of sentence.

4. The learned counsel for the petitioners submitted that the petitioners herein are arrayed as A1 and A2 and the entire case is a foisted one. He submitted that the prosecution has failed to prove the date and time of arrest and recovery of the contraband, which is fatal to them. There was material contradictions and Sections 42



(1), 42(2) and 57 of the NDPS Act were not followed and the learned trial Judge without analysing the oral and documentary evidences in a proper perspective manner, convicted and sentenced the petitioners as stated above.

5. The learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another reported in 2023 (1) SCC (Cri.). The relevant portions of the judgment is extracted for ready reference:

“.... Section 389 of the Code :

389. Suspension of sentence pending the appeal; release of Appellant on bail.--

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond. Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:



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Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this Section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,--

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court Under Sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the Appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so



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released shall be excluded in computing the term for which he is so sentenced.

42. Section 389 of the Code concerns itself with circumstances pending appeal leading to the release of the Appellant on bail. The power exercisable Under Section 389 is different from that of the one either Under Section 437 or Under Section 439 of the Code, pending trial. This is for the reason that "presumption of innocence" and "bail is the Rule and jail is the exception" may not be available to the Appellant who has suffered a conviction. A mere pendency of an appeal per se would not be a factor.

43. A suspension of sentence is an act of keeping the sentence in abeyance, pending the final adjudication. Though delay in taking up the main appeal would certainly be a factor and the benefit available Under Section 436A would also be considered, the Courts will have to see the relevant factors including the conviction rendered by the trial court. When it is so apparent that the appeals are not likely to be taken up and disposed of, then the delay would certainly be a factor in favour of the Appellant.

44. Thus, we hold that the delay in taking up the main appeal or



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revision coupled with the benefit conferred Under Section 436A of the Code among other factors ought to be considered for a favourable release on bail.

Precedents:

- Atul Tripathi v. State of U.P. and Anr., 2014 (9) SCC 177:

13.It may be seen that there is a marked difference between the procedure for consideration of bail Under Section 439, which is preconviction stage and Section 389 Code of Criminal Procedure, which is post-conviction stage. In case of Section 439, the Code provides that only notice to the public prosecutor unless impractical be given before granting bail to a person who is Accused of an offence which is triable exclusively by the Court of Sessions or where the punishment for the offence is imprisonment for life; whereas in the case of post-conviction bail Under Section 389 Code of Criminal Procedure, where the conviction in respect of a serious offence having punishment with death or life imprisonment or imprisonment for a term not less than ten years, it is mandatory that the appellate court gives an opportunity to the public prosecutor for showing cause in writing against such release.

14. ...in case the appellate court is inclined to consider the release



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of the convict on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the Appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. Despite such an opportunity being granted to the Public Prosecutor, in case no cause is shown in writing, the appellate court shall record that the State has not filed any objection in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the court is properly assisted by the State with true and correct facts with regard to the relevant considerations for grant of bail in respect of serious offences, at the post-conviction stage.

- Angana v. State of Rajasthan, (2009) 3 SCC 767:

14. When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending



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on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict Under Section 389 of the Criminal Procedure Code.

- Sunil Kumar v. Vipin Kumar (2014) 8 SCC 868:

13. We have heard the rival legal contentions raised by both the parties. We are of the opinion that the High Court has rightly applied its discretionary power Under Section 389 Code of Criminal Procedure to enlarge the Respondents on bail. Firstly, both the criminal appeal and criminal revision filed by both the parties are pending before the High Court which means that the convictions of the Respondents are not confirmed by the appellate court. Secondly, it is an admitted fact that the Respondents had been granted bail earlier and they did not misuse the liberty. Also, the Respondents had conceded to the occurrence of the incident though with a different version.



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14. We are of the opinion that the High Court has taken into consideration all the relevant facts including the fact that the chance of the appeal being heard in the near future is extremely remote, hence, the High Court has released the Respondents on bail on the basis of sound legal reasoning. We do not wish to interfere with the decision of the High Court at this stage. The appeal is dismissed accordingly.

Thus, highlighting the guidelines and decision of the Hon'ble Supreme Court in Satender Kumar's case as stated supra, the learned counsel for the petitioners prayed for grant of suspension of sentence imposed on the petitioners.

6. The learned Special Public Prosecutor for NCB cases for the respondents submitted that on reliable information, the respondent police on raid found the accused with 114 parcels of ganja weighing 251.500 kgs from the petitioners herein along with one Sriram/A3. He drew the attention of this Court to Section 436-A of Cr.P.C., which would reveal that when a person had undergone detention for a period extending one half of the maximum period of imprisonment specified for that offence, he shall be released by the Court on his personal bond with or without sureties. The maximum punishment specified for the offences committed by the petitioners under the NDPS Act is 20 years and therefore the petitioners case cannot be considered under Section 436-A of Cr.P.C., as they have only served around 5



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years. In this case, the trial Court has awarded punishment of 10 years (3 counts) and now, the petitioners have completed only five years.

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7. In support of his contention, the learned Special Public Prosecutor drew the attention of this Court to the decision of the High Court of Bombay in the case of Maksud Sheikh Gaffur Sheikh Vs. State of Maharashtra reported in 2020 (6) Mh.L.J. 441, wherein it has held that Section 436A refers to the maximum period of imprisonment specified for the offence in question and not to the period of imprisonment actually imposed. The proviso clause to Section 436-A provides that even when the prisoner has served more than half the period of the punishment he/she shall order the continued detention of such person for a period longer than one half of the period of punishment or release him/her on bail. The proviso clause would have an overriding effect. It was also clearly stated that Section 436A of Cr.P.C., is not applicable to the appeal proceeding and therefore, the petitioners shall not be entitled to the benefit provided under Section 436A on two grounds. Firstly, they are convicts and the second ground is that they have not undergone one-half the period of maximum punishment for the offence.

8. Under Section 37 of the NDPS Act, twin conditions has to be satisfied by the petitioners for grant of suspension of sentence. At this juncture, it is relevant to refer to Section 37 of the NDPS Act which reads as under:



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37. Offences to be cognizable and non-bailable.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

9. He also submitted that the petitioners in the instant case were convicted by the trial Court to undergo 10 years (3 counts) of imprisonment and the question of presumption of innocence to grant them suspension will not arise. He submitted that Section 37 of the NDPS Act should not be overlooked and it squarely applies while



granting suspension of sentence.

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10. Moreover, the decision of the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another reported in 2022 (10) SCC 51 has not distinguished the grant of bail under Section 439 Cr.P.C., and suspension of sentence under Section 389 Cr.P.C.

11. The Hon'ble Supreme Court in the case of Preet Pal Singh Vs. State of UP reported in 2020 (8) SCC 645 has held as follows:

“36. There is a difference between grant of bail under [Section 439](#) of the CrPC in case of pre-trial arrest and suspension of sentence under [Section 389](#) of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in [Dataram Singh v. State of U.P. and Anr.](#)(supra). However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial”



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12. The above said principles are followed by the Hon'ble Apex Court in the case of NCT of Delhi Vs. Lokesh Chadha reported in 2021 (5) SCC 724.

13. Furthermore, the learned Special Public Prosecutor also relied upon Satender Kumar's case stated supra, wherein the Hon'ble Supreme Court has held that an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence, contradicting the contentions of the learned counsel for the petitioners pleading for grant of suspension of sentence.

14. In response to the submissions of the learned counsel for the petitioners in regard to the views of the Hon'ble Supreme Court in Satender Kumar's case, the learned Special Public Prosecutor highlighted the same decision, wherein he has referred para 5 of the said decision wherein, it has held that all the discussions along with the directions in that case, were meant to act as guidelines, as each case pertaining to a bail application is obviously to be decided on its own merits. He also contended that the offence committed by the petitioners are of serious nature which disturbs the socio-economic status of the Country and therefore pleaded this Court to order for dismissal of the above petitions seeking for suspension of sentence.

15. Heard the rival submissions of the learned Counsels on either side and also perused the materials available on record.

16. The prosecution has proved the possession of the contraband ganja beyond



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reasonable doubts and therefore, bar created under Section 37(1)(b)(ii) of the NDPS Act, applies. The petitioners herein had involved in possession of contraband which falls within the 'Commercial Quantity'. The embargo contained under Section 37(1)(b)(ii) of the NDPS Act is crucial and the Court has to satisfy the twin conditions laid therein. He further submitted that the above provision would apply in the appeal stage also and in this regard, he has placed reliance upon the decisions of the Hon'ble Supreme Court in *Union of India v. Rattan Mallik @ Habul* reported in 2009 (2) SCC 624. The relevant portions of the said decision reads hereunder:

“9.The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a (2000) 8 SCC 437 special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application.

10.As already noted, in the present case, the respondent has been convicted and sentenced for offences under the NDPS Act and therefore,



while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for offences under the Indian Penal Code, 1860 the relevant provision in the said special statute in this regard had to be kept in view.

....

12.It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of subsection (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”.



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13.The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14.We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited



purpose and is confined to the question of releasing the accused on bail.

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15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are :

(i) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Indian Penal Code, 1860 etc. but are not sufficient to satisfy the mandatory requirements as stipulated in sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act.

17. Likewise, in yet another decision in the case of State of Kerala and others v. Rajesh reported in 2020 (12) SCC 122, the Hon'ble Court has held as under:

“17. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed.



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At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and nonbailable.

It reads thus: “37. Offences to be cognizable and nonbailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force



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on granting of bail.” (emphasis supplied)

18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95] as under:

<https://www.mhc.tn.gov.in/judges> 24. With deep concern, we may point out that the organised



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activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not



abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socioeconomic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes



for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

21. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

22. The submission made by learned counsel for the respondents that in Crime No. 14/2018, the bail has been granted to the other accused persons(A1 to A4), and no steps have been taken by the prosecution to challenge the grant of postarrest bail to the other accused persons, is of no consequence for the reason that the consideration prevailed upon the Court to grant bail to the other accused persons will



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not absolve the act of the accused respondent(A5) from the rigour of Section 37 of the NDPS Act.

23. The further submission of the learned counsel for the respondents that they have been falsely implicated in Crime No. 19/2018 for the reason that the batchmates of the excise official, Babu Varghese was convicted in the corruption case on the trap being laid down by the respondentShajimon(A1) is only a conjecture of self-defence, and no inference could be drawn of false implication, more so when in Crime No. 19/2018 and 14/2018, chargesheets have been filed after investigation and the matter is listed before the learned trial Judge for framing of the charge where the accused respondents certainly have an opportunity to make their submissions.

24. That apart, in the application which was filed before the learned Single Judge of the High Court by the appellant under Section 482 CrPC, the learned Single Judge has also prima facie accepted that error has been committed in granting bail to the accused respondents as observed in para 16 of the impugned judgment as under:-

“ On going through the orders granted on 10.5.2019 allowing bail applications of A1 and A3 on the one hand and 5th accused on the other



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hand in NDPS crime Nos. 19/2018 and 14/2018 respectively, I find that the bail was granted by the Court after being cognizant of the principles laid down in Section 37 of the Act whether it ultimately turned out to be right or wrong. May be as regards 3rd accused was concerned, order was passed under misconception of facts. Likewise, the criminal antecedents concerning the first accused did not fall to the notice of this Court. What could at the most be said of the order passed by this Court is that it was erroneous or it did not involve application of mind. But then the question arises is whether the same court could under law reconsider the facts invoking Section 482 of the Code. I am of the opinion that the remedy of the State lay in challenging the orders of this Court, if it was really aggrieved, before a superior forum and not before the same court. Therefore, accepting the argument of the learned counsel for the accused, I hold that none of the applications seeking to recall the order of this Court is maintainable under law.” (emphasis supplied)

25. In the result, the appeals are allowed and the impugned order passed by the High Court releasing the respondents on bail is hereby set aside. Bail bonds of the accused respondents stand cancelled and they



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are directed to be taken into custody. The trial Court is directed to proceed and expedite the trial.”

18. In the recent decision of the Hon'ble Supreme Court in the case of State by the Inspector of Police Vs. B.Ramu in SLP (Crl. No. 8137 of 2022), it has held that, in case of recovery of a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused even during trial. The effects of the drug trafficking being worse and unimaginable, the Courts and legislature intended jail to be the rule and bail to be an exception for the offence committed under NDPS Act. The relevant portions of the decision reads as under:

“11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused ...

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.”

19. Apparently, in the case on hand, the petitioners were in possession of 251.500 kgs of contraband, which is of commercial quantity and not even much beyond the commercial quantity but of huge quantity and therefore, is a bar under



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Section 37 of the NDPS Act, prohibiting grant of bail or suspension of sentence. In such a view of the matter, this Court is of the considered view that the prayer sought for by the petitioners in the present petitions, cannot be acceded to.

20. For the foregoing reasons and also in the light of the decisions of the Hon'ble Apex Court as stated supra and several orders of this Court in NDPS Act cases pertaining to commercial quantity, this Court dismisses the relief sought for by the petitioners in these Criminal Miscellaneous Petitions and accordingly, the Criminal Miscellaneous Petitions stand dismissed.

sd/-
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Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DP

TO

1 THE ADDITIONAL DISTRICT JUDGE,
I ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES (FAC),
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE, MADURAI DISTRICT.



CRL MP(MD) No.9468 of 2023

4 THE SPECIAL PUBLIC PROSECUTOR FOR NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.MAHARAJAN, Advocate (SR-3545[I] dated 22/03/2024)

ORDER

IN

CRL MP(MD) No.9468 & 13647 of 2023

in

CRL A(MD) No.126 of 2022 and 880 of 2023

Date :22/03/2024

RS/JGB/SAR-(27.03.2024) 29P 6C

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