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Crl.M.P.No.10728 of 2024 in Crl.A.No.973 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.10728 of 2024
in Crl.A.No.973 of 2024

Nilamaalai

... Petitioner

Vs.

State Represented by
The Inspector of Police,
NIB-CID Kancheepuram

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) and 439 of Code of Criminal Procedure, to suspend the sentence and grant bail to the petitioner/appellant for the conviction and sentence imposed in C.C.No.118 of 2022 dated 08.05.2024 on the file of the I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai pending disposal of the above said Criminal Appeal.

For Petitioner : Mr.D.Selvam

For Respondent : Dr.C.E.Pratap,
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in C.C.No.118 of 2022, dated 08.05.2024 by the learned I Additional Special Judge, Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that on secret information, the petitioner's car viz., Maruti Swift Dzire bearing Reg.No.TN-58-AS-6607 was intercepted; that he was found in possession of 25 packets containing 2 kgs each totalling 50 kgs of ganja which was kept in the dickey of the car; and that after completion of formalities, FIR was registered in Crime No.5 of 2022 and on completion of investigation, the charge sheet was filed before the Trial Court.



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3.The petitioner was convicted for the offence under Section 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- in default of payment of fine to undergo imprisonment for six months *vide* judgment, dated 08.05.2024 made in C.C.No.118 of 2022.

4.The learned counsel for the petitioner would submit that there are several arguable points in the above appeal; and that the petitioner has served almost three years of sentence out of ten years imposed by the Trial Court and prayed for suspension of sentence.

5.Heard the learned Government Advocate (Crl. Side) appearing for the respondent Police and perused the counter filed.

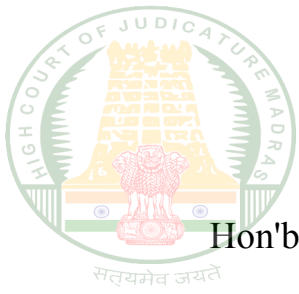
6.The Hon'ble Supreme Court in “*Rabi Prakash v. State of Odisha*, reported in 2023 SCC OnLine SC 1109”, while considering the bail application of an accused charged for an offence under NDPS Act, pending investigation, had held that if an accused had spent substantial period in



custody, his fundamental right under Article 21 of the Constitution of India would override, the statutory embargo under the NDPS Act. The relevant observations read as follows:

“4. As regard to the twin 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.It is seen that the petitioner has raised substantial grounds in the appeal. Hence, this Court considering the fixed sentence of imprisonment imposed on the petitioner, the fact that the petitioner has served nearly three years of imprisonment out of ten years; and in view of the observation of the



Hon'ble Supreme Court in the aforesaid case, is inclined to grant the relief of suspension of sentence to the petitioner.

8. Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

(i) The petitioner 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 I Additional Special Judge, Special Court for Exclusive Trial of Cases under NDPS Act, Chennai;

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the



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trial Court on any other day in lieu of the date of his absence, as directed by
the trial Court.

09.01.2025

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Note: Issue Order Copy on 10.01.2025.

To

- 1.The I Additional Special Judge,
Special Court for Exclusive Trial of
Cases under NDPS Act,
Chennai.
- 2.The Inspector of Police,
NIB-CID Kancheepuram
- 3.The Central Prison,
Trichy.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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