



WEB COPY



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: **24-01-2025**
CORAM
THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024

Maman Mia

Petitioner in Crl.MP.13337/2024

Jahir Hossian

Petitioner in Crl.MP.15318/2024

Vs

State Represented By
The Inspector of Police
S-16. Semmancherry Police Station
Chennai

Respondent in both Crl.MP

For Petitioner(s):

Mr.K.A.M.Jagadish Kumar

For Respondent(s):

Dr.C.E.Pratap Govt Advocate (Crl Side)

COMMON PRAYER: Criminal Miscellaneous Petitions have been filed under Section 430(1) of BNSS praying to suspend the sentence imposed in C.C.No.334 of 2021 dated 17.05.2024 by the Special Judge II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioners on bail till the disposal of the above criminal appeals.



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

COMMON ORDER

WEB COPY

These Criminal Miscellaneous Petitions have been filed under Section 430(1) of BNSS praying to suspend the sentence imposed in C.C.No.334 of 2021 dated 17.05.2024 by the Special Judge II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioners on bail till the disposal of the above criminal appeals.

2.The case of the prosecution is that on secret information, P.W.1 proceeded to the scene of occurrence and intercepted the accused, who were found in possession of polythene bag containing 1 Kg of dried ganja and on the confession of A1, seized 24 Kgs of ganja from the house of A1, (the petitioner in Crl.M.P.No.13337 of 2024) and hence a case was registered U/s.8c r/w 20(b)(ii)(C) of the NDPS Act.

3.The petitioners/Accused in C.C.No.334 of 2021 were convicted by the Trial Court vide judgment dated 17.05.2024 for the offences U/s.8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced to undergo R.I. for 10 years with a fine of Rs.1,00,000/- in default to undergo six months imprisonment. Aggrieved by the same, the petitioners have filed the above appeals before this



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

Court along with the instant miscellaneous petitions seeking suspension of sentence and bail.

4.The learned counsel for the petitioners would submit that the petitioners are in custody from 17.12.2021 and the total sentence imposed by the trial Court is 10 years R.I. and thus they have almost completed one third of the sentence; that there are several arguable points in the above appeals; that the respondents have violated the mandatory provisions U/s.50 and 52(A) of the NDPS Act and prayed for suspension of sentence.

5.Heard the learned Government Advocate (Crl. Side). Perused the counter affidavit.

6.The learned Government Advocate (Crl. Side) on instructions would submit that there are no previous cases against the petitioners; that the petitioners were arrested on 17.12.2021 and are in custody since then; that both the petitioners are residents of Tripura and in the event of this Court granting suspension, they may be released on stringent conditions.



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

7. Admittedly, there are no previous cases against the petitioners. The petitioners are in custody from 17.12.2021. The petitioners have raised substantial grounds in the above appeal which requires consideration. Further, 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."



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

WEB COPY

8. Considering the above, the period of incarceration and the fact that the petitioners have served nearly one third of the sentence imposed, this Court is inclined to suspend the sentence. However, since the petitioners are residents of Tripura, this Court is of the view that stringent conditions have to be imposed for their release.

9. Accordingly, this criminal miscellaneous petitions are **allowed** and the sentence imposed on the petitioners is suspended till the disposal of the above Criminal appeal and the petitioners are ordered to be released on bail on the following conditions:

- (i) The petitioners/accused shall execute a separate bond for a sum of Rs.25,000/-, with two sureties, of which one should be a blood surety, each for a like sum to the satisfaction of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
- (ii) The petitioners shall pay the fine amount imposed by the trial Court.
- (iii) The petitioners 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



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

WEB COPY

(iv) The petitioners shall stay at Chennai and shall appear before the trial Court on every Monday at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application U/s.317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

24.01.2025

kas/dk

Issue order copy by 28.01.2025
Upload the order copy forthwith.

To
1. The Special Judge
II Additional Special Court
for Exclusive Trial of Cases under NDPS Act
Chennai.



WEB COPY



*Crl.M.P.Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024*

SUNDER MOHAN, J.

kas

2.The Inspector of Police
S-16. Semmancherry Police Station
Chennai

3.The Superintendent,
Central Prison
Puzhal

4.The Public Prosecutor,
High Court, Madras.

CRL MP Nos.13337 & 15318 of 2024
in Crl.A.Nos.909 & 936 of 2024

24.01.2025