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CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2025

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THE HONOURABLE MR JUSTICE SUNDER MOHAN

**CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024**

GANESH	...	Petitioner in Crl.MP No.11577 of 2024
GEETHAN	...	Petitioner in Crl.MP No.12046 of 2024
K.VIJI @ VIJAY DINESH	...	Petitioner in Crl.MP No.13571 of 2024

Vs

The State, Rep. By
The Inspector Of Police,
E2, Royapettah Police Station,
Chennai.

... Respondent in all Crl.MPs

For Petitioner	}	
in Crl. MP Nos.11577	}	Mr.R.Rajarajan
and 12046 of 2024	}	

For Petitioner in
Crl.MP No.13571/2024 Mr.P.Pugalenth

For Respondent	}	Dr.C.E.Pratap
in all Crl.MPs	}	Govt Advocate (crl Side)

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed to suspend
the sentence imposed on the petitioners in C.C.No.251 of 2021 dated

11.01.2024 on the file of the I Additional Special Court for Exclusive trial of



CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

cases under NDPS Act, Chennai and release the petitioners on bail, pending disposal of the above Criminal Appeals.

2. The case of the prosecution is that the respondent police, on information, intercepted the vehicle in which all the accused were travelling and found that they were in possession of 25 kgs. of ganja which was kept in the vehicle.

3. The petitioners/A.1 to A.3 in C.C.No.251 of 2021 were convicted by the Trial Court and sentenced to undergo Rigorous Imprisonment for a period of **Ten years** each and to pay a fine of Rs.1,00,000/- each for the offence under Section 8(c) r/w 20(b) (ii)(c) of NDPS Act and in default to undergo rigorous imprisonment for a period of six months each. Aggrieved by the same, the petitioners/A.1 to A.3 filed Crl.A.Nos.197, 336 & 1221 of 2024 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

4. The learned counsels for the petitioners would submit that the petitioners have raised substantial grounds in the above appeals; that the mandatory provisions under Section 42 & 50 of NDPS Act were not



CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

complied with; that there is huge delay in sending the contraband to the court; that the petitioners were in custody during investigation for a period of six months and are now in custody from the date of judgment, i.e.11.01.2024 and prayed for suspension of sentence.

5. The learned Government Advocate (crl.side) on instructions submitted that the petitioners were in custody during investigation for a period of six months. He further submitted that as against A.2 there is one previous case under the NDPS Act.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) and perused the records.

7. 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:



CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

“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.”

8. Admittedly, the petitioners were in custody for a period of six months during investigation and are now in custody from 11.01.2024. Further, it is seen that there are no previous cases against the accused except for A.2 who has one previous case under the NDPS Act. The appeal is not likely to be taken up in the near future. Further, the Hon'ble Supreme Court in the aforesaid case had held that the fundamental right under Article 21 of the Constitution must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.



CRL MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

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9. Considering the above facts, the period of incarceration suffered by the petitioners; the fact that the petitioners have been sentenced to fixed period of imprisonment and that the appeals are not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioners.

10. Accordingly, these criminal miscellaneous petitions are **allowed** and the sentence imposed on the petitioners is suspended and the petitioners are ordered to be released on bail on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court under EC and NDPS Act, Chennai ;
- (ii) The petitioner s shall pay the fine amount before the Trial court, if not already paid ;
- (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 MP Nos.11577, 12046 & 13571 of 2024
and CRL A Nos.197, 336 & 1221 of 2024

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(iv) The petitioners shall appear before the trial Court on the first working day of every month 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 under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

23.01.2025

rgr

Issue order copy by 24.01.2025
Upload the order copy forthwith.
To

1. The Special Judge,
I Additional Special Court for
Exclusive trial of cases under NDPS Act,
Chennai
- 2.The Inspector Of Police,
E2, Royapettah Police Station,
Chennai.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.



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CRL MP Nos.11577, 12046 & 13571 of 2024
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SUNDER MOHAN, J.

rgt

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