



Crl.M.P.No.12960 of 2024 in Crl.A.No.1519 of 2023

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.12960 of 2024
in Crl.A.No.1519 of 2023

Hrishikesh

... Petitioner

Vs.

The Superintendent of Customs,
RSI-AIR, New Customs House,
Meenambakkam, Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS, to suspend the sentence imposed on the petitioner by the Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai made in C.C.No.104 of 2020 by judgment dated 22.11.2023 and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

For Petitioner : Mr.C.S.S.Pillai

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in C.C.No.104 of 2020, dated 22.11.2023 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 the Appraiser of Customs/PW1 had intercepted a parcel in Foreign Post Office which was addressed to one Shreyash Kushal/PW7 which had arrived from Netherlands; that on suspicion, the said parcel was opened and it was found to contain MDMA tablets weighing 384 grams; and that the investigation revealed that the petitioner had entered into conspiracy with an individual by the name Nazim to procure 384 grams of MDMA tablets through courier.



3.The petitioner was convicted for offence under Section 8(c) r/w 22(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 Rigorous Imprisonment for six months and in so far as the offence under Section 8(c) r/w 23(c) of Narcotic Drugs and Psychotropic Substances Act, the petitioner was 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 Rigorous Imprisonment for six months *vide* judgment, dated 22.11.2023 made in C.C.No.104 of 2020.

4.The learned counsel for the petitioner would submit that the petitioner has raised substantial grounds in the above appeal which requires consideration; that in any case, the petitioner was in custody from 12.03.2020 to 24.03.2020 and thereafter from 12.02.2021 to till date; and that since the petitioner has been continuously incarcerated for almost four years, the sentence imposed on him may be suspended.



5.The learned Special Public Prosecutor strongly opposed the prayer for suspension of sentence and would submit that the respondent had established the case beyond all reasonable doubt; that all mandatory provisions were complied with; that the evidence of the witnesses are cogent and convincing; and that there is no reason to interfere with the judgment of the Trial Court and in any case, the petitioner has not made out any ground for suspension of sentence. On instructions, he would further submit that the petitioner was in custody from 12.02.2021.

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.Considering the fact that the petitioner has no previous cases; that the petitioner has raised substantial grounds in the appeal which requires consideration; that the petitioner has served nearly four years of imprisonment out of ten years; and in view of the observation of the Hon'ble Supreme Court in the aforesaid case, this Court 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:



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(i)The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five 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;

(iii)The petitioner shall appear before the Trial Court once in a week at 10.30 a.m until further orders.

(iv)The petitioner shall pay the fine amount imposed by the Trial Court in C.C.No.104 of 2020 if not paid already.

09.01.2025

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To

- 1.The I Additional Special Judge,
Special Court for Exclusive Trial of
Cases under NDPS Act,
Chennai.
- 2.The Superintendent of Customs,
RSI-AIR, New Customs House,
Meenambakkam, Chennai.
- 3.The Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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