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Crl.M.P.No.13677 of 2024 in Crl.A.No.338 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2025

PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.13677 of 2024

in

Crl.A.No.338 of 2024

A.Guru @ Mineshkumar

... Petitioner/A2

Vs.

The State Rep. by
The Inspector of Police,
B-2 Esplanade Police Station,
Chennai.

(Cr.No.784/2015)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS / 389 (1) of the Cr.P.C., to suspend the sentence imposed in C.C.No.88 of 2017 dated 29.01.2024 on the file of the learned Principal Sessions Judge, EC & NDPS Court, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Ganesh Kumar

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



ORDER

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This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/A2 by judgment and order dated 29.01.2024 passed in C.C.No.88 of 2017 on the file of the learned Principal Sessions Judge, EC & NDPS Court, Chennai and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that on 13.08.2015 at about 9.00 a.m., the Sub Inspector of Police attached to the respondent police had received an information from a secret informer that the petitioner arrayed as A2 and another person were selling ganja; that after due intimation to the superior officer[PW1], the Sub Inspector along with the police party reached the spot with NDPS kit and found A1 was in possession of 4 kgs of ganja and the petitioner/A2 was in possession of 2.5 kgs of ganja; and that thereafter, an FIR was registered and after completion of investigation, a final report was filed.

3. The trial Court convicted the petitioner/A2 for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and sentenced him to



undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/-, in default to undergo rigorous imprisonment for a further period of six months.

4. Heard Mr.R.Ganesh Kumar, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. (i) The learned counsel appearing for the petitioner/A2 would submit that the petitioner was in possession of intermediate quantity, even according to the prosecution and the respondent have violated the mandatory provision of Section 57 of the NDPS Act; that the seizure cannot be believed; that no independent witnesses were examined; that there are several infirmities in the prosecution case; that the petitioner is in custody from 29.01.2024; and that therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Government Advocate (Crl. Side) *per contra* would oppose the prayer for suspension of sentence mainly on the ground that the petitioner has 17 previous case, out of which 5 are



similar cases under the NDPS Act and the other cases are registered for the offences under the IPC and prayed for dismissal of the petition.

7. The learned counsel for the petitioner/A2 in response would submit that in two of the above cases, the Special Court had acquitted the petitioner; that in all other cases, he is on bail; and that the petitioner's appeal would become infructuous, if he is in continuous incarceration.

8. Considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

9. It is seen that the petitioner/A2 has raised substantial grounds in the above appeal, which require consideration. It is also admitted that in all the other cases, the petitioner is on bail. Further, in two of the cases filed under the NDPS Act, the petitioner was acquitted by the Special Court, in C.C.No.168 of 2018, by judgment dated 12.12.2024.

10. Considering the above, the fact that sentence of imprisonment imposed by the trial Court is for a fixed period of five years and that the petitioner is in custody from 29.01.2024, and also the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to



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grant the relief of suspension of sentence to the petitioner.

11. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended and the petitioner/A2 is ordered to be released on bail on the following conditions:

- (i) The petitioner/A2 shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, EC & NDPS Court, Chennai;
- (ii) The petitioner/A2 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/A2 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 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 trial Court on any other day in lieu of the date of his absence, as directed by the trial Court; and
- (iv) The petitioner shall also appear before the respondent police on every Monday at 5.00 p.m., until the disposal of the appeal.



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09.01.2025

ars

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SUNDER MOHAN, J.

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To

1. The Principal Sessions Judge,
EC & NDPS Court, Chennai
2. The Inspector of Police,
B-2 Esplanade Police Station,
Chennai.
3. The Superintendent of Prisons,
Central Prison, Chennai.
4. The Public Prosecutor,
Madras High Court.

Pre-delivery order in
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