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CRL MP No. 13298 of 2024 in
CRL A NO.1196 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02-01-2025**

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 13298 of 2024

in CRL A.NO.1196 OF 2024

PURUSHOTHAMAN

S/o.Babu,

D.No.8, N.V.Natrajan Street, Kodungaiyur,
Chennai-600 118.

Appellant(s)

Vs

The State Rep.By
Inspector Of Police,
M4 Redhills Police Station,
Chennai.
Cr.No.3301 Of 2020.

Respondent(s)

PRAYER: Criminal Miscellaneous Petition filed under Section 389(2) of Cr.P.C / 430 of the BNSS, to suspend the execution of sentence dated 28.03.2024 passed in C.C.No.31 of 2021 against the petitioner/appellant by the learned Special Judge, I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai and pending disposal of the above appeal, enlarge the petitioner on bail.

For Appellant(s): M/s.Krishnasamy Chinnasamy

For Respondent(s):Dr.C.E.Pratap
Govt Advocate (crl Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the execution of sentence dated 28.03.2024 passed in C.C.No.31 of 2021 against the petitioner/appellant by the learned Special Judge, I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai and pending disposal of the above appeal, enlarge the petitioner on bail.

2. The case of the prosecution is that on 13.07.2020, when the defacto complainant intercepted the vehicle of the petitioner and A.1, found that they were transporting 42 kgs. of ganja in their vehicle bearing Reg.No.TN 05 BU 3859.

3. The petitioner/Accused in C.C.No.31 of 2021 was convicted by the Trial Court for the offence under Section 8(c) r/w 20(b) (ii)(C) of NDPS Act and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default thereof, to undergo imprisonment for a period of six months. Aggrieved by the same, the petitioner/accused filed Crl.A.No.1196 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. The learned counsel for the petitioner would submit that the petitioner has raised substantial grounds in the above appeal; that the evidence of PW1 to PW5 cannot be believed; that no independent witnesses were examined and hence the petitioner has fair chance of success in the above appeal; that the petitioner has spent nearly two years and four months in jail, including the period of incarceration during the pendency of the investigation and trial and prayed for suspension of sentence.

5. The learned Government Advocate (crl.side) appearing for the respondent, on instructions would confirm that the petitioner is in jail from 13.07.2020 to 04.02.2022 and thereafter from 28.03.2024 till date.

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:



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"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."

1. The petitioner has raised substantial grounds pointing out the contradictions in the evidence of the witnesses. Hence, this court is of the view that considering the fixed sentence of imprisonment imposed on the petitioner and the fact that the petitioner has served nearly 2 years and four months of imprisonment; that 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.

2.



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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/-, with two sureties, each for a like sum to the satisfaction of the learned Special Judge, I Additional 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 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.

02.01.2025

rgf

Issue order copy by 08.01.2025
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

- 1.The Special Judge,
I Additional Special Court for exclusive Trial of cases
under NDPS Act, Chennai
- 2.The Inspector Of Police
M4 Redhills Police Station,
Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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