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CRL MP No. 17212 of 2024
and CRL A No.921 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-01-2025

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THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 17212 of 2024

and CRL A NO.921 OF 2024

Mehul Bafna Alias Mehul Kumar
S/o.Umesh Kumar Bafna, R/o.No.13, Murugappan
Street, Sowcarpet, Chennai - 79.

Appellant(s)

Vs

State By
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.

Respondent(s)

For Appellant(s) : Ms.A.L.Ganthimathi
Senior Counsel for Mr.L.Palanimuthu
For Respondent(s): Mr.N.P.Kumar,
Special Public Prosecutor (CBCID)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Principal Special Court Under EC and NDPS Act, Chennai by the Judgment dated 25.04.2024 passed in C.C.No.105 of 2020 and enlarge the petitioner on bail, pending disposal of the criminal appeal.



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2. The case of the prosecution is that the petitioner who was arrayed as A.1, alongwith A.2 entered into a criminal conspiracy and on 14.03.2020, at 20.30 hrs., near a shop in Kilpauk, A.2 handed over a colourful design dotted blot sheets containing a plastic cover to A.1 and it was found that the accused were in possession of 1.83 grams (91 blots) of LSD and thus committed the offence under Section 8(c) r/w 22 (c), 27A , 28 and 29 of the NDPS Act.

3. The petitioner/A.1 in C.C.No.105 of 2020 was convicted by the Trial Court under Section 8(c) r/w 22(c) of NDPS Act and sentenced to undergo Rigorous Imprisonment for a period of 12 years and to pay a fine of Rs.1,20,000/- and in default to undergo simple imprisonment for a period of six months and sentenced to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.50,000/- for the offence under Section 8(c) r/w 29(1) of NDPS Act, and in default to undergo Simple Imprisonment for a period of six months. Aggrieved by the same, the petitioner/A.1 filed Crl.A.No.921 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 pursuant to the arrest of the petitioner on 15.03.2020, during covid lock down, the petitioner was released in the 4th week of March 2020; that thereafter he was arrested on 14.07.2020 and is in custody for more than four years and six months; that there are several arguable points in the above appeal which requires consideration ; that there are no previous case against the petitioner and prayed for suspension of sentence.

5. The learned Special Public Prosecutor (CBCID Cases) would submit that the prosecution had proved its case beyond reasonable doubt; that since the petitioner was found in possession of commercial quantity and in view of the bar under Section 37 of NDPS Act, the prayer for suspension may not be considered.

6. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor (CBCID Cases) 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



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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.”

8. On perusal of the record, it is seen that the petitioner had raised several arguable points in the above appeal. Admittedly, the petitioner is in custody from 14.07.2020 till date. The sentence of imprisonment is for a fixed period of 12 years. The points raised by the petitioner has to be considered in the above appeal. The appeal is not likely to be taken up in the near future. Further, the Hon'ble Supreme Court in the aforesaid case had



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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.

9. Considering the above facts and the period of incarceration suffered by the petitioner ; that there are no previous cases against the petitioner and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

10. 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.25,000/- , 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 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



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(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, 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 his absence, as directed by the trial Court.

03.01.2025

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Issue order copy by 08.01.2025
Upload the order copy forthwith.
To

1. The Principal Special Judge,
Special Court Under EC and NDPS Act,
Chennai.
2. The Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.
- 3..The Superintendent,
Puzhal Prison-I, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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