



CRL MP No. 17457 of 2024
and CRL A No.825 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-01-2025

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 17457 of 2024

and CRL A NO.825 OF 2024

M.Narasimha Rao
S/o. Late Rama Mohana Rao,
Plot No.78, Hmt, Shathavahana Nagar,
Kukatpally, Ranga Reddy District,
Andhra Pradesh.

Appellant(s)

Vs

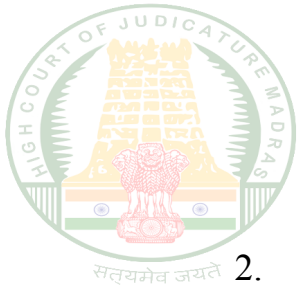
Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.
(R.R.No.09 Of 2014)

Respondent(s)

For Appellant(s) : Mr.V.K.Sathiamurthy
For Respondent(s): Mr.N.P.Kumar,
Special Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in C.C.No.30 of 2015 dated 22.05.2024 on the file of the Principal Special Court under EC and NDPS Act, Chennai and enlarge the petitioner on bail, pending disposal of the criminal appeal.



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2. The case of the prosecution is that when the petitioner was intercepted during routine search, he was found in possession of 65 kgs of Pseudo-Ephedrine, a controlled substance in his Hyundai Car bearing Regn.No.AP28-CD-8377

3. The petitioner/A.1 in C.C.No.30 of 2014 was convicted by the Trial Court and sentenced to undergo Rigorous Imprisonment for a period of **Five years** and to pay a fine of Rs.50,000/- for the offence under Section 9A r/w 25A 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.825 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that the petitioner was in custody during trial from 02.03.2014 to 08.05.2014 and is now in custody from the date of conviction, i.e. 22.05.2024, for a period of 9 months; that he has raised substantial grounds in the above appeal and prayed for suspension of sentence.

5. The learned Special Public Prosecutor, per contra submitted that the prosecution had established its case beyond reasonable doubt and that since



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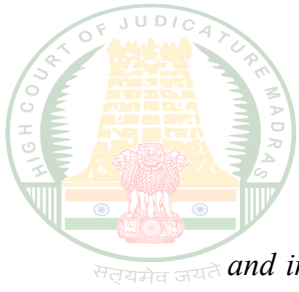
the petitioner was found in possession of commercial quantity, opposed for grant of suspension of sentence.

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6. Heard the learned counsel for the petitioner as well as the learned Special Public Prosecutor 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:

“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



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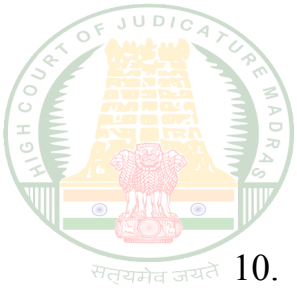
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and in such a situation, the conditional liberty must override the statutory

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 for more than nine months. The sentence of imprisonment is for a fixed period of 5 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 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, the period of incarceration suffered by the petitioner, that there are no previous cases against the petitioner and the since 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.



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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 shall pay the fine amount before the Trial court, if not already paid ;
- (iii) 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
- (iv) 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.

10.01.2025

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Issue order copy by 13.01.2025
Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

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

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