

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY ,THE TWENTY SECOND DAY OF APRIL

TWO THOUSAND AND TWENTY SIX

:PRESENT:

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

IA No. 1 OF 2023 IN CRLA NO. 757 OF 2023

AND

IA N.01 OF 2023 in CRLA NO: 654 OF 2023

IA No. 1 OF 2023 IN CRLA NO. 757 OF 2023

Between:

KALIYA, S/ o. Baluram, aged 28 years, caste by Bhagadi, R/o. Samalkha Village and Thana, Panipat District, Haryana State.

Appellant/Accused No.4

(Petitioner in CRLA 757 OF 2023

on the file of High Court)

AND

The State of Andhra Pradesh, through the Station House Officer,
Kothavalasa Police Státion, Vizianagaram District, Rep. by its Public
Prosecutor, High Court at Amarav ati.

...Respondent(s)

(Respondents in-do-)

Counsel for the Petitioner: SRI G VENKATA REDDY

Counsel for the Respondent: PUBLIC PROSECUTOR (AP)

Petition Under Section 389 (1) of Crpc., is filed praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the Appellant/Accused No.4 on bail by suspending the sentence and conviction held against the Appellant/Accused No.4 in NDPS.SC.No.29/2017, dt.09-08-2023 on the file of court of the Special Judge For Trial Of Cases Under NDPS ACT- Cum-I Additional District and-Sessions Judge at Vizianagaram, Pending disposal of CRLA No. 757 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).
The Court made the following



ORDER

"Heard Sri G.Venkat Reddy, learned counsel for the petitioners/appellants/ convicts/A1 to A4 and Sri C.Panini Somayaji, learned Additional Public Prosecutor representing the State.

The petitioners are accused Nos.1 to 4 in NDPS S.C.No.29 of 2017 on the file of the learned Special Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional District and Sessions Judge, Vizianagaram.

Learned counsel for the petitioners would submit that petitioners/A1 to A4 were convicted for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985 and accordingly, they were convicted and sentenced to suffer rigorous imprisonment for a period of ten (10) years each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) each, in default shall undergo simple imprisonment for a period of one (1) year each.

Learned counsel for the petitioners/ appellants/A1 to A4 would further submit that the appellants have already undergone nearly three (03) years of imprisonment out of fixed sentence of ten (10) years imposed by the trial Court. There is no possibility of hearing the appeal in the near future. The appeal is filed challenging the judgment on various grounds. There is a fair chance to succeed in the appeal. Further, there is no material placed on record to show that the appellants are likely to commit similar offence or any other offence if they are released on bail, pending the appeal. There is no material to show that the appellants were earlier involved in any other offence or similar offence so as to attract Section 37 of the NDPS Act, 1985. The appellants were on bail during the trial and before, and they did not commit breach of the bail bonds. They appeared before the trial Court for every adjournment, including on the date of judgment. Considering all these circumstances, the order of sentence imposed by the trial Court may be suspended pending disposal of the appeal and the appellants may be released on bail.

Learned Additional Public Prosecutor opposed the application. However, no written objections filed for the State. He would admit that the

contraband involved in the case is 244 Kgs. Therefore, Section 37 of NDPS Act is applicable to the facts of the case and he opposed the application.

He would further submit that the appellants have been in prison for the last 2 years 11 months as per the nominal roll issued by the prison authorities. He further submit that as per the information received from the police, the appellants are not involved in any similar offence or any other offences during trial of the case.

Considering the above submissions, and the fact that the appellants already served nearly three (03) years of imprisonment out of fixed sentence of ten (10) years imposed by the trial Court and as there is no material on record for coming to a conclusion that the appellants are likely to commit any offence, much less similar offence, so as to apply Section 37 of NDPS Act, 1985, this Court is of the considered opinion is that, "the order of sentence of imprisonment alone imposed by the learned Special Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional District and Sessions Judge, Vizianagaram, vide judgment dated 09.08.2023 passed in NDPS S.C.No.29 of 2017 be suspended, pending disposal of the appeal, in respect of the petitioners/appellants/A1 to A4 only, and the petitioners/A1 to A4 shall be released on bail, subject to the following conditions":

- i) The petitioners/appellants/A1 to A4 shall execute a personal bond for Rs.25,000/- (Rupees Twenty Five Thousand only) each, with two (02) sureties for a like sum each, to the satisfaction of the learned trial Court.
- ii) The petitioners/appellants/A1 to A4 shall not involve in similar offence in future in any manner.
- iii) The petitioners/appellants/A1 to A4 shall available for the process of the Court and shall attend the Court as and when directed by the trial Court.
- iv) The petitioners/appellants/A1 to A4 shall pay 20% of the fine amount before the trial Court within four (04) weeks from the date of copy of receipt of this order and file proof of the same before this Court.

- v) The petitioners/appellants/A1 to A4 shall not leave the country without permission of the Court.
- vi) If the petitioners/appellants/A1 to A4 violate any of the above conditions, the prosecution is at liberty to file an application seeking cancellation of the bail.

Accordingly, the application is ordered.”

IA N.01 OF 2023 in CRLA NO: 654 OF 2023

Between:

1. Suraj Mal, S/o. Kurudiyaram, aged about 22 years, R/o. Samaikha Village, and Thana, Panipat District, Haryana State.
2. Soorma, S/o. Late Jailer Singh, aged about 21 Years, R/o. Ward No. 13, Manana Road, Lohda Bus Stand, Samalkha Village, and Thana, Panipat District, Haryana State.
3. Suresh, S/o. Sivalal, aged about 25 Years, R/o. Samaikha Village, and Thana, Panipat District, Haryana State.

Appellants/Accused Nos.1 to 3

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Andhra Pradesh At Amaravathi.

...Respondent

Counsel for the Petitioner : SRI KAKUMANU JOJI AMRUTHA RAJU

Counsel for the Respondent : PUBLIC PROSECUTOR (AP)

Petition Under Section 389 (1) of Crpc., is filed praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of sentence Dated 09-08-2023, passed in N.D.P.S. Sessions Case. No. 29 of 2017 on the file of in the Special Judge for Try of Offences under N.D.P.S Act cum I Additional District and Sessions Judge, Metropolitan Sessions Judge, Vizianagaram and release the petitioner on bail, Pending disposal of CRLA No. 654 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following

order.(The receipt of this order will be deemed to be the receipt of notice in the case).

The Court made the following

ORDER

Heard Sri G.Venkat Reddy, learned counsel for the petitioners/appellants/ convicts/A1 to A4 and Sri C.Panini Somayaji, learned Additional Public Prosecutor representing the State.

The petitioners are accused Nos.1 to 4 in NDPS S.C.No.29 of 2017 on the file of the learned Special Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional District and Sessions Judge, Vizianagaram.

Learned counsel for the petitioners would submit that petitioners/A1 to A4 were convicted for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985 and accordingly, they were convicted and sentenced to suffer rigorous imprisonment for a period of ten (10) years each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) each, in default shall undergo simple imprisonment for a period of one (1) year each.

Learned counsel for the petitioners/ appellants/A1 to A4 would further submit that the appellants have already undergone nearly three (03) years of imprisonment out of fixed sentence of ten (10) years imposed by the trial Court. There is no possibility of hearing the appeal in the near future. The appeal is filed challenging the judgment on various grounds. There is a fair chance to succeed in the appeal. Further, there is no material placed on record to show that the appellants are likely to commit similar offence or any other offence if they are released on bail, pending the appeal. There is no material to show that the appellants were earlier involved in any other offence or similar offence so as to attract Section 37 of the NDPS Act, 1985. The appellants were on bail during the trial and before, and they did not commit breach of the bail bonds. They appeared before the trial Court for every adjournment, including on the date of judgment. Considering all these circumstances, the order of sentence imposed by the trial Court may be suspended pending disposal of the appeal and the appellants may be released on bail.

Learned Additional Public Prosecutor opposed the application. However, no written objections filed for the State. He would admit that the contraband involved in the case is 244 Kgs. Therefore, Section 37 of NDPS Act is applicable to the facts of the case and he opposed the application.

He would further submit that the appellants have been in prison for the last 2 years 11 months as per the nominal roll issued by the prison authorities. He further submit that as per the information received from the police, the appellants are not involved in any similar offence or any other offences during trial of the case.

Considering the above submissions, and the fact that the appellants already served nearly three (03) years of imprisonment out of fixed sentence of ten (10) years imposed by the trial Court and as there is no material on record for coming to a conclusion that the appellants are likely to commit any offence, much less similar offence, so as to apply Section 37 of NDPS Act, 1985, this Court is of the considered opinion is that, "the order of sentence of imprisonment alone imposed by the learned Special Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional District and Sessions Judge, Vizianagaram, vide judgment dated 09.08.2023 passed in NDPS S.C.No.29 of 2017 be suspended, pending disposal of the appeal, in respect of the petitioners/appellants/A1 to A4 only, and the petitioners/A1 to A4 shall be released on bail, subject to the following conditions":

- i) The petitioners/appellants/A1 to A4 shall execute a personal bond for Rs.25,000/- (Rupees Twenty Five Thousand only) each, with two (02) sureties for a like sum each, to the satisfaction of the learned trial Court.
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- iii) The petitioners/appellants/A1 to A4 shall available for the process of the Court and shall attend the Court as and when directed by the trial Court.
- iv) The petitioners/appellants/A1 to A4 shall pay 20% of the fine amount before the trial Court within four (04) weeks from the

date of copy of receipt of this order and file proof of the same before this Court.

- v) The petitioners/appellants/A1 to A4 shall not leave the country without permission of the Court.
- vi) If the petitioners/appellants/A1 to A4 violate any of the above conditions, the prosecution is at liberty to file an application seeking cancellation of the bail.

Accordingly, the application is ordered.”

Sd/- G.HELNA NAIDU
DEPUTY REGISTRAR

//TRUE COPY//

AB
SECTION OFFICER

To,

1. The Special Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional District and Sessions Judge, Vizianagaram.
2. The Superintendent, Central Prison, Visakhapatnam.
3. The Station House Officer, Kothavalasa Police Station, Vizianagaram District,
(By RPAD)
4. One CC to SRI. G VENKATA REDDY Advocate [OPUC]
5. One CC to SRI. KAKUMANU JOJI AMRUTHA RAJU, Advocate [OPUC]
6. Two CC's to Public Prosecutor, High Court of AP at Amaravati. [OUT]
7. One spare copy

TVSR

HIGH COURT

BVLNC,J

DATED:22/04/2026

ORDER

IA No. 1 OF 2023 IN CRLA NO. 757 OF 2023

AND

IA N.01 OF 2023 in CRLA NO: 654 OF 2023

ALLOWED

