

BAIL SLIP

The Petitioner/Accused No.4 namely Nalan S/o.(Late) S.Kumarasamy, was directed to be released on bail by order of this Hon'ble court dated 21.11.2014 and made in MP.1/14 in CrI.A.No.82 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CrI.A.Nos.132, 282 and 82 of 2014

Jeevan Singh @ Lambu ... Appellant/Accused No.2 in
CrI.A.No.132/2014

Hemanth Kumar ... Appellant/Accused No.3 in
CrI.A.No.282/2014

Nalan ... Appellant/Accused No.4 in
CrI.A.No.82/2014

Vs.

State by
Intelligence Officer
NCB, Chennai.
(NCB F.No.48/1/16/2007-NCB/MAD)
.... Respondent

Prayer: Criminal Appeals are filed under Section 374(2) Cr.P.C. read with 36-B of NDPS Act, 1985 against the judgment of conviction and sentence dated 31.01.2014 in C.C.No.99 of 2007 on the file of the Additional Sessions Court/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore.

For Appellants : Mr.M.S.Charles

For Respondent : Mr.N.P.Kumar,
Special PP for NCB Cases.

C O M M O N J U D G M E N T

The Criminal Appeals arise out of the judgment of conviction and sentence dated 31.01.2014 in C.C.No.99 of 2007 on the file of the Additional Sessions Court, Special Court for Essential Commodities Act Cases, Coimbatore, whereby the appellants/accused 2 to 4 are convicted and sentenced as follows:

Name of the Accused	Offence under Section	Conviction and sentence
A2/Jeevan singh @ Lambu A3/Hemanth Kumar A4/Nalan	8(c) read with 29 of NDPS Act, 1985	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- in default in payment to undergo one year rigorous imprisonment.
A2/Jeevan singh @ Lambu A3/Hemanth Kumar A4/Nalan	8(c) read with 28 of NDPS Act, 1985	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- in default in payment to undergo one year rigorous imprisonment.
A2/Jeevan singh @ Lambu A3/Hemanth Kumar A4/Nalan	8(c) read with 21(b) of NDPS Act, 1985	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- in default in payment to undergo one year rigorous imprisonment.
A3/Hemanth Kumar A4/Nalan	8(c) read with 25 of NDPS Act, 1985	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- in default in payment to undergo one year rigorous imprisonment.

The sentence are ordered to be run concurrently.

2.The prosecution case is based on the evidence let in by the prosecution witnesses, which are stated as follows:

(i) On the side of the prosecution, P.W.1 to P.W.9 were examined and Exs.P1 to P79 and M.O.1 to M.O.17 were marked.

(ii) P.W.1, P.W.3, P.W.4, P.W.6 and P.W.7 were working as the

Intelligence Officers in NCB, Chennai and they are empowered under the NDPS Act to receive information, search, arrest and to take other necessary proceedings.

(iii) On 03.10.2006, at about 7.45 p.m., P.W.4 received an information through phone that one Siddiq of Srilanka and one Yusuf @ Asif of Mandsaur, who was recently acquitted in a Narcotic case, were planning to engage in drug trafficking between Srilanka and India. The information further revealed that one Velayutham of Srilanka and Nalan/fourth accused were engaged by one Siddiq of Sri lanka for going to Ooty to fetch 16 kgs of Heroin from Jeevan Singh @ Lambu/2nd accused and Hemanth Kumar/3rd accused arranged by Yusuf @ Asif of Mandsaur. The information is that Jeevan Singh @ Lambu and Hemanth Kumar would be coming in a blue colour Tata Indica car with the contraband and Velayutham/A1 and Nalan/A4 would be coming in white colour Tata Indica Car for receiving the contraband. The contraband is meant for transport to Srilanka through coastal Ramnad. The contraband is likely to be exchanged between 7.00 a.m. to 10.00 a.m. on 04.10.2006 near Alankar Theatre, Ettines Road, Rose Garden Junction, Ooty. If these persons are apprehended and their vehicle and person are searched, the contraband can be seized. P.W.4 submitted Ex.P30 report to his Assistant Director Sri.K.Raghavan.

(iv) On 29.09.2006, P.W.1/Ramamoorthy along with other Intelligence Officers P.W.6 and P.W.7 went to Ooty and P.W.3 joined with them. On 04.10.2006, on seeing two persons got down from the blue colour car and handed over a black-red colour rexin bag to the persons who came in the white colour car and after receiving the same, they placed it behind the front seat. At that moment, NCB officers surrounded all the four persons.

(v) During examination, A1 and A4 were asked in Tamil and A2 and A3 were asked in Hindi as to whether they possessed any psychotropic substance. A1 and A4 deposed that 12 packets of psychotropic substance kept in the black-red colour rexin bag. A2 and A3 informed that they brought 16 packets from North India and handed over 12 packets to A1 and kept four packets in their car. A2 and A3 took four packets from a hiding place in the car and handed over to P.W.1. A1 handed over 12 packets to P.W.1. A small portion of the content was tested with the help of test kit, which was resulted in positive for heroin. Further, the search of A2 reveals that the possession of cash of Rs.1,00,630/-, a cell phone and a small paper containing some phone numbers.

(vi) When A1 was searched, his passport, air ticket, Indian and Srilankan currencies, mobile phone were seized. The seized contents, rexin bag, money cover, mobile phones and the blue and white colour cars used in the transaction were marked as M.O.1 to M.O.27. The sample identification Nos.P1 to P16 covers containing Heroin are marked as M.O.2 to M.O.17.

(vii) P.W.1 took custody of the seized materials and helped P.W.7 for remanding the accused. He prepared a report under Section 57 of the NDPS Act and submitted to his Director.

(viii) P.W.3, P.W.6 and P.W.7 participated along with P.W.1 in search of the accused, vehicle, seizure of material objects. After the seizure and sample proceedings were over, summons were issued to the accused persons.

(ix) P.W.5/Narayana Kumar, who was working as Assistant Chemical Examiner in Customs House, Chennai, received 16 sealed covers from P.W.7 along with the letter Ex.P31 from the Court and analysed the samples as per the procedures given under the Manual used by National Narcotic Laboratories published by United Nations. He issued Ex.P32 chemical analysis report, in which, it was stated that Di-Acetylmorphine (Heroin) is present in each of the 16 samples, which were in the form of brown coloured powder and the remaining samples were sent back to the Court under the seal of the Chemical Examiner, Customs House, Chennai and handed over to P.W.8/Ramasamy, Investigating officer, NCB. The test memo given by NCB was marked as Ex.P17.

(x) P.W.9/Dr.Sukhminder Kaur, who was working in Central Forensic Laboratory, Hyderabad received the sealed covers containing samples and analysed colour test, thin layer Chromatography, gas chromatography and mass spectrometric analysis and gave report Ex.P78.

(xi) P.W.8/Ramasamy, Investigating officer, NCB sent a letter to the Deputy Director, Head Quarters of NCB, New Delhi, which was marked as Ex.P53 and he took steps to conduct house search of the accused 1 to 4. After completing investigation, P.W.8 filed the complaint on 26.03.2007 against the accused for offences under Sections 8(c) read with 21, 25, 27A, 28 and 29 and Sections 21(c), 25, 27A, 28 and 29 of the N.D.P.S. Act, 1985.

3. The trial Court placed the incriminating evidence before the accused persons under Section 313(1)(b) of Cr.P.C. and the accused denied the same in toto and filed their written statements. After considering the oral and documentary evidence, the trial Court convicted and sentenced the appellants/A2 to A4 as indicated above. Against the same, the present Criminal Appeals have been separately filed by the appellants/A2 to A4.

4. Heard the learned counsel for the appellants and learned Special Public Prosecutor (NCB cases) and perused the entire materials available on record.

5. Even though the learned counsel for the appellants preferred the appeals against the conviction and sentence passed by the trial Court, at the time of arguments, he confined his arguments in respect of the quantum of sentence. He further submitted that the second accused/appellant in Cr1.A.No.132 of 2014 has been languishing in

jail for the past eight years and three months, third accused/appellant in CrI.A.No.282 of 2014 has been languishing in jail for the past eight years and three months and the fourth accused/appellant in CrI.A.No.82 of 2014 has been languishing in jail for the past eight years and one month and fine amount has already been paid.

6.As per para Nos.97 and 98 of the trial Court's judgment, the accused persons are alleged to be in possession of 32.58 grams of Heroin. Whereas the learned Special Public Prosecutor (NCB Cases) filed a memo stating that the total quantity of Diacetylmorphine in all the 15 pockets is 33.81 grams. As per the notification specifying small and commercial quantity in Schedule 56 of the N.D.P.S.Act, small quantity is five grams and the commercial quantity is 250 grams. According to the findings of the trial Court, the quantity in possession of the accused is in between small and commercial quantity. So the appellants were convicted for possessing intermediate quantity of heroin under Sections 8(c) read with 21(b) of N.D.P.S. Act.

7.According to the learned counsel for the appellants, there is no bad antecedents against these appellants and they have not involved in any other offences and they have no previous cases and hence, he prayed for leniency in the sentence imposed on the appellants.

8.At this juncture, learned Special Public Prosecutor (NCB cases) submits that as per the decision of the Apex Court, if the possession of heroin is in between intermediate quantity, 12 years sentence awarded by the trial Court may be reduced to 10 years. But he fairly conceded that the appellants herein have not involved in any other offences.

9.As per Section 21(b) of the N.D.P.S.Act, where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extent to one lakh rupees.

10.As per Section 21(c) of the N.D.P.S.Act, where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

11.As per Section 21(b), it was specifically stated that "may" extend to 10 years, whereas in (c) it was stated that "shall" not be less than 10 years and it may be extended to 20 years. The trial Court has sentenced the accused persons to undergo ten years rigorous imprisonment each and to pay a fine of Rs.10,000/- each in default in payment to undergo one year rigorous imprisonment each.

12.Considering the facts and circumstances of the case along with the submissions made by both sides, I am of the view, the trial Court has rightly held that the appellants/accused 2 to 4 are convicted for offences under Sections 8(c) read with 29, 8(c) read with 28, 8(c) read with 21(b) and 8(c) read with 25 of NDPS Act, 1985. Since the appellants herein are not having any bad antecedents and they have not involved in any other offences, I am inclined to reduce the sentence awarded by the trial Court from 10 years rigorous imprisonment to 8 years rigorous imprisonment. Accordingly, the sentence imposed by the trial Court on the accused persons is reduced from 10 years rigorous imprisonment to 8 years rigorous imprisonment and the fine amount imposed by the trial Court is hereby confirmed.

13.In the result:

(a) The Criminal Appeals are partly allowed and the conviction imposed on the appellants/A2 to A4 by the trial Court is hereby confirmed and the fine amount imposed by the trial Court is also hereby confirmed.

(b)The sentence is reduced from 10 years rigorous imprisonment to 8 years rigorous imprisonment. Since the appellants/accused 2 to 4 have been in jail for more than eight years, they had already undergone the sentence as imposed by this Court and fine amount has also been paid by them, hence, they are set free.

(c) Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

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KJ

To

1. Intelligence Officer
NCB, Chennai.
2. The Additional Sessions Court
The Presiding Officer
Special Court for Essential Commodities Act Cases
Coimbatore.
3. The Special Public Prosecutor
(NDPS), High Court, Madras.
4. The Record Keeper
Criminal Section
High Court, Madras.
5. Superintendent,
Office of the Superintendent,
Narcotics Central Bureau,
Intelligence Cell, Madurai
Having Office at 4/790, Old No. 667,
Annai Street, Meenakshi Nagar, Anna Nagar,
Madurai.
6. The Superintendent, Central Prison,
Coimbatore.

+1cc to Mr.M.S.Charles, Advocate, S.R.No.7033/15

CrI.A.Nos.132, 282 and 32 of 2014

SU(CO)
CA(02/03/2015)

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