

Bail Slip

The Petitioner herein/Accused namely Malliga, W/o.Balre, is be and hereby is directed to be and hereby released on bail as per the order of this Court made in MP.1/13 in Crl A.No.804 of 2013 dated 07.04.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.804 of 2013

Malliga

.. Appellant/
Accused

vs.

State rep. by,
The Inspector of Police,
NIB CID,
Chennai.

.. Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence dated 07.08.2013 passed by the Principal Special Judge (Special Court under NDPS Act), Chennai in C.C.No.24 of 2005.

For Appellant : Mr.C.Mohanraj
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal has been preferred by the appellant against the judgment of conviction and sentence dated 07.08.2013 passed by the Principal Special Judge (Special Court under NDPS Act), Chennai in C.C.No.24 of 2005.

2.The prosecution story is as follows :

2.1.On 12.08.2004, Raja (P.W.1), Head Constable 9874, Narcotics Intelligence Bureau-Crime Investigation Department (for brevity "NIB-CID") received an information that one Malliga, aged about 37 years, is selling ganja near Thiyagaraja college bus stand. He recorded the information vide Ex.P1 and placed the same before Kumar (P.W.4), Sub Inspector of Police, who permitted him to proceed further. Accompanied by two

constables, Usha Nandini (P.W.2) and Thananjayan (not examined), Raja (P.W.1) went to the place of occurrence and on being identified by his informant, intercepted the accused around 11.45 a.m. on 12.08.2004. He introduced himself and apprised the accused of her right to be searched, in the presence of a Magistrate or a gazetted officer under Section 50 of the NDPS Act vide written intimation (Ex.P2). The accused declined the offer. The accused was carrying an yellow colour polythene bag. Raja (P.W.1) checked the bag and it was found to contain ganja. On measurement, it was found to weigh 5.7 kgs. He drew two representative samples of 50 gms each and sealed them individually with the NIB seal and the balance contraband was also packed and sealed. He prepared the seizure mahazar (Ex.P4) and affixed the facsimile seal thereon. He served the grounds of arrest on the accused and brought her to the police station. He also informed the arrest of the accused to her relatives by sending a telegram (a copy of which has been marked as Ex.P6).

2.2. On return to the police station, he gave a report, based on which, the Sub Inspector of Police registered a case in Crime No.101 of 2004 under Section 8(c) read with 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "the NDPS Act") against the accused. The accused along with the contraband was produced for remand. Raja (P.W.1) gave a report under Section 57 of the NDPS Act to his official superior vide Ex.P9.

2.3. Investigation of the case was taken over by Kumar (P.W.4), Sub Inspector of Police, who had the contraband produced before the Special Court for NDPS Act cases, Chennai (for brevity "the Special Court") with a request to send the sample to the Tamil Nadu Forensic Sciences Laboratory (for brevity "TNFSL") for chemical examination. The Special Court sent a requisition letter dated 25.08.2004 (Ex.P10) to the laboratory along with one sample.

2.4. Vijaya (P.W.3), Scientific Assistant in the TNFSL, examined the sample and in her evidence as well in the report Ex.P11, has stated that the sample answered positive for cannabinoids and the same is ganja. Investigation was taken over by Ashok Kumar, Inspector of Police, who recorded the statements of witnesses, collected various reports, completed the investigation and filed a final report in C.C.No.24 of 2005 before the Special Court.

3. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and a charge for the offence under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act for possession of 5.7 kgs of ganja on 12.08.2004 was framed by the Special Court.

4. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 4 witnesses, marked 12 exhibits and 3 material objects.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she denied the same. No witness was examined on the side of the appellant nor any document marked.

6. After considering the evidence on record, the Special Court by judgment and order dated 07.08.2013 in C.C.No.24 of 2005 convicted the appellant of the said offence and sentenced her to undergo 3 years rigorous imprisonment and fine of Rs.20,000/-, in default to undergo 3 months rigorous imprisonment. Challenging the same, the accused is before this Court.

7. Heard Mr.C.Mohanraj, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

8. Mr.Mohanraj, learned counsel for the appellant contended that,

- i. There are no independent witnesses to the seizure;
- ii. There is a violation of Section 50 of the NDPS Act;
- iii. There is a violation of Sections 41 and 42 of the NDPS Act and
- iv. There are contradictions in the evidence of the prosecution witnesses.

9. Per contra, learned Government Advocate (Crl. Side) refuted the contentions raised by the learned counsel for the appellant.

10. This Court gave its anxious consideration to the rival submissions.

11. Raja (P.W.1), in his evidence, has stated that, while he was on duty in the police station on 12.08.2004, his informant gave information at 10.00 a.m. that one Malliga was selling ganja near Thiyagaraja college bus stand; he recorded the intimation under Ex.P1 and submitted it to the Sub Inspector of Police, who permitted him to proceed further; he went with a police party comprising, Mangalathan, HC 7313, Usha Nandini, WHC 245, Pudunayanar, HC 1012 and Thananjayan, HC 14044, along with the informant to the said place and on the informant identifying the accused, he went to her and introduced himself; he

approached some persons nearby, to stand as witness, but, they declined; therefore, in the presence of Usha Nandini (P.W.2) and Thananjayan, he gave the option to the accused to be searched in the presence of a gazetted officer or a Magistrate vide Ex.P2, but, the accused declined; the accused was carrying an yellow colour polythene bag and on checking the bag, it was found to contain ganja; he weighed the contraband and it was found to be 5.7 kgs; he took two samples of 50 gms each and separately packed them and affixed NIB seal; the balance contraband was packed and sealed; he prepared the seizure mahazar (Ex.P3); he placed the accused on arrest vide arrest memo (Ex.P4); he also sent an intimation to her relatives by telegram, a copy of which has been marked as Ex.P6; he came to the police station and registered an FIR in Crime No.101 of 2004 and handed over the accused and contraband to the Sub Inspector of Police; he gave a report under Section 57 of the NDPS Act.

12.In the cross-examination, Raja (P.W.1) has stated that the seizure documents were written by him. It was suggested to him that he had not gone for the seizure at all and that, on the instructions of the Inspector of Police, he has foisted a case against the accused, which suggestion, he denied. The evidence of Raja (P.W.1) stands sufficiently corroborated by the evidence of Usha Nandini (P.W.2).

13.Vijaya (P.W.3), Scientific Assistant, TNFSL, has stated that, on 25.08.2004, the Department received a parcel with a covering letter from the Special Court (Ex.P10) for examining the material in the cover; she compared the seal affixed on the cover and the facsimile of it and the Court requisition and found that they tallied; she examined the item found in the cover and it weighed 50 gms; on thorough examination, she found that it had cannabinoids and that it was ganja; she sent the remnant sample along with the report to the Special Court (her report was marked as Ex.P11).

14.In the cross-examination, Vijaya (P.W.3) has stated that, she has given the nett weight and not the gross weight. She also stated that she does not know, who had seized the items. It was suggested to her that, to oblige the police, she had given the report (Ex.P11), which suggestion, she denied.

15.Kumar (P.W.4), Sub Inspector of Police, has stated that on 12.08.2004, Raja (P.W.1) submitted an intimation report (Ex.P1), in which, it was stated that a lady by name Malliga was selling ganja near Theagaraya college bus stand and he permitted him to proceed further; after some time, Raja (P.W.1) brought the accused with the contraband to the police station and submitted the report under Section 57 of the NDPS Act, handed over the accused with the contraband to him; he send the accused

along with the seized contraband and samples in Form-95 to the jurisdictional Magistrate for remand; he requested the Special Court to send one sample to the TNFSL for chemical examination; he recorded the statements of Raja (P.W.1), Thananjayan and Usha Nandini (P.W.2); he submitted his investigation reports to the Inspector of Police, who completed the investigation and filed the final report.

16. In the cross-examination, Kumar (P.W.4) has stated that, he did not go with Raja (P.W.1) for the seizure and he only perused the records and the contraband submitted by Raja (P.W.1). He denied the suggestion that a false case has been put on the accused.

17. Coming to the contention of the learned counsel for the appellant that there was a violation of Section 50 of the NDPS Act, this Court finds the option under Section 50 of the NDPS Act has been given in writing to the appellant vide Ex.P2.

18. Be that as it may, the seizure in this case is from a bag, that was being carried by the appellant and not from her personal search. In view of the authoritative pronouncements of the Supreme Court in State of Rajasthan Vs. Daulat Ram [(2005) 7 SCC 36], State of Rajasthan Vs. Baburam [(2007) 6 SCC 55] and Ajmer Singh Vs. State of Haryana [(2010) 3 SCC 746], the question of violation of Section 50 of the NDPS Act will not arise in this case.

19. As regards the alleged violation of Sections 41 and 42 of the NDPS Act, the seizure has been effected from the bus stand near Theagaraya college, which will fall under Section 43 of the NDPS Act. That apart, the seizure was effected around 11.45 a.m. and not in the night hours. The police party was accompanied by Usha Nandini (P.W.2), WHC 245.

20. Regarding the contention of the counsel that there was no independent witness, it is seen that the police attempted to call some persons to stand as witness, but, none obliged. In such cases, the seizure will not stand vitiated automatically and the Court is required to analyse the evidence of the seizing officer with caution, in view of the judgment of the Supreme Court in Dalip Singh and Others Vs State of Punjab [AIR 1953 SC 364]. This Court has no reasons to disbelieve the evidence of Raja (P.W.1) and Usha Nandini (P.W.2).

21. As regards the alleged contradiction in the evidence of the witnesses, this Court scrutinised the same, but, found that there are no serious contradictions as alleged by the learned for the appellant. No two witnesses will give evidence

in a parrotlike manner. There are bound to be some discrepancies here and there. Only if those discrepancies affect the very root of the prosecution case, can the benefit of it be given to the accused.

22.As regards the seized properties, it is seen that they were produced along with the accused before the remanding Magistrate and on his directions, the properties were once again produced before the Special Court. The sample has been sent by the Special Court to the TNFSL for examination.

23.Vijaya (P.W.3), has stated that, she compared the seal on the sample and the facsimile of it, in the communication that was received from the Special Court and found that they tallied. In such view of the matter, it cannot be inferred that there has been substitution by the police.

24.On the whole, this Court does not find any infirmity in the finding of guilt arrived at by the Special Court. However, learned counsel for the appellant contended that the appellant being a lady, some leniency may be shown in sentence. Learned Government Advocate (Crl. Side) submitted that apart from this case, the appellant is not involved in any other case.

25.Taking these factors into consideration, the conviction imposed on the appellant under Section 8(c) r/w 20(b) (ii) (B) of the NDPS Act by the Special Court, stands confirmed. The substantive sentence of imprisonment is reduced from 3 years to 18 months rigorous imprisonment. The sentence of fine and the default sentence stands unaltered. The appellant will be entitled to set off under Section 428 Cr.P.C. The Special Court is directed to secure the presence of the appellant and commit her to prison to undergo the remaining period of sentence. Registry is directed to transmit the original records, if any to the Special Court forthwith.

In the result, this appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

gya

To

1.The Principal Special Judge,
(Special Court under NDPS Act),
Chennai.

2.The Superintendent,
Central Jail for Women,
Puzhal, Chennai.

3.The Inspector of Police,
NIB CID, Chennai.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar,
Criminal Section,
High Court, Madras.

6.The Section Officer, Criminal Section,
High Court, Madras.

1CC to Mr.C.Mohanraj, Advocate, SR.No.96811.

CRL.A.No.804 of 2013

BS (CO)
CSR: 27/01/2020



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