

BAIL SLIP

The Appellant/Accused namely S.A.Bakrudin, S/o. Abdul Khadar (Accused in C.C.No. 124/2007 dated 17/02/2011 on the file of the Special Judge, I Additional Special Court for NDPS Act) was enlarged on bail in Crl.MP 1 of 2011 in Crl.A.No.156/2011 dated 11.03.2011 by this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2018

Pronounced on : 12.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.156 of 2011

S.A. Bakrudin

... Appellant/Accused

Versus

Inspector of Police,
NIB CID,
Chennai.

... Respondent

Appeal filed under Section 374(2) of the Criminal Procedure Code, read with Section 36 (B) of NDPS Act 1985, to set aside the conviction and sentence rendered by the Special Judge, First Additional Special Court for NDPS Act, Chennai dated 17.02.2011 in C.C.No.124 of 2007.

For Appellant : Mr. P.G.Perumal Pandian
(Legal Aid Counsel)

For Respondent : Ms. V. Saratha Devi
Govt. Advocate (Crl.Side)

JUDGMENT

The case of the prosecution is that on 10.05.2007 at 9.30 hours, PW2, on receipt of reliable information that the accused is in possession of a narcotic substance, obtained prior permission from his superior, PW4 and proceeded to the place of occurrence along with Head Constable 717 and C. Narayanamoorthy, Head Constable No.657, who was examined as PW3. In the place of occurrence namely Junction of Kusharath Ali Makkan Street and Dr. Natesan Street, Triplicane, Chennai, the appellant was

identified by the informant. Thereafter, the accused was enquired by PW2 inter alia informed him about his right enshrined under Section 50 (1) of NDPS Act. As the accused preferred to be searched, PW2 issued a search notice, Ex.P4. As no private witness was available, Head Constables C. Narayanamoorthy and P. Kumar were called to stand as witness during the search. On being searched, PW2 seized 1.750 kilograms of ganja in a yellow colour polythene bag kept by the accused in his right hand. After seizure of the contraband, PW2 drew two samples from the seized contraband, weighing 50 grams each, neatly packed them and sent it to the Laboratory for chemical analysis under Ex.P11. PW2 thereafter arrested the accused under Arrest Memo, Ex.P6. Upon reaching the Police Station, along with the accused and witnesses, a case in Crime No. 51 of 2007 was registered. Ex.P8 is the first information report. Thereafter, PW2 submitted a report under Section 57 of NDPS Act, marked as Ex.P7 along with the case records, seized contraband etc., and PW4 proceeded with the investigation. Accused was sent to remand by PW4 and thereafter, he recorded the statement of witnesses. He also sent a requisition letter to the Court to send the contraband for chemical analysis under Ex.P11.

2. During the course of trial, prosecution examined PWs 1 to 4, Exs. P1 to P11 and MOs 1 to 3 were also marked. On behalf of defence, no witness was examined or document marked. The trial Court, on consideration of the oral and documentary evidence found the accused guilty of the offence under Section 8 (c) read with Section 20 (b) (II) (B) of NDPS Act and sentenced him to undergo rigorous imprisonment for 9 months with fine of Rs.5,000/-, in default to undergo rigorous imprisonment for two months.

3. The learned Counsel for appellant contended that even though PWs 2 and 3 admitted that the scene of occurrence is a crowded place, no independent witness was examined, rather, PW3, Head Constable, who accompanied PW2, alone was examined to speak about the seizure. Further, PW2 in his evidence has stated that after recovering the contraband, he had allegedly informed the accused about his right under Section 50 of the NDPS Act and therefore, the entire seizure is vitiated. It is also contended that there is contradiction in the deposition of PWs 2 and 3 with respect to the quantum of contraband seized. As regards seizure, only one witness was examined as PW3 and the other person, who witnessed the alleged seizure, was not examined. Further, the information leading to discovery of possession of the contraband by the appellant has not been established in the manner as required under the law. Even though, Ex.P5, Mahazar was drawn at 1.30 pm, the arrest card,

Ex.P6 indicates the time of arrest at 12.30 pm which creates doubt about the manner in which the seizure and arrest were made. Above all, PW1, Scientific Officer signed the forensic science report dated 29.08.2007 on 03.09.2007 but the same was counter-signed by the Assistant Director on 05.09.2007 which creates a suspicion in the genuineness of the chemical analysis report. Above all, there is enormous delay in sending the sample to the Forensic Sciences Department but the same was not considered by the Court below while convicting the accused.

4. The learned Government Advocate appearing for the respondent would submit that as accused was found to be in a possession of the contraband and the nature of the contraband was found to be ganja as per the certificate issued by PW.1 coupled with the Forensic Chemical Report Ex.P2, which was also established by the prosecution, the trial court is right in convicting the accused. PW2, Sub Inspector of Police duly informed the accused about his right under Section 50 (1) of NDPS Act and the search notice was also marked as Ex.P4. The contraband was packed in polythene bag kept in the hands of the accused was seized and hence, no notice was required under Section 50 of the above said Act. However, PW2 has taken necessary action in serving the notice and hence the prosecution has been carried out as per law. Further, considering the presumption under Section 35 of NDPS Act, the Trial Court has come to the correct conclusion to convict the accused. The prosecution has duly followed all the formalities before arresting the accused and therefore, the learned Government Advocate prayed for dismissal of the appeal.

5. Heard both sides. It appears from the list of documents filed before the Trial Court that based upon the information received by the P.W.2, the Sub Inspector of Police attached to the NIB wing, he reduced the information in writing, which was marked as Ex.P3. After obtaining permission from PW4, Inspector of Police, PW2 proceeded to the occurrence spot and found that the accused was in possession of 1.75 Kgs of the contraband. After enlightening the accused as regards his right under Section 50 of the NDPS Act, the contraband property seized under Ex.P.5 Mahazar in the presence of P.W.3 and another person. To prove the nature of substance, a chemical analysis report was obtained by P.W.2 from PW1, the Scientific Officer based on which, the investigation officer filed the final report alleging commission of offence punishable under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985.

6. In order to prove the case of the prosecution, PW1, Scientific Officer, PW2, Sub Inspector of Police, PW3, Head

Constable and PW4, Investigation Officer were examined. PW2 was the Officer who proceeded to the occurrence spot where PW3 stood as witness for the seizure of the contra band and Mahazar. Their deposition is cogent and corroborative with each other. PW2 clearly states that on receipt of information, he obtained permission from his superior officer, PW4 and then proceeded to the place of occurrence along with two Head Constables. According to PW2, no one has come forward to attest the Mahazar and therefore, PW3 was made to attest the Mahazar. The deposition of PW2 was corroborated by PW3. PW3 in his deposition has stated the procedures followed by PW2 prior to seizure and arrest of the accused. Both PWs 2 and 3 have clearly deposed that the accused was in possession of 1.75 Kg of ganja and it was seized from his custody. In the cross-examination of PWs 2 and 3, the defence could not elicit any worthwhile suggestion and on considering the deposition of PWs 2 and 3 the Trial Court has rightly come to the conclusion that the seizure of contraband from the accused is proved and it need not be interfered with by this Court.

7. The learned counsel for the appellant relied on the Judgment in Mohan Lal vs. State of Punjab, CDJ 2018 SC 842 and contended that the case of the prosecution is vitiated for not examining the other Head Constable, who accompanied along with Pws 2 and 3 at the time of seizure. It is also contended that PW2 ought to have examined an independent witness to prove the seizure and arrest. The said judgment cannot be made applicable to this case. In that case, it is seen from para No.15 that the informant himself acted as an investigation officer and that the investigation was not conducted fairly. In this case, admittedly, PW2, Sub Inspector of Police went to the scene of occurrence along with Head Constable, PW3. After submitting the report relating to seizure of the contraband and production of accused, PW4, Investigation officer took up the investigation and proceeded to comply with all other formalities contemplated under the Act. In any event, the evidence of the officials witness be relied unless it is found to be not reliable and untrustworthy. In this case, the deposition of Pws 2 and 3 are cogent and clear with respect to seizure of the contraband and their evidence cannot be discarded.

8. The case points raised by the learned counsel for appellant is that there is non compliance of procedure contemplated under Section 50 (1) of NDPS, Act. By perusing the evidence of the Seizure Mahazar, and deposition of PWs 2 and 3, it reveals that information was given in writing to the accused before search as required under Section 50(1) of the Act. Furthermore, the above section is applicable only when the person such of person is involved. In this case, the contraband

was sized from a Polythene Bag carried by the accused in his hands and hence compliance of procedure contemplated under Section 50 of NDPS Act is not required. However, it appears from the evidence of the PW2 and PW3 that the procedure under Section 50 of the Act has been duly complied with and hence this contention raised by the learned counsel is also rejected.

9. Though the learned counsel for the appellant would submit that there is delay in sending seized contraband for laboratory examination and the learned counsel has relied upon Ex.P2 stating that vide letter dated 03.07.2007, the sample reached the scientific laboratory, however the same was sized on 10.05.2007, on perusal of the cross examination PW1 chemical analysis, PW2, Sub Inspector of Police, PW4, Investigation Officer nothing has been whispered or no suggestion has been made to elicit answer with regard to reason for the said delay. In other words, when the prosecution witness has not been confronted with the question of alleged delay the same cannot be raised at the appellate stage. Hence, this Court is not inclined to consider the delay aspect raised by the learned counsel at the appellate stage without putting any suggestion or explanation to prosecution witnesses before the trial Court. In any event, the trial Court, on the basis of the oral and documentary evidence made by the prosecution and the fact that the seized contraband was ganja as per the evidence of the PW1, correctly come to the conclusion that the prosecution has proved the case against the accused beyond reasonable doubt and the same is not liable to be interfered with by this Court.

10. In the result, the Criminal Appeal fails and it is dismissed confirming the conviction and sentence passed in C.C. No.124 of 2007, dated 17.02.2011 on the file of Special Judge, First Additional Special Court for NDPS Act, Chennai. Bail Bond, if any, executed by the accused / appellant shall stand cancelled. The trial Court is directed to secure the accused / appellant to enable him to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Judge,
First Additional Special Court for NDPS Act,
Chennai.
- 2.The Superintendent,
Central Prison, Puzhal, Chennai.
- 3.The Inspector of Police,
NIB CID, Chennai.
- 4.The Public Prosecutor,
High Court, Madras(NDPS).

Copy to:

The Section Officer,
Criminal Record Section,
Highcourt,
Madras.

Crl.A.No.156 of 2011

SVN(CO)

rrs 01/10/2018



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