

Bail Slip

The Appellant/Accused Viz; Sebastin, aged about 47 years S/o.Kuppusamy was directed to be released on bail as per order of this court dated 09/04/2012 in MP.No.1/12 in CrI.A.No.203/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.203 of 2012

Sebastin ... Appellant/Accused

Vs

The Inspector of Police,  
NIB CID,  
Chennai-39.  
Cr.No.54/2006

... Respondent/Complainant

Criminal Appeal filed against the judgment dated 24.02.2012 passed in C.C.No.14 of 2007 by the learned Principal Special Judge for NDPS & EC Act Cases, Chennai.

For Appellant : Mr.K.Kannan

For Respondent : Ms.M.Prabhavathi Ganeshram,  
Addl. Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment, dated 24.02.2012, in C.C.No.14 of 2007, convicting and sentencing the accused to undergo RI for 2 years and to pay a fine of Rs.15,000/- in default to undergo 3 months RI for the offence under Section 8[c] r/w 20[b][ii][B] of NDPS Act, 1985.

2.The Inspector of Police, NPDS, Chennai charge sheeted the appellant/accused alleging that he was in possession of cannabis weighing 2kgs at 11.45 a.m. on 20.01.2006, at the entrance of corporation vegetable market, Kodambakkam-Arcot Road, Chennai and thereby, he committed the offence under Section 8[c] r/w 20 [b][ii][B] of NDPS Act, 1985.

3. According to the prosecution, on information, P.W.1, after getting permission from his superior officer, went with two police personnel and searched the accused at 11.45 a.m. on 20.01.2006, near the entrance gate of vegetable market, Kodambakkam-Arcot Road and found the accused in possession of 2kgs of cannabis. After following the procedure, he sent the sample and contraband along with the accused to the Court and also requested the Court to send the sample for chemical examination. After getting the report, charge sheet was laid by the Investigating Officer. The trial Court, framed charges and questioned, after furnishing copies of documents and since the accused pleaded not guilty, he was put on trial.

4. On the side of the prosecution, 4 witnesses were examined and 8 exhibits and 3 M.O.s were marked.

5. Incriminating evidence appeared against the accused was put to him under Section 313[1][b] of Cr.P.C. and the accused denied his complicity with the crime. The trial Court, after analysing the evidence, convicted the accused as aforesaid.

6. Learned counsel for the appellant mainly contended that the prosecution has not established the possession of contraband by the accused and that the alleged recovery is falsified in the light of crime number found in the arrest card.

7. Learned Additional Public Prosecutor inter alia argued that the prosecution has proved charges beyond reasonable doubt and the trial Court, after analysing the evidence, has rightly convicted the accused and the same does not require any interference.

8. For recovery of the contraband, only police personnel have been cited as witnesses. No independent witness has been examined. P.W.2 says in his cross-examination that Ramasubbu and Rajasekar were available in the place of seizure and they refused to be the witnesses for the recovery. P.W.2 says that the above persons refused to furnish their addresses. Though P.W.2 says so, he admits during cross-examination that he has not stated the same before the Investigating Officer, when examined him. When independent witnesses were available and refused to be the witnesses and furnish their addresses, P.W.2, the officer who arrested and recovered the contraband, should have stated the above fact to the Investigating Officer. This itself creates the doubt about the recovery.

9. The arrest card has been marked as Ex.P6, in which, crime number has been noted. According to the prosecution, only after arrest and recovery near the entrance gate of vegetable market at Kodambakkam-Arcot Road, the accused was taken to the NDPS branch and a case was registered. Only after reaching the

station, case was registered and crime number was assigned. The trial Court, is not correct in accepting the reason given on the side of the prosecution that it is the usual practice of the police to note the crime number, immediately on receipt of information from the informant. The above reasoning is not convincing and acceptable. When the crime number is mentioned in the arrest card, the contention of the appellant that all documents including recovery mahazar and arrest card were prepared in the police station, so as to suit the case foisted by the police cannot be brushed aside. Thus, the alleged recovery at the scene of crime is highly doubtful. Therefore, the prosecution has not established the recovery and possession of contraband with the accused.

10. Presumption of culpable mental state under Section 35 of the NDPS Act, 1985 will come into play, only after the prosecution establishes the possession of contraband beyond reasonable doubt.

11. For the aforesaid reasons, this Court holds that the prosecution has not established the possession of contraband with the accused beyond reasonable doubt and therefore, the accused is entitled to be acquitted.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Principal Special Judge for NDPS & EC Act Cases, Chennai, in C.C.No.14 of 2007, dated 24.02.2012, is set aside and the appellant/accused is acquitted from the charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/accused, shall stand cancelled.

Sd/-

Assistant Registrar(CS IV)

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सत्यमेव जयते

Sub Assistant Registrar

To

1. The Principal Special Judge for NDPS & EC Act Cases, Chennai.

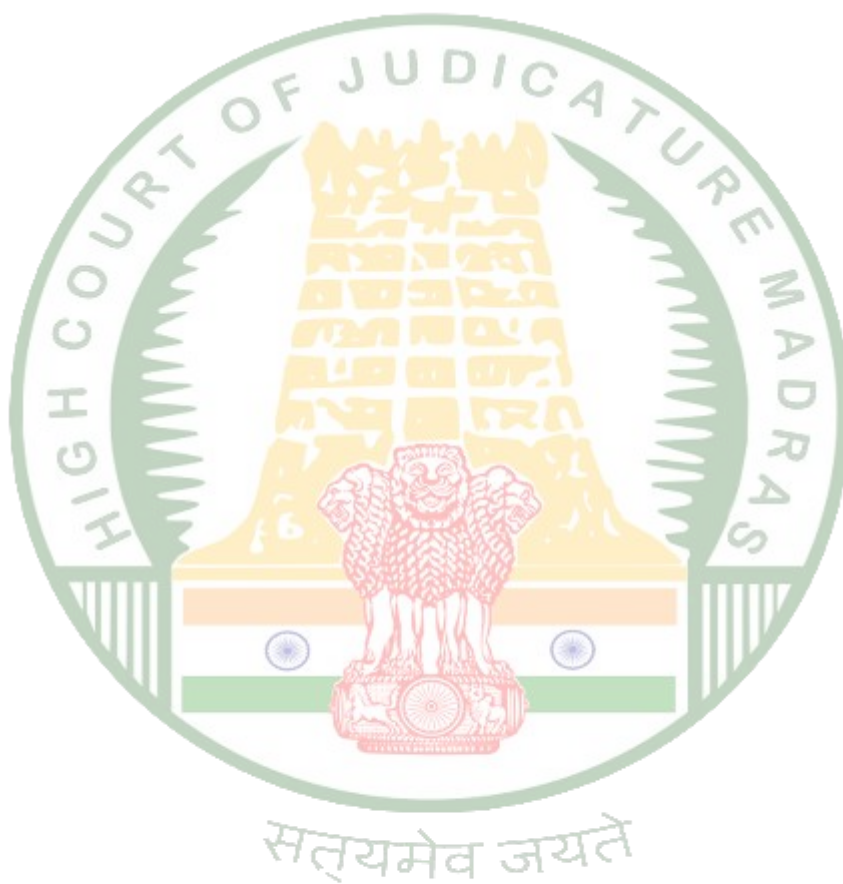
2. The Superintendent Central Prison, Puzhal, Chennai

3. The Inspector of Police  
NIB CID, Chennai

4.The Public Prosecutor High Court,  
Madras

Crl. Appeal No.203 of 2012

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