

Bail Slip

The Petitioner/Accused Viz., R. Kumaravel, M/27 years was directed to be released on bail as per order of this court dated 4.09.2013 and made in MP.1/2013 in Crl.A.No.579/2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.579 of 2013

R.Kumaravel

Vs.

...Appellant

The Inspector of Police,
NIB CID, Chennai.

...Respondent

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment dated 21.08.2013 made in C.C.No.90 of 2007 by the learned II Additional Special Judge for NDPS Act, Chennai.

For Appellant : Mr.T.S.Sasikumar

For Respondent : Mr.R.Ravichandran

Govt. Advocate (Crl.Side)

Judgment

This criminal appeal has been filed against the judgment of conviction dated 21.08.2013 made in C.C.No.90 of 2007 by the learned II Additional Special Judge for NDPS Act, Chennai.

2 Case of the prosecution is that while P.W.2/Seizure Officer, who was a Sub-Inspector of Police in NIBCID, Chennai, was on duty had received a secret information on 29.09.2006, about the illicit sale of Narcotic Drug Ganja. He reduced the same into writing and obtained direction from his higher officials and proceeded to place of occurrence, where he identified the appellant/accused, who came with yellow color polythene bag as stated by the informer. The accused was informed about his right to be searched either before the Magistrate or before the Gazetted Officer and enlightened about Section 50 of the NDPS Act, through Ex.P4 Notice, but the appellant/accused told that it was not necessary to take him to

a Magistrate or a Gazetted Officer and instead, stated that the officer himself can made search and accepted the notice given under Section 50 of the NDPS Act. Since some of the persons, who were available at the place, had refused to stood as witness for the search to be made, P.W.2 had searched before two witnesses, who were accompanying with him and recovered contrabands i.e. 2 Kgs of Ganga.

3 P.W.2 had drew out samples M.O.1 & M.O.2 50 grams each and M.O.3 bulk Ganja, packed in brown cover, tied and sealed and obtained signatures of accused and witnesses. Thereafter, prepared recovery Mahazar Ex.P5 and issued arrest memo Ex.P6 and after coming to the Police Station, P.W.2 had prepared FIR and Ex.P.10 Form 95 and entrusted all the above to the P.W.4, Inspector of Police. P.W.4, the Inspector of Police after receiving Ex.P7/Report, had registered a case in Crime No.49 of 2006 against the appellant/accused under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and the same was forwarded to the learned Magistrate and thereafter transferred to the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, which was taken on file in C.C.No.90 of 2007.

4 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W4 were examined and Ex.P1 to Ex.P11 were marked along with Material Objects 1 to 3. On the side of the accused, no one was examined and no document was marked.

5 The learned Special Judge, after trial, found the accused guilty of offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and by judgment dated 21.08.2013, convicted him and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a further period of three months.

6 Aggrieved against the judgment of conviction dated 21.08.2013, the convict had preferred the present criminal appeal before this Court.

7 The learned counsel for the appellant/accused would submit that the appellant was not informed about the right to be searched either before the Magistrate or Gazetted Officer and thereby the mandatory provision of Section 50 of NDPS Act was not complied with, which itself is fatal to the case of the prosecution. Further, the ganja alleged to have been recovered from the accused and the appellant/accused were not produced before the Special Court, within the stipulated time and there was inordinate delay in producing the same before the Special Court. The prosecution had failed to explain the delay occurred in producing the appellant and recovered contraband before the

Special Court. The right of the accused given by the legislature, should not be denied by the police and he has no authority to do the same. Further, within 14 days from the date of arrest, the accused and recovered contraband must be produced before the Court, and if there is any delay, the prosecution is bound to explain the same. In the present case there was about 47 days delay in producing the contraband before the Court, but the prosecution had not explained the above inordinate delay. Hence prosecution had failed to prove its case beyond reasonable doubt. The learned counsel, in support of his contention, has relied on decisions rendered by the Hon'ble Supreme Court as well as this Court. Hence the appellant/accused is entitled for acquittal.

8 The learned Government Advocate (Crl.Side) would submit that none of the mandatory provisions contemplated under the NDPS Act had been violated by the prosecution. The Investigating Officer, soon after receiving the secret information, reduced the same into writing and obtained necessary permission from his immediate superior and proceeded to the place of occurrence. He identified the accused and duly informed the right to be searched either before the Magistrate or before the Gazette Officer and issued Notice under Section 50 of the NDPS Act, and obtained signature, thereby the mandatory provision has been duly complied with. After completing legal formalities, since no one had come forward to stand as witness, P.W.3 and the Head Constable attached to the Police Station, had stood as witness for the search and recovery mahazar and recovered 2 Kgs of Ganja from the accused and took the appellant to the Police Station. P.W.4, after registering case and preparation of Form 95, had forwarded the same to the Magistrate and the Magistrate also affixed his signature in Ex.P10, which contains list of properties and after completing legal formalities, all the above had been taken to the II Additional Special Judge for NDPS Act, Chennai, for further trial. The Chemical Analyst, who had examined as P.W.1, had given a report Ex.P2, which reveals that the contraband seized from the accused is Ganja, which is prohibited. Since the appellant/accused, neither had any valid license nor got any permission for possession of 2Kgs Ganja, he was in conscious possession of the banned contraband and thereby committed offence punishable under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985. P.W.2 and P.W.3 had categorically deposed and they also spoken about the compliance of the mandatory provisions of the NDPS Act. Hence trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant, which does not warrants any interference of this Court.

9 Heard the rival submissions made by the learned counsel appearing on either side and perused the original records.

10 The main contention raised by the learned counsel for the appellant/accused is that prosecution had violated the mandatory provisions as contemplated under the Act and the appellant/accused was not informed his right of search and prosecution had obtained the signature of the accused in the notice under Section 50 of the NDPS Act, forcibly with coercion. Further there was a delay in producing the accused along with recovered Ganja before the Special Court and prosecution had failed to explain the delay.

11 On a perusal of the records, it reveals that the accused was duly informed about his right to be searched either before the Magistrate or before the Gazetted Officer, but, he told that it was not necessary to take him to either before the Magistrate or before the Gazetted Officer and instead the Officer himself could make personal search. Ex.P4 notice under Section 50 of the NDPS Act was issued on him and the accused also signed on the same. Though, the learned counsel for the appellant had taken a stand that the prosecution had obtained signature of the accused by threat and coercion, it was not proved. Further, the accused and the recovered contraband along with Ex.P10/Form 95 had been produced before the Magistrate and Magistrate also signed on the same. When the accused signed in the Ex.P4 Notice, he is bound to explain as to whether there was any threat or coercion. Completion of legal formalities will take certain amount of time and thereby the delay in producing the accused and contraband before the Special Court had occurred. The above delay is not at all fatal to the case of the prosecution.

12 It is stated by the learned counsel for the appellant that all the documents were prepared at the Police Station and not at the place of occurrence. The appellant had not taken the above stand either before the Magistrate or before the Special Court and hence it is after thought. If the prosecution had obtained signature of the accused in the Section 50 Notice, forcibly, the accused must have elucidated the same, before the Special Court, at the time of cross examination and thereby the accused failed to use the opportunity, which was very well available to him.

13 In this case, from the documents available, it is very clear that mandatory provisions of Section 50 of the NDPS Act had been duly complied with and there was no violation at all. Insofar as the recovery of possession of contraband and delay in production of the same before the Special Court is concerned, Ex.P4 and Ex.P5 clearly shows, which were signed by the accused and the witnesses and the same was brought to the Police Station along with contraband and after registering FIR forwarded the same to the Magistrate along with contraband only. Later, when

the matter was sent to Special Court, P.W.1, Chemical Analyst, had clearly spoken that he received the same with sealed cover and he also opined that the sample contains substances of Ganja. Hence the authorities cited by the learned counsel for the appellant would not application to the facts of the present case on hand. A combined reading of the documents produced by the prosecution and the evidences of witness, would clearly shows that the accused along with contraband were sent to the Special Court, after completing the legal formalities. Therefore, the trial Court gone into all these aspects and found the accused guilty. From the documentary evidences and also memo of objections, this Court, as a first appellate Court, after re-appreciating entire materials, found the accused guilty of offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985.

14 In the result, the criminal appeal stands dismissed, judgment of conviction dated 21.08.2013 made in C.C.No.90 of 2007 by the learned II Additional Special Judge for NDPS Act, Chennai, is hereby confirmed and since the accused was in possession of 2 Kgs contraband, this Court is not inclined to modify the sentenced imposed by the trial Court. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Special Judge for NDPS Act, Chennai.
- 2.The Public Prosecutor, High Court of Madras.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Inspector of Police, NIBCID, Chennai.

+ 1 cc to MR. T.S. Sasikumar, Advocate Sr.58709

Crl.A.No.579 of 2013

SPD(CO)
EU(12/11/2018)