

Bail Slip

The Appellant namely Vasu S/O Gopal Naidu in Crl Appeal No.602/2013 Accused in Cr.No.55/07 on the file of Inspector of Police NIB CID, Chennai CC No.125/07 on the file of the Special Judge, I Additional Special Court for NDPS Act Chennai was released on bail vide order of this Hon'ble Court dated 8/10/2013 in Crl.M.P.No.1/13 in Crl Appeal No.602/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.602 of 2013

Vasu

...Appellant/Accused

Vs.

State by:

The Inspector of Police,
NIB CID, Chennai.
(Cr.No.55 of 2007)

...Respondent/Complainant

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment of conviction dated 31.12.2012 made in C.C.No.125 of 2007 by the learned I Additional Special Judge for NDPS Act, Chennai.

For Appellant : Mr.A.Jotheeswaran

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.Side)

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Judgment

This criminal appeal has been filed against the judgment of conviction dated 31.12.2012 made in C.C.No.125 of 2007 by the learned I Additional Special Judge for NDPS Act, Chennai.

2 According to prosecution, while P.W.2, the Sub Inspector of Police, NIB CID, Chennai, was on duty, had received information about the illicit sale of Ganja by the accused. Immediately, P.W.2 had reduced the same into writing and submitted before his immediate higher officer, P.W.4/the Inspector of Police and obtained permission to proceed further. Thereafter P.W.2 proceeded with his team to the place of occurrence and identified the accused through informer. The accused came with white color polythene bag, which had been kept in his hand. The accused was informed about his right to be searched either before the Gazetted Officer or before the Magistrate and enlightened about Section 50(1) of the NDPS Act, through Ex.P4 Notice, wherein the appellant/accused signed and refused to accept the offer and stated that the officer/P.W.2 himself can made search. Thereafter, P.W.2 called some of the persons, who were available at the place, since they had refused to stood as witness for the search to be made, P.W.2 searched the accused before two witnesses, who were accompanied with him and recovered contrabands i.e. 3 Kgs of Ganja.

3 P.W.2 had taken 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.9 Form 95 and entrusted all the above to the P.W.4, the Inspector of Police. P.W.4, the Inspector of Police after receiving Ex.P7/Report from P.W.2, since the accused had no valid license or any permission for possession of 3 Kgs of contraband, had registered a case in Crime No.55 of 2007 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, I Additional Special Court under NDPS Act, Chennai. After investigation, the respondent filed a final report before the special court, which was taken on file in C.C.No.125 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.P9 were marked along with Material Objects 1 to 3. On the side of the defence, no one was examined no document was marked.

5 The learned Special Judge, after trial, found the appellant/accused guilty of offence under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and by judgment dated 31.12.2012, convicted him and sentenced to undergo rigorous

imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a further period of one month.

6 Aggrieved against the judgment of conviction dated 31.12.2012, the convict had preferred this 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 Gazette Officer or Magistrate and hence mandatory provision of Section 50 of NDPS Act was not complied with. The accused was not searched either before the Magistrate or Gazette Officer and recovery was not made before any independent witnesses. Even though the place of occurrence is very busy place and there were many shops and public movements were available, the prosecution had failed to examine any independent witness. Further the learned counsel for the appellant would contend that there are many contradictions in the evidences of prosecution witnesses regarding time and place of occurrence. The contradictions made by the prosecution, would clearly show that the present case is concocted one and there is no vital evidence to convict the appellant/accused. Hence the appellant/accused is entitled for acquittal and he prayed atleast to reduce the sentence imposed on him by the trial Court.

8 The learned Government Advocate (Crl.Side) would submit The Investigating Officer, soon after receiving the secret information at 6.00 p.m. about the illicit sale of ganja, 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 to the accused/appellant about the right to be searched either before the Gazetted Officer or before the Magistrate and issued Notice/Ex.P4 under Section 50(1) 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 stood as witness, the team members, who accompanied with P.W.2, had stood as witness for the search and recovery mahazar and recovered 3 Kgs of Ganja from the accused and took the appellant to the Police Station at 9.30 p.m. P.W.4, after registering case in Crime No.55 of 2007 and preparation of Form 95/Ex.P9, had forwarded the same to the Magistrate, which contains list of properties and after completing legal formalities, all the above had been taken to the I Additional Special Judge for NDPS Act, Chennai. After completing investigation, the respondent filed a final report before the

special Judge and the same was taken on file. The Chemical Analyser, who examined as P.W.1, had given a report Ex.P2, which reveals that the contraband seized from the accused is cannabinoids known as Ganja, which is prohibited. Since the appellant/accused, neither had any valid license nor got any permission for possession of 3Kgs 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 had also spoken about the compliance of the mandatory provisions of the NDPS Act. P.W.3 & P.W.4 had corroborated the evidence of P.W.2/Seizure Officer. Further minor contradictions as stated by the learned counsel for the appellant/accused, will not go to root of the case. Hence, the 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 According to the learned counsel for the appellant/accused there were many contradictions in the evidences of P.W.2 to P.W.4 regarding time and place of occurrence and hence the case is concocted one. On a perusal of the evidences of P.W.2 to P.W.4, it reveal that there is no much contradictions as stated by the learned counsel for appellant/accused. The minor contradictions stated by the learned counsel for the appellant/accused, will not vitiate entire case of prosecution. The prosecution had clearly proved possession and recovery of contraband, through evidence of P.W.2, which had been corroborated by P.W.3 and P.W.4. Further the accused was duly informed about his right to be searched either before the Gazetted Officer or before the Magistrate and the appellant understood and stated that the P.W.2 himself can search and he need not brought either before the Gazetted officer or Magistrate for conducting search. Ex.P4 notice under Section 50 of the NDPS Act was issued on him and the accused also signed on the same.

11 In the present 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. The trial Court gone into all these aspects and found the accused guilty. From the documentary evidences and the judgment of conviction made by the Court below, 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. There is no valid ground to take a different view in the matter. Further, even though, the learned counsel for the appellant has prayed to minimise the sentence, this Court, considering the nature of the offence and quantum of contraband, seized from the accused, is not inclined to reduce the sentence, since the trial Court had already awarded a lesser punishment of one year.

12 In the result, the criminal appeal stands dismissed, judgment of conviction dated 31.12.2012 made in C.C.No.125 of 2007 by the learned I Additional Special Judge for NDPS Act, Chennai, is hereby confirmed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

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

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Cr1.A.No.602 of 2013

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srg 31/10/2018