

Bail Slip

The Accused Viz, Balu, S/o. Ethiraj Sole Accused and was released on bail in Crl.M.P.NO.1 of 2014 in Crl.A.No.767 of 2013, dated 17.3.2014 on the file of this court C.C.NO.106 of 2004 (on the file of the Principal Special Judge, Special Court, under EC & NDPS Act).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.767 of 2013

Babu

...Appellant

Vs.

State rep by
The Inspector of Police,
K6, T.P.Chatram Police Station,
Chennai.

...Respondent

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment of conviction dated 30.09.2013 made in C.C.No.106 of 2005 by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Appellant : Mr.T.S.Srinivasan

For Respondent : Mr.R.Ravichandran

Govt. Advocate (Crl.Side)

Judgment

This criminal appeal has been filed against the judgment of conviction dated 30.09.2013 made in C.C.No.106 of 2005 by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

2 Case of the prosecution is that while P.W.1/Seizure Officer, who was a Sub-Inspector of Police in K6, T.P.Chatram Police Station, Chennai, was on duty had received a secret information on 02.03.2002, at about 6.00 a.m regarding the illicit sale of Narcotic Drug Ganja. Immediately, P.W.1 reduced the same into writing and obtained direction from his higher official P.W.4/the Inspector of Police, and proceeded to the place of occurrence with her team and identified the

appellant/accused, who came with white colour polythene bag as stated by the informer. The accused was informed about his right to be searched either before the Judicial Magistrate or before the Gazetted Officer and enlightened about Section 50 (1) of the NDPS Act through Ex.P2 Notice, wherein the appellant/accused signed and declined to accept the offer and stated that the officer herself can made search. Thereafter, P.W.1 called two persons, who were available at the place and since they had refused to stand as witnesses for the search to be made, P.W.1 had searched before two witnesses, who were accompanying with P.W.1. and recovered contraband i.e. 1.200 Kgs of Ganja.

3 P.W.1 had drawn out samples M.O.1 & M.O.2 in 50 grams each and the remaining 1.100 kgs of Ganja, was packed in old news paper, tied and sealed and obtained signatures of accused and witnesses, which had been marked as M.O.3. Thereafter, P.W.1, prepared recovery Mahazar Ex.P4 and issued arrest memo Ex.P3. After coming to the Police Station, P.W.1 had prepared his report under Section 57 and submitted all the above to P.W.4.

4 P.W.4, the Inspector of Police after receiving Ex.P7/Report from P.W.1, since the accused had no valid license or any permission for possession of the contraband, had registered a case in Crime.No.190 of 2002 against the appellant/accused under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and after investigation, had forwarded all the above to the jurisdictional Magistrate and thereafter transferred to the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, which was taken on file in C.C.No.106 of 2005.

5 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.

6 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 30.09.2013, convicted him and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.20,000/-, in default, to undergo Rigorous Imprisonment for a further period of three months.

7 Aggrieved against the judgment of conviction dated 30.09.2013, the convict had preferred this present criminal appeal before this Court.

8 The learned counsel for the appellant would submit that the prosecution had not strictly complied with the mandatory provisions as contemplated under Section 50 (1) of NDPS Act. Though the accused refused to avail the rights provided under law, the respondent Police must have searched the accused either before the Magistrate or before the Gazetted Officer, as per the decision rendered by the Hon'ble Supreme Court reported in 2011 CRI. L.J. 680 (Supreme Court) and in Criminal Appeal No.273 of 2007 in the case of Arif Khan @ Agha Khan vs. State of Uttarakhand.

9 The learned counsel further submitted that there were many material contradictions between the prosecution witnesses and also the documents produced by the prosecution. Further Section 67 Report had been prepared only after registering FIR, which is also contrary to NDPS Act. Samples of contraband said to have been recovered from the appellant/accused, must have sent for chemical analysis within 72 hours from recovery, in order to avoid legal objections. In the present case, the samples had not been sent for chemical analysis within the time frame. Further the person, who had taken the sample to the Forensic Department, had not examined as witness by the prosecution for the reasons best known to them. In order to support his contention, the learned counsel has placed his reliance on the decisions rendered by this Court in Criminal Appeal (MD) No.53 of 2008 in the case of Mathi alias Mathiyalagan vs. State and reported in 2004 (4) Crimes 1 as well as by the Hon'ble Apex Court in Criminal Appeal No.1880 of 2011 in the case of Mohan Lal vs. The State of Punjab. All the above are fatal to the case of the prosecution and the prosecution had failed to prove its case beyond reasonable doubt. Therefore, the appellant/accused is entitled for acquittal.

10 Learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1/the Sub Inspector of Police, soon after receiving the secret information, reduced the same into writing and obtained necessary permission from her immediate superior and proceeded to the place of occurrence with the team. P.W.1 had identified the accused and duly informed 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. Since the accused refused to avail the rights provided under law, P.W.1, had made search, which does not seem to be any violation of the NDPS Act. After completing legal formalities, since no one had come forward to stand as witness, the team members, who accompanied with P.W.1, had stood as witness for the search and recovery mahazar and recovered 1.200

Kgs of Ganja from the accused and took the appellant to the Police Station. P.W.4, after verifying all the documents submitted by P.W.1, since the accused had no valid liscence for possession of 1.200 Kgs of Ganja, had registered a case in Crime No.190 of 2002. After investigation and preparation of Form 95/Ex.P9, had forwarded all the documents and produced the accused before the Magistrate and after completing legal formalities, all the above had been taken to the Principal Special Judge, Special Court under EC & NDPS Act, Chennai, for further trial. The Chemical Analyser, who examined as P.W.3, had given a report Ex.P11, which reveals that the contraband seized from the accused is Narcotic Drug Ganja, which is prohibited. Since the appellant/accused, neither had any valid license nor got any permission for possession of 1.200 Kgs of Ganja, he was in concious possession of the contraband and thereby committed offence punishable under Sections 8 (c) r/w 21 (b) of NDPS Act, 1985. Hence, the trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant. Further the minor contradictions, pointed out by the learned counsel for the appellant/accused, will not vitiate the entire case of the prosecution and it will not go to the root of the case.

11 The learned Government Advocate (Crl.Side) further pointed out that the criminal records shows, that the appellant/accused is a habitual offender and there are many previous cases are pending against the appellant/accused. Hence the accused must be undergo the punishment imposed by the trial Court.

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

13 According to prosecution, while P.W.1/Seizure Officer, who was a Sub-Inspector of Police in K6, T.P.Chatram Police Station, Chennai, was on duty, had received a secret information on 02.03.2002, at about 6.00 a.m regarding the illicit sale of Narcotic Drug Ganja. Immediately, P.W.1 reduced the same into writing and obtained direction from his higher official P.W.4/the Inspector of Police, and proceeded to the place of occurrence with her team and identified the appellant/accused, who came with white colour polythene bag as stated by the informer. The accused was informed about his right to be searched either before the Judicial Magistrate or before the Gazetted Officer and enlightened about Section 50 (1) of the NDPS Act, through Ex.P2 Notice, wherein the appellant/accused signed and declined to accept the offer and stated that the officer herself can made search. Thereafter, P.W.1 called two persons, who were available at the place and since they had refused to stand as witnesses for the search to be made, P.W.1

had searched before two witnesses, who were accompanying with P.W.1. and recovered contraband i.e. 1.200 Kgs of Ganja. Therefore registered a case in Crime.No.190 of 2002 against the appellant/accused under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985. From the evidence of P.W.1 to P.W.4, it is very clear that the appellant has committed offence punishable under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985 and prosecution has proved its case with cogent evidence.

14 On a perusal of the records, it reveals that all the discrepancies, which have been pointed out by the learned counsel for the appellant/accused, are only minor contradictions and the same will not vitiate the entire case of the prosecution and also will not go to the root of the case. Further it is an admitted fact that the appellant/accused was convicted by the Court in many cases and there are many cases are pending before the Criminal Court, which clearly shows that the appellant/accused is a habitual offender.

15 The lower Court had rightly considered the past criminal records of the appellant/accused and convicted him. This Court, considering the nature of offence and the past criminal records of the appellant/accused, is not inclined to allow the appeal and hence the appeal deserves to be dismissed.

16 In the result, the criminal appeal is dismissed. The trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-
सत्यमेव जयते

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Principal Special Judge,
Special Court under EC & NDPS Act,
Chennai.
- 2.The Public Prosecutor,
High Court of Madras.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Inspector of Police, K-6, T.P.Chatram Police Station,
Chennai.
5. The Section Officer, VR Section, High Court, Madras.

Crl.A.No.767 of 2013

CP(CO)
EU(13/11/2018)



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