Bail Slip

The Appellant/Accused Viz., C.Krishnaveni W/O Chakkarapani in CC.No.148/2005 dated 25/08/2011 on the file of the Principal Special Judge, Special Court EC & NDPS Act Chennai was directed to released on bail as per order dated 14/09/2011 in M.P.No.1/2011 in Crl.A 547/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 16.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.547 of 2011

C.Krishnaveni ... Appellant/Accused

Vs

State rep. By Inspector of Police,
K6, T.P.Chatram Police Station,
Chennai. ... Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed by the learned Principal Special Judge, Special Court EC & NDPS Act, Chennai made in C.C.No.148 of 2005 dated 25.08.2011.

For Appellant : Mr.M.Shahjahan, for
Mr.C.G.Narendran

For Respondent : Mrs.Kritika Kamal.P.,
Government Advocate (crl.side)

JUDGMENT

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The appeal preferred by the appellant/accused is against the judgment of the Principal Special court for NDPS Act, Chennai, sentencing her to undergo 5 years rigorous imprisonment and fine of Rs 1,00,000/- in default to undergo further period of 6 months rigorous imprisonment for offence under section 8 (c) r/w 20 (b)(ii)(B) of NDPS Act.

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2.The case of the prosecution is that, on 03/07/2005 at about 7.00 hrs, the Sub-Inspector of Police attached to K-6, TP Chatram Police Station, received a specific information from the Informant that one Krishnaveni w/o Chakarapani aged about 69 years selling ganja on the back side of 4 floor apartment, 'A' block, Shenoy Nagar. On receipt of this information, E.Krishnamoorthy, the Sub Inspector of Police, recorded the information into writing and placed it before his immediate superior, Mr.Angusamy, Inspector of Police. On seeing the information, the Inspector of Police permitted the Sub-Inspector of Police to proceed. Thereafter, the Police team consisting of E.Krishnamoorthy -Sub-Inspector of police, Iyyanar - Head constable and Amsavalli – Women Police Constable, went to the spot.

3.On identification of the accused by the Informant, they apprehended Krishnaveni. She was informed about her right to be searched before a Gazetted Officer or a Judicial Magistrate. After obtaining her consent, she was subjected to search. A white colour polythene bag was handed over by her to the police. On opening the parcel packed in old Tamil newspaper, they found 2.320 kgs of ganja. After drawing sample of 50 grams ganja, the bulk and the sample were packed, sealed and labelled. The thumb impression of the accused was obtained in the search notice, mahazar and the property packets marked as P-1 and S-1.

4.The accused was arrested. She was brought to the Police Station and FIR was registered at about 9.30 hrs. A detailed report about the seizure and arrest was forwarded to the Inspector of police. The Inspector of Police, took up the case for investigation. He forwarded the seized ganja to the Court and sent the sample for chemical analysis along with the request letter from the Court. The Chemical Examiner gave report indicating the presence of cannabinoids in the samples, which is a chemical present in ganja.

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5.The Sub-inspector of Police, who received the information from the Informant and conducted the search and seizure was examined as PW-1. The information report marked as Ex P-1. The search notice issued to the accused, before conducting the search, in compliance of section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) is marked as Ex P-2. The mahazar for seizure is marked as Ex P-3. The arrest intimation under section 52 of the

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NDPS Act and the full report of seizure and arrest under section 57 of the NDPS act were marked as Ex.P-4 and Ex P-9 respectively.

6.The Head constable - Mr.Iyyanar was examined as PW-2. The Women Police Constable, Amsavalli was examined as PW-3. They were witnesses for the search, seizure of contraband and arrest of the accused. They have affixed their signatures in Ex P-2 search notice, Ex P-3 mahazar for recovery of 2.320 kgs ganja, Ex P-4 arrest intimation and on the property packets marked as M.O. 1 and M.O-2.

7.The Inspector of Police Mr.Angusamy examined as PW-5 has deposed about the information - Ex P-1 seen by him and endorsement made on it permitting PW-1 to proceed. Receipt of the full report, Ex P-9 and further action taken by him as Investigating Officer till filing of final report.

8.The trial Court has held that, though, there is no independent witnesses, the evidence of the Police personnel who were part of the raiding Team is reliable and prosecution case cannot be thrown out merely because independent witness not been examined. Relying upon the Judgments of the Hon'ble Supreme court in Appabai -vs- State (AIR 1988 SC 696), Karnail Singh -vs- State of Punjab (1983 Crimes 1218), State of NCT of Delhi -vs- Sunil (2000 (1) SCC 748) the trial Court has held that, the evidence of the prosecution witness is cogent, convincing and credible. There is no doubt about the prosecution case when PW-1 has categorically stated that, no member of public was willing to stand as witness which, compelled him to conduct the search and seizure in the presence of Head constable (PW-2) and Women Constable (PW-3).

9.Drawing presumptions mentioned in Sections 35 and 54 of the NDPS act, the trial Court has held that the culpable state of mind and possession of the contraband not rebutted by the accused and her antecedent of previous conviction warrants enhanced punishment as specified in Section 31 of the NDPS Act.

10.The learned counsel for the appellant would submit that the trial Court failed to consider the inherent defect in the prosecution case. The prosecution has failed to prove the possession of contraband with the accused. Therefore, neither Section 34 nor 54 of the NDPS Act is applicable in this case.

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11.The admitted case of the prosecution witnesses is the accused/appellant, a known drug offender and have several cases pending against her. If so, the necessity of identifying the accused by the Informant is redundant. But, invariably, the witnesses, PWs-1 to 3, parrot like had said that a lady came there to sell ganja, the Informant identified her then, they went and apprehended her. While the information - Ex P-1 is specific, that a lady by name krishnaveni is selling ganja, on the back side of 'A' block, PWs-1 and 2 have deposed that they were keeping surveillance from 7.45 am on 03.07.2005. The accused came there, carrying a plastic bag at 8.00 am. This is contrary to the information. The writing in the information - Ex P-1 and mahazar Ex P-3 is by one and the same person. While Ex P-1 was written in the police station by the Writer as per the evidence of PW-1, the mahzar Ex P-3 also ought to have been written only at police station since, except PWs-1 to 3 none other from the police station came to the spot, as per the witnesses. Thus, the base of the prosecution case about the seizure gets uprooted.

12.The learned counsel for the appellant would also submit that the evidence of PW-3 - Amsavalli, the Women Police Constable, is contradictory to the evidence of other witnesses, in all aspects which renders the prosecution case totally unreliable. She says that the accused affixed her signature, in the documents. Whereas, the accused is an unlettered lady. In the documents, only, left thumb impression of the accused was found. While PW-1 say that they all went to the spot in an Auto, contrarily, PW-3 has deposed that they all went in the Police Jeep. She had deposed that the documents at the spot was prepared by PW-2 - Ayyanar, Head constable. Whereas, the documents, Exs.P-2 to P-5 which were alleged to have been prepared on the spot, were not written by the same persons. It is in different handwriting.

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13.Pointing the crime number written on the label of the property even before registration of the case, the learned counsel for the appellant submitted that, the contradictions in the prosecution case should be taken note and 'benefit of doubt' should be given to the accused/appellant.

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14.Per contra, the Government Advocate (crl.side) would submit that, the contradictions mentioned by the appellant are very trivial and does not affect the prosecution case. The occurrence took place on 03/07/2005 at a public place. The accused, a habitual offender was arrested by the police when she was found carrying ganja near her resident. After intimating her about the right under the NDPS Act, she was subjected to search. The contraband carried by her was voluntarily handed over to the Police. The witnesses were examined after one and half years. Hence, due to lapse of memory, PW-3 has deposed certain facts inconsistent to the prosecution case. However, those contradictions does not render the entire prosecution case un-believable.

15.The overall evidence placed before the Court proves that the possession seized the contraband with the accused. The mental state of the accused is established through her conduct past and present. The accused has affixed her left thumb impression in the search notice, recovery mahazar, arrest intimation and the property packets. The documents were forwarded to the learned Judicial Magistrate along with the contraband and accused immediately and the same is proved through the endorsement made by the learned Magistrate in the documents and Form 95. Therefore, minor lapse pointed by the learned counsel for the appellant have no bearing in the finding of the trial Court and hence, it has to be confirmed.

16.Heard the learned counsel for the appellant and the learned Government Advocate (crl.side) appearing for the respondent. Records perused.

17.The case of the prosecution is based on the information received by P.W.1 about the sale of ganja by Krishnaveni/accused. The said information is Ex.P.1. P.W.1 in her deposition, admits that the said information was reduced into writing by the Police Station Writer, on her dictation. P.Ws.1 and 2 had deposed that they went to the spot in an Auto. Whereas, P.Ws.3 and 4 had deposed that the Team went in Police Jeep. P.Ws.1 and 2 had deposed that the accused affixed her left thumb impression in the documents, whereas, P.W.3 - Amsavalli, had deposed that the accused affixed her signature in the

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documents. It is borne on record that the accused is an habitual offender that she is a known accused of the NDPS offence, in the respondent police station beside this case, there were few more cases pending against her. The same have been extracted in the trial Court judgment. While so, P.Ws.1, 2 and 3 had invariably in their chief examination had deposed that the accused was identified by the Informant to them. The information Ex.P.1 and mahazar Ex. P.3 are of the same hand writing. So, the learned counsel for the appellant contended that the prosecution evidence is to be believed, the police Station Writer has reduced the information into writing as deposed by P.W.1 ought to have been present in the scene of seizure when mahazar Ex. P3 was written or Ex. P.3 ought to have been written in the police station after arrest of the accused. Either way, the prosecution case gets doubtful since, none of the witness for the prosecution has deposed that the station writer was present at the scene of seizure.

18.So, it is strongly contended by the learned counsel for the appellant that in the absence of independent witness, if the prosecution wants to rely solely upon the witnesses of the Police, the evidence of the Police witnesses must be cogent consistent and reliable. The inconsistency and contradiction between the deposition of P.Ws.1, 2 and 4 and not corroborated by any independent witnesses through away, the prosecution version as unbelievable. The response to the appellant by the learned Government Advocate (crl.side) is that the evidence of the prosecution witnesses has to be taken in a holistic manner and not in piecemeal. Slight contradictions in their evidence does not impinge the overall credibility of the prosecution case.

19.In State Govt. of N.C.T of Delhi v Sunil (2001 (1) SCC 652), the Hon'ble Supreme Court has been held as follows:-

> "21.We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy.

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> As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable.....”

20.So, when the above principle of the Hon'ble Supreme Court to be applied to the facts of the present case, the evidence of P.Ws.1, 2, 3 and 5 has to be tested, 'whether it is otherwise shown to be unreliable'. All these four witnesses have spoken about the information received before proceeding to the spot. The mode of transport to the scene of occurrence, P.W.3 has differed with the evidence of P.Ws.1 and 2. Otherwise, there is no major contradiction in their evidence. The recovery is substantiated by the evidence of P.Ws.1, 2 and 3, through the mahazar and the property recovered from the accused. Both the mahazar and on the property, the accused has affixed her left thumb impression. Here again, P.W.3 has differed from the evidence of the prosecution witnesses saying that, the accused affixed her signature. This contradiction which is pointed out by the appellant and found in the deposition of P.W.3 does not renders the prosecution version otherwise shown to be unreliable. The operation of such seizure and arrest has commenced at 7.00 am on 03.07.2005 and got completed by 16.10 hours, when the accused along with the property was produced before the Magistrate. In the said circumstances, the doubt in the prosecution version raised by the appellant appears to be very weak piece of suspicion which gets redundant in the light of overwhelming evidence against the accused.

21.The prosecution has given a valid reason for non availability of independent witness. While so, there is no reason to suspect the version of the prosecution merely because they are hinges upon the evidence of police personnels. Therefore, this Court finds no error in the finding of the trial Court holding the accused guilty for offence under Section 8 (c) r/w 20 (b)(ii)(B) of NDPS Act.

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22.As far as the punishment is concerned, the trial Court has taken note of the antecedents of the accused and has applied Section 31 of the NDPS Act to impose enhanced punishment. The trial Court has also taken note of the age of the accused, at that time. Now, the appellant has almost crossed 80 years. Therefore, though she has been proved to be a habitual offender under the NDPS act, taking note of her age, it is suffice to sentence her to undergo two years rigorous imprisonment instead of 5 years rigorous imprisonment. There shall be no change in the fine amount and the default sentence. Accordingly, the criminal appeal is partly allowed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

To

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

2.The Inspector of Police,
K6, T.P.Chatram Police Station,
Chennai.

3.The Superintendent,
Central Prison for Women,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Chennai.

5.The Criminal Section,
High Court, Madras.

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Crl.A.No.547 of 2011

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