

Bail Slip

The Accused namely Sekar @ City Sekar/Sole Accused in C.C.No.104/07 on the file of the 1st Additional Special Judge for NDPS Act, Chennai was directed to be released on bail in MP.1/12 in Crl.A.No.425/12 dated 25/07/12 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.425 of 2012

Sekar @ City Sekar,
S/o.Doss,
No.15, Canal Street,
Mattankuppam, Triplicane. Appellant/Accused

/versus/

Inspector of Police,
NIB CID,
Chennai Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C r/w Section 36-B of NDPS Act, 1985, praying against to set aside the conviction and sentence rendered by the 1st Additional Special Judge for NDPS Act, Chennai, dated 12.07.2012, in C.C.No.104 of 2007 in Crime No.13/2006 for offence under Section 8(C) r/w 20(b)(ii)(B) of NDPS Act.

For Appellant : Mr.R.Rajan (Amicus Curiae)

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

J U D G M E N T

The appellant is an accused found guilty for offence under Section 8 (c) r/w 20(b)(ii)(B) of NDPS Act. The trial Court sentenced him to undergo 7 months R.I and to a fine of Rs.5,000/-, in default to undergo further period of one month R.I, for possessing 2.100kgs of dry Ganja without any valid permit or license.

2. The case of the prosecution is that Mr. AnnaKamu, while working as Head Constable in NIB CID, Chennai., received an information on 16.02.2006 at about 11.30 a.m over phone. His informant informed him that Sekar @ City Sekar of Triplicane will be arriving at the junction of Bharathi Salai, Venkatanarayananpillai Street, Triplicane between 12.45 hrs with Ganja. On receiving the said information, Annakamu reduced the information into writing, submitted that to the Inspector of Police. On perusing the information, the Inspector permitted Head Constable to proceed. Therefore, Annakamu along with Mr.Nandhirajan, Head Constable and Mr.Mahalingam, Head Constable reached the spot and mounted surveillance. The informant identified the accused who was carrying a white colour bag in his right hand and proceeding towards the junction of Bharathi Salai, Venkatanarayananpillai Street, Triplicane. The accused was intercepted by the team. He revealed his name as Sekar @ City Sekar. After informing him about the right under Section 50 of NDPS Act, his answer declining to exercise the right was reduced into writing. Thereafter, the plastic bag carried by the accused was seized and they found 2.100kgs of Ganja in it. After drawing two samples each 50 grams, the sample packets were sealed and labelled. The accused was arrested and brought to the police station. The First Information Report was registered. The samples were sent for chemical analysis, after receiving the report, final report was filed for offence under Section 8 (c) r/w 20(b) (ii) (B) of NDPS Act.

3. To prove the charges, the prosecution has examined 5 witnesses. 9 Exhibits and 3 material objects were marked. The Head Constable who received the information was examined as PW.2. The information is marked as Ex.P.3. Mr.Nandhirajan, Head Constable who accompanied PW.2 for the ride and he has supported the case of the prosecution regarding seizure and arrest. The Chemical Examiner Tmt.R.Banumathi was examined as PW.1. Her report is marked as Ex.P.2. Ashok Kumar, Inspector of Police was examined as PW.4. The information Ex.P.3 was placed before him by PW.2 and he has identified the initial made on Ex.P.2 and he has also corroborated the evidence of PW.2 regarding Form-57 report forwarded to him. Mr.R.John Joesph, Inspector of Police, completed the investigation and filed final report and he has been examined as PW.5. The trial Court, after considering the above evidence has held the accused guilty.

4. Aggrieved by that the present appeal is filed on the ground that there is no independent witness to substantiate the seizure of contraband from the possession of the accused. There is an alternation in the mahazar Ex.P.5, the name of Head Constable Mr.R.Nanthirajan (PW.3) has been inserted, after applying whitener. The contraband was not produced to the Court

immediately after the seizure. The reason given by the I.O for not producing the contraband immediately after seizure is unbelievable. The probability of tampering the contraband cannot be neglected in the arrested memo Ex.P.6. The crime number is mentioned, which is not probable. Since, even according to the prosecution, the accused was arrested on the spot of seizure and thereafter, brought to the station and F.I.R was registered subsequently.

5. The learned Amicus Curie Mr.Rajan appointed by this Court, who assisted the Court. After pointed out all the above lacuna in the prosecution case would further submit that in a busy area like Bharathi Salai, Venkatanarayananpillai Street, Triplicane, the justification given by the prosecution for not securing the independent witness is unbelievable. The delay of 20 days in forwarding the sample and the bulk to the Special Court, Chennai, ought to have been taken serious note by the trial Court. The presence of crime in the arrest memo totally demolished the case of the prosecution. The manner in which the appellant was secured by the prosecution and the allegations of possession of 2.100 kgs Ganja.

6. Per contra, the learned Government Advocate (Crl.Side) would submit that it is based on a secret information received by PW.2. The action to apprehend the accused was initiated, when the accused was identified by the informant, he was intercepted and option to be searched before the Magistrate or Gazette Officer was informed to him. In the search note marked as Ex.P.4. The answer of the accused declining to exercise the option also been recorded and the signature of the accused is obtained, in the said search notice Ex.P.4. Mr.Nanthirajan (PW.3) has signed as one of the witness. Therefore, the applying of whitener in the "Column 3" of Ex.P.5 mahazar is need not be doubted, as if, Mr.Nanthirajan name has been newly introduced. Mr.Annakamu (PW.2) in his evidence has mentioned about the presence of K.Nanthirajan (PW.3) in the riding team. In the search notice Ex.P.3 as well as in the mahazar Ex.P.4 Nanthirajan has signed as one of the witness. Later, the accused was arrested and the arrested memo is marked as Ex.P.6. The wife of the accused was informed about the arrest. In the said arrest memo also PW.3 has affixed his signature. Therefore, the presence of PW.3 on the spot of seizure is proved. The contraband possessed by the accused contains cannabinoid and same has been established by the chemical analysis report Ex.P.2. The Delay of 20 days in forwarding the contraband to the Special Court for NDPS Cases, has been explained by PW.4 Mr.V.Ashok kumar who registered the case and conducted investigation. The contraband was presented before the Metropolitan Magistrate under Form-95 on the same. In the Ex.P.9, Form-95 was presented to the Magistrate on

16.02.2006 itself. The learned Metropolitan Magistrate has recorded in the Form-95 to produce the contraband before the regular Court thereafter, the contraband was produced before the Special Court for NDPS Cases on 06.03.2006. Therefore, there is no delay in forwarding the contraband to the Court.

7. Heard the learned Mr.Rajan, Amicus curie appearing for the Appellant and the learned Mrs.P.Kritika Kamal Government Advocate (Crl.Side) appearing for the Respondent/state.

8. The case of recovery is based on information. The information (Ex.P.3) reveals that the informant disclosed the name and identity of the accused and the probable time of his visit with Ganja. Accordingly, the NIB CID, Chennai, team has gone to the spot. Mr.Annakamu (PW.2), Head Constable has placed the information to his superior Mr.Ashok Kumar (PW.4), Inspector of Police and after obtaining his permission, he has gone to the spot along with Nanthirajan (PW.3), Head Constable and Mahalingam Head Constable. He has spoken about the seizure and arrest of the accused. He has given some explanation for non-availability of public witnesses for the correction in the mahazar. He has explained that there was some spelling mistake while writing the name of Nanthirajan, therefore, he has applied whitener and wrote the name of Nanthirajan correctly.

9. Regarding mentioning of crime number in the arrest memo, PW.2 Mr.Annakamu was unable to give satisfactory explanation. Similarly, when wife of the accused was informed and from where she was informed through telegram about the arrest of accused is also not properly explained. However, this discrepancy in the arrest memo at the most, they make the arrest illegal but not the seizure. Insofar as seizure is concerned, the sequence of event has spoken by prosecution witness is that on 16.02.2006 at about 11.30 hours, PW.2 has received the information and placed the information to his superior PW.4 Mr.V.Ashok Kumar, at about 11.45 hours and thereafter, they have proceeded to the spot. The informant has identified the accused at around 13.30 hours which has followed by seizure proceedings. The accused and the seized contraband has been produced before the Magistrate on the same day of seizure and arrest. For producing the contraband before the Regular Court, 20 days delay is admitted. However, on the day of arrest itself, the contraband has been produced before the Judicial Magistrate. The sample received by the chemical examiner for analysis was found intact with seal. Therefore, there is no scope to suspect any manipulation. When the possession of contraband not been explained by the accused, the overall evidence let in by the prosecution, prove the charge of illegal possession of Ganja by the accused. Therefore, this Court finds no error in the finding of the trial Court.

10. Considering the sentence, the accused has been sentenced to undergo R.I for a period of 7 months. This accused has already undergone imprisonment for nearly 3 months. Therefore, leniency may be shown in terms of imprisonment. After considering the facts of the case and the submission of the Amicus Curie, this Court is of the opinion that while confirming the conviction, the sentence for possessing 2.100kgs of Ganja, the imprisonment for a period of 4 months will be adequate due to efflux of time.

11. Accordingly, The Criminal Appeal is partly allowed. The Conviction imposed on the accused for offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, is confirmed. The sentence of imprisonment imposed on the appellant is modified to four months rigorous imprisonment and the fine amount imposed by the trial Court shall stand unaltered.

12. The trial Court is directed to secure the presence of the accused/appellant to undergo the remaining period of sentence, if any. The period already undergone by the accused shall be given set off as provided under Section 428 Cr.P.C. This Court records its appreciation to Mr.Rajan, Amicus Curie for his valuable assistance to arrive at appropriate decision.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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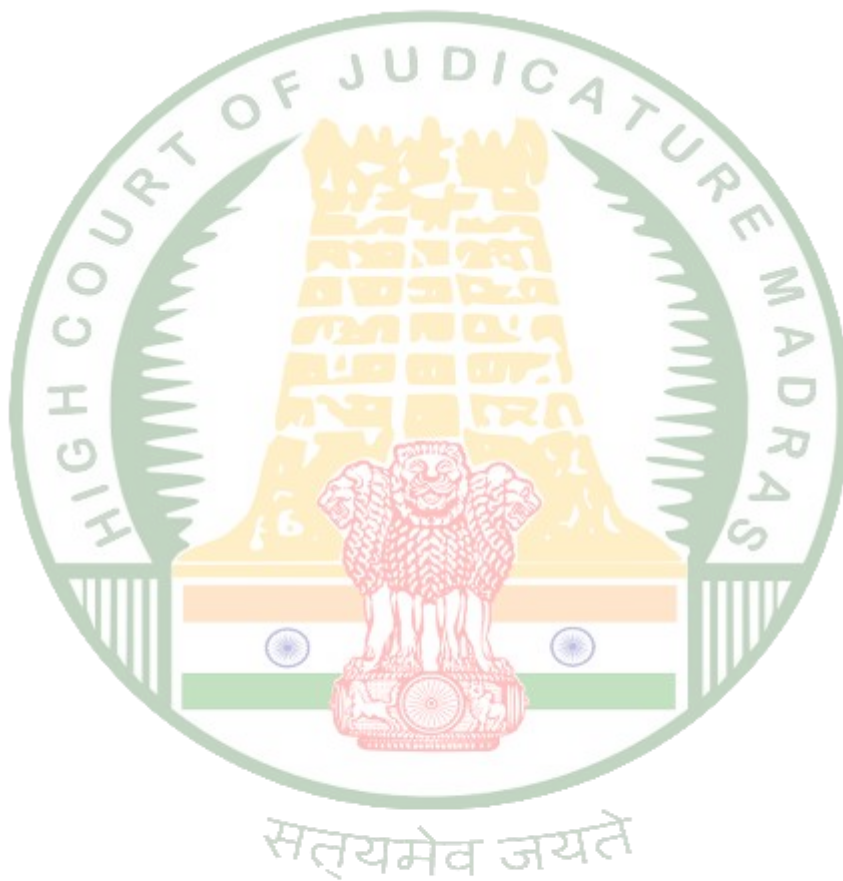
1. The Learned I Additional Special Judge, NDPS, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, NIB CID, Chennai.
4. The Superintendent of Prison, Puzhal Chennai.

5.The Director General of Police,
Mylapore, Chennai.

6. The Section Officer, Criminal Section, High Court, Madras.

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