

Bail Slip

The Appellant herein/Accused namely Babu, aged 26 years S/o.Kesavan, was directed to be released on bail as per the order of this Hon'ble Court dt.03/09/12 in MP.No.1/12 in CrI.A.No.537/12 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.537 of 2012

Babu

Appellant

Vs

The State

Rep by

Inspector of Police

NIBCID, Chennai-39

Respondent

Prayer: Criminal Appeal is filed under Section 374(ii) of the code of Criminal Procedure, praying to set aside the conviction and sentence imposed upon the appellant/accused in CC No.193 of 2005 on the file of I Additional Special Court under NDPS Act, Chennai dated 10.08.2012.

For Appellant : Mr. G.S. Magesh

For Respondent : Ms.P. Kritika Kamal
Government Advocate

JUDGMENT

This Criminal Appeal is directed against the Judgment of the trial Court holding the accused guilty of offence under Section 8(c) r/w 20 (b) (ii) (B) of NDPS Act 1985 amended by Act 9/2001.

2. The brief facts of the prosecution case is that on 04.04.2004, M.Royappan Yesunesan, the Sub-Inspector attached to NIBCID, received an information over phone from his informant that one Babu S/o Kesavan likely to come to Old Jail Road, Near Madi Park bus stop, Royapuram, Chennai, between 14.00 hours to 16.00 hours with Ganja to sell it to the perspective buyers. On receiving the information at about 13.00 hours, the same was reduced to writing by 13.15 hours and placed before his

immediate superior, Inspector of Police Ashok Kumar, who in turn permitted Royappan to proceed. Accordingly, Royappan proceeded to the spot along with the head constable Dhananjeyan and Sekar. They reached the spot by 14.30 hours. The informant identified the accused, who was carrying yellow colour polythene bag in his hand. After intercepted him, the accused was interrogated and on confirming his identity, he was offered the right of being searched before the Gazetted Officer or nearest Magistrate. The Search Notice was reduced in writing. The answer of the accused declining the offer was also recorded in the Search notice. Thereafter, the bag carried by the accused was searched and have found 1.300 kgs of Ganja in it. After drawing two samples of 50 gms each from the bulk, the samples and the bulk were separately packed, sealed and labeled with details. The Seizure was recorded by way of Mahazar. The accused was arrested on 15.30 hours and brought to the station. The detailed report under Section 57 of NDPS Act was forwarded by Royappan to the Inspector of Police Ashok Kumar. The sample drawn was sent for analysis. The report from the Laboratory proved it as "Canabinoid". On completion of the investigation, Final Report was filed by the Inspector of Police.

3. To prove the case, prosecution has examined 4 witnesses, 12 exhibits and 3 material objects were marked. The Chemical Analyst Sankar Kumar was examined as PW 1. The requisition letter from the Court and the Analysis Report are marked as Ex.P.1 and Ex.P.2 respectively. Royappan, the Sub-Inspector of Police was examined as PW-2. The information received by him about the illicit trafficking of Ganja by the accused was marked as Ex.P.3. The Search Notice under Section 50 of NDPS Act was marked as Ex.P.4. Mahazar drawn for recovery of 1.300 kgs of Ganja from the accused was marked as Ex.P.5. Based on the materials placed before the Court, the trial Court held the accused guilty of the charge and convicted him to undergo 7 months rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo further period of imprisonment of 1 month rigorous imprisonment.

4. Aggrieved by the above conviction and sentence, the present Criminal Appeal is filed.

5. The learned Counsel appearing for the appellant would point out the following infirmities in the prosecution case.

- ◆ While the informant has given a secret information to the Sub-Inspector of police PW-1, that the accused will come near Madi Pak, Royapuram between 14.30 hours to 16.00 hours, the Search Notice Ex.P.4 indicates that the information received by PW-2 was that the accused will come to Madi Pak, Royapuram between 14.00 hours to 16.00 hours.

- ◆ The Mahazar marked as Ex.P.5 was not prepared in the presence of independent witnesses. One of the witness Sekar, police constable, his name mentioned as "N.Sekar", whereas he has signed as "M.Sekar".

- ◆ Further, while PW-2 had deposed that Recovery Mahazar was prepared by Dhananjeyan, Head Constable, contrarily, PW-3 Dhananjeyan has deposed that Mahazar was prepared by the Sub-Inspector of police PW-2 Royappan yesunesan. So, neither PW 2 nor PW-3 has admitted that the Mahazar was prepared by them.

Under such circumstances, it is clear that the Mahazar was not prepared in the spot as contended by the prosecution.

6. Apart from that, the learned Counsel for the appellant would also contend that the Crime Number found in the label affixed on the contraband also cause doubt. Regarding the Crime Number in the label, the learned counsel would also relied upon one of the Judgment of this Court rendered in Criminal Appeal No.304 of 2013, Rangan Vs. State, where, this Court has suspected the case of the prosecution due to the mentioning of the Crime Number in the contraband packet, even before the registration of the case. The non-explanation of mentioning the Crime Number on the contraband packets by the witnesses being fatal to the truth of the prosecution case.

7. Per contra, the learned Government Advocate appearing for the state would submit that the raid team lead by PW-2 went to the spot immediately after receiving the information at about 13.00 hours. On identification of the accused by the informant, he was intercepted and on the spot itself, the contraband was seized, Mahazar was prepared. Thereafter, the contraband along with the accused was brought to the police station. Typographical error in Search Notice i.e 14.00 hours to 16.00 hours is not an infirmity to suspect the case of the prosecution.

8. The Mahazar Ex.P.5 was prepared at about 15.00 hours. Regarding the scribe of Mahazar and the Search Notice, the learned Government Advocate would point out the explanation has been given by PW-3 in his cross examination that Mahazar Ex.P.5 and Search Notice Ex.P.4 were written down by him on the dictate of the Sub-Inspector. Apart from PW-2, two witnesses and the accused had affixed their signature in the Mahazar Ex.P.5.

9. With regard to mentioning of the Crime Number in the Arrest Memo, the learned Government Advocate would submit that PW-3 Dhananjeyan has explained how the Crime Number is being mentioned in the Arrest Memo. Since there is an explanation by

the witnesses how and when the Crime number was written in the Arrest Memo i.e after they came to the Police Station, the Judgment of this Court rendered in Rangan Vs. State cited and relied upon by the appellant Counsel is not applicable to the facts of this case, since in Rangan Vs. State case, no explanation was given by the witness concern.

10. As far as the delay in forwarding the contraband to the Special Court is concerned, inspite of the specific direction by Remand Magistrate to present the contraband to the Special Court, the Investigating Officer has explained in his cross examination that the records to the Special Court was not forwarded immediately from the Remand Magistrate. Therefore, there was a delay in submitting the contraband before the Special Court.

11. Pointing out that the possession of 1.300 kgs of Ganja by the appellant /accused, who has failed to explain about the possession of the same submitted that the Court below has rightly convicted the accused.

12. Heard the learned Counsel for the appellant and the learned Government Advocate for the respondent State.

13. The error in the timing found in the Search notice, which is contrary to the time mentioned in the secret information is not very significant. Whether it is 14.00 hours or 14.30 hours, the actual arrival and investigation of the accused has taken place around 15.00 hours. The information over phone has been received at 13.00 hours. In the said circumstances, as contended by the learned Government Advocate, the error in mentioning the expected time of arrival in the Search Notice as 14.00 hours to 16.00 hours instead of 14.30 hours to 16.00 hours is not fatal to the case of the prosecution.

14. Regarding the Crime Number found in the Arrest memo, PW-3 has given a specific explanation that it was written after came to the police station. As pointed out by the learned Government Advocate, the dictum laid down will not apply, if possible and satisfactory explanation given by the Investigating Agency for mentioning the Crime Number in a document, which purported to have been created before the registration of the case.

15. As far as the Crime Number found on the label of the contraband, this Court find no such explanation from any of the witnesses of the prosecution, either PW 2 who has seized the contraband from the accused or PW-5, to whom the full report was submitted could give any possible explanation how the Crime Number came to be mentioned in the label of the contraband with other details, even before the registration of the First Information Report. PW-2 admits that in the label of the

contraband, Crime Number is mentioned along with the provision of the Act. There is no explanation, how the Crime Number came to be mentioned in the contraband packet, which was seized by the police at 15.00 hours, near Madi Park bus stop, Royapuram, much before registration of the case. The entire Seizure process gets tainted because of the unexplained marking . Hence, the benefit of doubt is extended to the appellant /accused.

16. In the light of the above discussions, the appeal is allowed. The conviction and sentence imposed upon the appellant by the learned Presiding Officer of the I Additional Special Court under NDPS Act, Chennai in CC No.193 of 2005 dated 10.08.2012 is hereby set aside and the appellant is acquitted. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be returned to the appellant.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Special Court under NDPS Act, Chennai

2.The Superintendent,
Central Prison,
Puzhal, Chennai.

3.Inspector of Police
NIBCID, Chennai-39

4.The Deputy Superintendent of Police,
Mylapore, Chennai-4.

5. The Public Prosecutor
High Court
Madras

+1cc to Mr.T.S.Srinivasan, Advocate sr.no.23427

Criminal Appeal No.537 of 2012

nr 22/04/2019