

BAIL SLIP

The Appellant/Accused namely S.A.Fakruddin, S/o.Abdul Khader was released on bail as per order of this court dated 18.09.2012 in Crl.MP.No.1/12 in Crl.A.No.572 of 2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.572 of 2012

S.A.Fakruddin Appellant/Accused

Vs

State by:

The Inspector of Police,
NIB CID, Chennai
(Crime No.74 of 2007)

.... Respondent/Complainant

PRAYER:

Criminal appeal is filed under Section 374 (2) of the Criminal Procedure Code Section 36-B of NDPS Act, to set aside the conviction and the sentence rendered by the 1 Additional Special Judge for NDPS Act Cases, Chennai dated 24.08.2012 in C.C.No.75 of 2008 on the file of the I Additional Special Judge, NDPS Act, Chennai in NIB CID Cr.No.74 of 2007 on the file of the respondent and may be pleased to acquit the accused.

For Appellant : Mr.K.Shanmugam
Legal- Aid- Counsel

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Criminal Side)

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ORDER

This Criminal appeal is directed against the conviction and sentence imposed upon the appellant/accused by the trial Court for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 as amended by Act 9/2001.

2 The learned Special Judge, E.C.Act, Chennai, considering the evidences placed before the court such as

depositions PW-2/ A.Malaichamy, the Sub-Inspector of Police cum Seizure Officer, PW-3/ Thiru Arunkumar, Head Constable cum independent witness and PW-4/ R.John Joseph, the Inspector cum Investigation Officer, who conducted investigation and filed charge sheet. The trial Court concluded that the prosecution has proved the illicit possession of Ganja by the accused and recovery of the same from his possession. The trial Court has held that the accused found guilty of the charges 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 1 month rigorous imprisonment.

3 In order to prove the case, the prosecution has examined 4 witnesses and marked 10 exhibits besides 3 material objects. There is no oral and documentary evidence was produced on behalf of the defence.

4 Aggrieved by the said Judgment of conviction, the convict has preferred the present appeal before this Court.

5 The learned Counsel appearing for the appellant would submit that the occurrence has taken place on 30.06.2007 at 11.30 a.m., the accused was arrested at 2.50 p.m., even before, the arrest of the accused the relatives were informed at 2.05 p.m., itself and First Information Report was registered at 3'0 clock. Before registering the First Information Report, the Crime number was mentioned in arrest memo and mahazar, the officials sent telegram to the relatives of the accused about his arrest, which also create suspicious. The learned trial Judge, failed to consider the fact that mandatory procedures contemplated under Section 42 to 57 under NDPS Act was not complied with by the Investigating Officer. The definition of ganja as defined under Section 7(3)(b) of NDPS Act has not been properly appreciated by the trial Judge. The learned trial Judge failed to consider the contradictions in the evidence of prosecution witness. Further, the trial Court failed to appreciate the evidence of Investigating Officer for non-compliance of the mandatory provisions under NDPS Act by P.W.3 regarding arrest, seizure and recovery. No independent witness was examined to prove the case of the prosecution and the appellant was falsely implicated in this case. The respondent police foisted false case against the accused under the guise that he has already involved in the other case and he was facing trial in C.C.No.75 of 2008. Therefore, the prosecution has not proved its case beyond all reasonable doubts, which warrants interference of this Court.

6 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that on 30.06.2007 at about 07.00 a.m., PW-2 received secret information that the

accused is indulging illicit sale of ganja at the junction of Kusharath Ali Makkan Street and Dr.Natesan Salai between 08.30 a.m, and 11.30 a.m, the respondent police has proceeded to the spot with team of officials and arrested the accused who was carrying a blue colour polythene bag in his hand contain 02.00 kgs of Ganja. The prosecution has proved its case beyond reasonable doubt and there is no perversity in appreciation of the evidence, which does not warrants any interference by this Court.

7 Heard the rival submissions made on both sides and perused the records.

8 The case of the prosecution is that on 30.06.2007, at about 07.00 a.m., PW.2/ Sub Inspector of Police, NIB CID, Chennai received a secret information over the office telephone that the accused is indulging illicit sale of ganja at the junction of Kusharath Ali Makkan Street and Dr.Natesan Salai between 08.30 a.m., and 11.30.a.m. PW.4 after reducing the said information in writing and obtained permission from his Superior, he proceeded to the spot with his team. When they reached the spot, the informant identified the accused who came with a blue colour polythen bag. The bag carried by the accused found to have contained 02.00 kgs., of Ganja. The rights under Section 50 of NDPS Act was explained to the appellant. The appellant also understood about the rights given under Section 50 of the Act and declined to avail the same and asked PW2 himself to do the search. However, nothing was recovered form his body therefore there is no violation of Section 50 of the Act. The detailed report about Seizure and arrest has been forwarded to the immediate superior, as per Section 57 of NDPS Act. The accused was remanded to judicial custody. The sample was sent for chemical analysis, which was subjected to analysis at the Tamil Nadu State Forensic Science Laboratory. PW-1, Maria Selvi Roselin, Chemical Examiner has given a report that the seized contraband contains canabinoid which is known as Ganja. Based on the materials collected during the course of investigation, the prosecution laid Final Report against the accused for the offences punishable under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985.

9 Moreover, from Ex.P.6/Arrest Memo and the evidence of PW-1, PW-2, PW-3, and PW-4, the recovery of 02.00kgs., of Ganja from the possession of the accused is clearly proved. The witnesses examined in this case are all official witnesses and no independent witnesses have been examined. It is true that in these type of cases, the individuals will not come forward to be stood as witnesses. The raiding team has sought the assistance of the individuals who were present in the spot, but they declined to stand as witnesses. This fact finds place in the

Report filed under Section 57 of NDPS Act and deposition of P.W.2. Therefore, the non-procuring of any independent witnesses will not vitiate the case of the prosecution. Normally in NDPS cases the seizure officer after getting permission from the superior officer only he would proceed to occurrence place, some time he would note down the next crime number of the police station. Therefore, mere mentioning the crime number in the arrest memo, search and recovery mahazar will not affect the case of the prosecution.

10 This Court being appellate Court, has to re-appreciate the evidence independently and arrive at independent conclusion that as to whether the prosecution has proved the guilt of the accused and proved its case beyond all reasonable doubts. On a reading of the entire materials, it is seen that the appellant has committed the offences under Sections 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 and the evidence of P.W.2 to P.W.4 have also proved the same. There is no violation of mandatory provisions of NDPS Act. Therefore, under these circumstances, this Court does not find any reason to interfere with the judgment of the Special Court and there is no merit in the appeal and hence, the appeal is liable to be dismissed.

11 In the result, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.K.Shanmugam, Legal- Aid- Counsel, S.R.No.65838

Cr1.A.No.572 of 2012

NRL(CO)
CS/20/09/2019