



BAIL SLIP

The Petitioner/Accused viz., Devendrakumar @ Devashankar M/A51/06 years was released on bail as per the Order of this Court Dated 31.10.2012 in CrI.MP.NO.1 of 2012 in CrI.A.NO.752 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.06.2019
CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
CRL.A.NO.752 OF 2012

Devendrakumar @ Devshankar ...Appellant

Vs.

The Inspector of Police,
NIB CID, Chennai - 39. ...Respondent

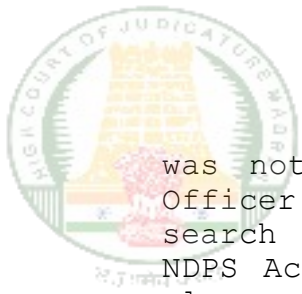
The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure r/w Section 36-B of NDPS Act 1985 seeking to set aside the conviction and sentence rendered by the learned I Additional Special Judge for NDPS Act, Chennai dated 15.10.2012 in C.C.No.117 of 2007 and acquit the accused.

For Appellant	: Mr.T.S.Sasikumar
For Respondent	: Mr.T.Shanmugarajeswaran Govt.Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 15.10.2012 made in C.C.No.117 of 2007 by the learned I Additional Special Judge for NDPS Act, Chennai.

2 Case of the prosecution is that while P.W.2/Seizure Officer, who was a Sub-Inspector of Police in NIBCID, Chennai, was on duty, on 06.09.2006 at 13.00 hrs, had received a secret information, about the illicit sale of Narcotic Drug Ganja by the appellant/accused. He reduced the same into writing and submitted to his immediate superior and after obtaining necessary permission, proceeded to the place of occurrence along with Police officials with necessary equipments required for the case. P.W.2 and the team, after reaching the place, mounted surveillance and the informant identified the appellant/accused. The police officials surrounded the appellant and introduced themselves and the accused was informed about his right to be searched either before the Magistrate or before the Gazetted Officer and enlightened about Section 50 of the NDPS Act, through Ex.P5 Notice, but the appellant/accused told that it



was not necessary to take him to a Magistrate or a Gazetted Officer and instead, stated that the officer himself can made search and accepted the notice given under Section 50 of the NDPS Act. Since some of the persons, who were available at the place, had refused to stand as witness for the search to be made, P.W.2 had searched before two witnesses, who were accompanying with him. On enquiry, the appellant/accused handed over a white colour polythene bag to P.W.2 and it was found that the same contains Ganja weighing 7.00 Kgs. P.W.2 had drew out samples M.O.1 & M.O.2 50 grams each and M.O.3 bulk Ganja, packed in brown cover, tied and sealed and obtained signatures of accused and witnesses. Thereafter, the accused handed over another cover, which contains 3.00 Kgs of Ganja lagiyam and P.W.2 has taken two samples of 50 grams each M.O.4 and M.O.5 and the M.O.6 bulk Ganja, packed in brown cover, tied and sealed and obtained signatures of accused and witnesses. Thereafter, prepared recovery Mahazar Ex.P6. The accused has no valid licence or permit for his conscious possession of Ganja and hence, issued arrest memo Ex.P7 and arrested the appellant/accused. After coming to the Police Station, P.W.2 had submitted report under Section 57 of NDPS Act along with accused, contraband and case records to P.W.5. P.W.5, the Inspector of Police, had registered FIR, which was marked as Ex.P9. The Inspector of Police P.W.5, after receiving report, had registered a case in Crime No.63 of 2006 against the appellant/accused under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and forwarded the same along with Form 95/Ex.P10 to the learned Magistrate and thereafter to the learned Special Judge, I Additional Special Court under NDPS Act, Chennai, which was taken on file in C.C.No.117 of 2007.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W5 were examined and Ex.P1 to Ex.P11 were marked along with Material Objects 1 to 6. On the side of the accused, no one was examined and no document was marked.

4 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 as amended by Act 6/2001, and by judgment dated 15.10.2012, convicted him and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.25,000/-, in default, to undergo rigorous imprisonment for a further period of one month.

5 Aggrieved against the judgment of conviction dated 15.10.12, the accused had preferred the present criminal appeal before this Court.

6 The learned counsel for the appellant/accused would submit that the appellant was not informed about the right to be



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searched either before the Magistrate or Gazetted Officer and thereby the mandatory provision of Section 50 of NDPS Act was not complied with, which itself is fatal to the case of the prosecution. Further, the ganja alleged to have been recovered from the accused and the appellant/accused were not produced before the Special Court, within the stipulated time and there was inordinate delay in producing the same before the Special Court. The prosecution had failed to explain the delay occurred in producing the appellant and recovered contraband before the Special Court. The right of the accused given by the legislature, should not be denied by the police and he has no authority to do the same. Further, within a reasonable time, the accused and recovered contraband must be produced before the Court, and if there is any delay, the prosecution is bound to explain the same and there is no document to show as to how and where the properties had been kept during such period. There is no document to show that arrest of the accused was informed to his relative and thereby prosecution has failed to follow the guidelines of the Hon'ble Supreme Court. It has been suggested that the accused is a Poojari in the temple, which is situated adjacent to the place of seizure and P.W.4 admitted that there is a temple and P.W.5 also during investigation admitted that this fact has been disclosed by the accused.

7 Even though, the place of occurrence is a busy place as admitted by P.W.2, the Seizure Officer, prosecution has failed to examine any independent witness there was contradiction between the evidence of P.W.2 and P.W.3 regarding compliance of Section 50(i) of the NDPS Act. Further Ex.P7, the arrest memo contains Crime Number, which could not be possible for the police officials to put crime number in the arrest memo, since it could be done only at the Police Station at the time of registering the First Information Report. Hence it creates doubt in the case of the prosecution and the same has not been explained properly. In support of his contentions, the learned counsel has relied on the decision rendered by this Court reported in 2007 2 LW (Cr1) 774 (Kala vs. The Secretary to the Government, Prohibition and Excise Department, Secretariat, Chennai, and the Commissioner of Police, Greater Chennai). The Special Court has failed to consider the above facts, which are fatal to the case of the prosecution, and hence the appellant/accused is entitled for acquittal.

8 The learned Government Advocate (Cr1.Side) would submit that none of the mandatory provisions contemplated under the NDPS Act had been violated by the prosecution. The Seizure Officer/P.W.2, soon after receiving the secret information, reduced the same into writing and obtained necessary permission from his immediate superior/P.W.5 and proceeded to the place of occurrence. He identified the accused and duly informed the



right to be searched either before the Magistrate or before the Gazette Officer and issued Notice under Section 50 of the NDPS Act, which was marked as Ex.P.5 and obtained signature, thereby the mandatory provision has been duly complied with. After completing legal formalities, since no one had come forward to stand as witness, P.W.3 and P.W.4 the Head Constables attached to the Police Station, had stood as witness for the search and recovery mahazar and recovered 7.00 Kgs and 3.00 Kgs of Ganja from the accused and took the appellant to the Police Station. P.W.5 after registering case and preparation of Form 95/Ex.P10, had forwarded the same to the Magistrate and the Magistrate also affixed his signature on the same, which contains list of properties and after completing legal formalities, all the above had been taken to the I Additional Special Judge for NDPS Act, Chennai, for further trial. The Chemical Analyst, who had examined as P.W.1, had given a report Ex.P2, which reveals that the contraband seized from the accused is Ganja, which is prohibited and comes under Narcotic Drug and Psychotropic Substances. Since the appellant/accused, neither had any valid license nor got any permission for possession of totally 10 Kgs of Ganja, he was in conscious possession of the contraband and thereby committed offence punishable under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985. P.W.2 and P.W.3 had categorically deposed and they have also spoken about the compliance of the mandatory provisions of the NDPS Act. Hence trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant, which does not warrants any interference of this Court.

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

10 The main contention raised by the learned counsel for the appellant/accused is that prosecution had violated the mandatory provisions as contemplated under the NDPS Act and the appellant/accused was not informed his right of search. Further there was a delay in producing the recovered Ganja before the Special Court and prosecution had failed to explain the delay.

11 On a perusal of the records, it reveals that the accused was duly informed about his right to be searched either before the Magistrate or before the Gazetted Officer through search notice/Ex.P5, but, he told that it was not necessary to take him either before the Magistrate or before the Gazetted Officer and instead the Officer himself could make personal search. Ex.P5 notice under Section 50 of the NDPS Act was issued on him and the accused also signed on the same. The accused and



the recovered contraband along with Ex.P10/Form 95 had been produced before the Magistrate and Magistrate also signed on the same. Completion of legal formalities will take certain amount of time and thereby the delay in producing the contraband before the Special Court had occurred. The above delay is not at all fatal to the case of the prosecution, since it has been explained by the prosecution.

12 It is stated by the learned counsel for the appellant that mentioning of crime number in the arrest memo/Ex.P7 is not possible, which creates doubt in the case of prosecution and that has not been explained properly and also relied on the decision as cited above. It is seen that P.W.2 had explained the fact that at the time of issuing arrest memo, he called to the police Station over phone and obtained crime number. It is easy for the police officials, to allot crime number, even before registering a case, since they can easily say what would be the next crime number for NDPS cases. Therefore prosecution has explained as to how crime number has been mentioned in the arrest memo. In the case referred to by the learned counsel, there was lack of explanation for the same, but in this case, prosecution witness has explained the fact and the same could be acceptable.

13 In this case, from the documents available, it is very clear that mandatory provision of Section 50 of the NDPS Act had been duly complied with and there was no violation at all. Insofar as the recovery of possession of contraband and delay in production of the same before the Special Court is concerned, Ex.P5 and Ex.P6 clearly shows, which were signed by the accused and the witnesses and the same was brought to the Police Station along with contraband and after registering FIR forwarded the same to the Magistrate along with contraband only. Later, when the matter was sent to the Special Court, P.W.1, Chemical Analyst, had clearly spoken that he received the same with sealed cover and he also opined that the sample contains substances of Ganja. A combined reading of the documents produced by the prosecution and the evidence of witnesses, would clearly show that the contrabands were sent to the Special Court, after completing the legal formalities. Therefore, the trial Court gone into all these aspects and found the accused guilty. From the documentary evidences, this Court, as a first appellate Court, after re-appreciating entire materials, found the appellant guilty of offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985.

14 In the result, the criminal appeal stands dismissed,



judgment of conviction dated 15.10.2012 made in C.C.No.117 of 2007 by the learned I Additional Special Judge for NDPS Act, Chennai, is hereby confirmed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Special Judge for NDPS Act, Chennai.
2. The Inspector of Police, NIBCID, Chennai-39.
3. The Superintendent Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court of Madras.

+1cc to Mr.T.S.Sasikumar, Advocate, S.R.No.53289

CrI.A.No.752 of 2012

SPD(CO)
CS/04/09/2019