

Bail Slip

The Appellant/Sole Accused namely Mani, S/o.Arumugham, was directed to be released on bail as per order of this Court dated 29/10/2012 made in CrI.MP.No.1 of 2012 in CrI.A.No.755 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No .755 of 2012

Mani

... Appellant/Accused

vs.

The Inspector of Police,
NIB, CID, Chennai.
(Cr.No.147 of 2004)

... Respondent/Complainant

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, praying to set aside the conviction and sentence rendered by the learned I Additional Special Judge for NDPS Act, Chennai, dated 14.09.2012 in C.C.No.225 of 2005 on Crime No.147/2004 for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and to acquit the accused.

For Appellant : Mr.R.Ganesh,
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran,
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction made by the learned I Additional Special Judge for NDPS Act, Chennai, dated 14.09.2012 in C.C.No.225 of 2005.

2 Case of the prosecution is that while P.W.2/the Sub Inspector, NIBCID, Chennai, was on duty, on 08.12.2004 at 11.00 hrs, had received a secret information, about the illicit sale of Ganja Narcotic Drug by the appellant/accused near Presidency College, Junction of Barathiar Road and Kamarajar Road in near Subway entrance, Triplicane, Chennai-5. P.W.2 reduced the same into writing and submitted to his immediate superior P.W.4,

Inspector/Investigating Officer, and after obtaining necessary permission, proceeded to the place of occurrence along with team members with necessary equipments. P.W.2 and the team after reaching the place at 12.15 hrs mounted surveillance and through the informant, the accused was identified. The Police Officers surrounded the accused and introduced themselves, on enquiry the accused revealed his name and he was informed about the information received and also 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, 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 do search. P.W.2 approached the persons nearby the occurrence place, but, they only told their names and denied to stand as witness. Therefore, P.W.3 and one another police official, who accompanied P.W.2, were stood as witnesses. When the accused was specifically questioned as to whether he had in possession of any narcotic drug, the appellant/accused handed over a white colour polythene, which contains narcotic drug Ganja weighing 1.500 Kgs. P.W.2 had drawn out samples M.O.1 & M.O.2 50 grams each and M.O.3 bulk cocaine, packed and sealed and obtained signatures of accused and witnesses. Thereafter, prepared recovery Mahazar/Ex.P5 and since the accused has no valid licence or permit for his conscious possession of Ganja, issued arrest memo Ex.P6 and arrested the appellant/accused and the same was duly intimated to his close relatives. P.W.2 prepared report under Section 57 of NDPS Act, which was marked as Ex.P9 and handed over all the proceedings to P.W.4. FIR was registered in Cr.No.147 of 2004 against the accused. P.W.4 was instructed to carry out further investigation and he also investigated the matter further and recorded statement of accused under Section 67 of NDPS Act and after completing investigation filed a complaint against the appellant/accused, for the offence under Sections 8(c) r/w 20 (b) (ii) (B) of NDPS Act, which was taken on file by the learned Special Judge, Additional Special Court under NDPS Act, Chennai, in C.C.No.225 of 2005.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W4 were examined and Ex.P1 to Ex.P12 were marked along with Material Objects 1 to 3. After completing prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused, he denied as false. On the side of the defence, no one was examined and no document was marked.

4 The learned Special Judge, after trial, by judgment dated 14.09.2012, convicted the appellant and sentenced him to

undergo rigorous imprisonment for a period of seven months and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a further period of one month.

5 Aggrieved against the judgment of conviction dated 14.09.2012, the accused has preferred the present criminal appeal before this Court.

6 The learned counsel appearing for the appellant/accused would submit that the appellant was not informed about the right to be 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. The statutory right of the accused should not be denied by the police and they have no authority to do the same. Further, prosecution has shown two witnesses for recovery, but, has failed to examine both the witnesses and examined only one witness as P.W.3. Prosecution has failed to prove the statement recorded under Section 67 of NDPS Act. In Ex.P1, requestion letter from Court to the Laboratory, there was no police seal, only Court seal was affixed and subsequently during cross examination of P.W.1 Chemical Analyst, there was police seal found on the same, which itself proves that the records have been tampered by the police officials and foisted false case against the appellant. There was materials contradictions between the prosecution witnesses. There was delay in producing the seized properties before the Court and prosecution has failed to explain the cause for the delay and there is no whisper about the place, where the samples have been kept between the interregnum period. The trial Court has failed to appreciate the above facts and erroneously convicted the appellant, which warrants interference of this Court.

7 The learned Government Advocate (Crl.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.4 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, thereby the mandatory provisions of Sections 42 and 50 of the NDPS Act has been duly complied with. After completing legal formalities, the persons, who were available nearby the place of occurrence, were requested to stand as witness, for which they have only revealed their name and denied to stand as witness. Therefore, P.W.3 and one another police official stood as witness for recovery and arrest of the

appellant. P.W.2 obtained signatures of witnesses and the appellant in the recovery Mahazar Ex.P5. The samples have also been sent for chemical analyst, who was examined as P.W.1 has clearly spoken that the samples received by her 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 prohibited Narcotic Drug, 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. Even though, prosecution did not examine the other witnesses cited in the Mahazar, but has examined P.W.3, who has clearly spoken about the recovery of the contraband, which would suffice to prove the recovery. Further, the appellant/accused had voluntarily handed over the contraband, which was proved from his confession statement. 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.

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

9 The main contention raised by the learned counsel for the appellant/accused is that prosecution had violated the mandatory provisions as contemplated under Section 50 of the NDPS Act and the appellant/accused was not informed his right of search. Further prosecution has not examined both the witnesses for Mahazar and has examined only one witness and also not proved the statement recorded under Section 67 of NDPS Act.

10 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, but, he told that it was not necessary to take him either before the Magistrate or before the Gazetted Officer and instead P.W.2 himself could make personal search. It is to be noted that the appellant/accused himself has voluntarily handed over the contraband to the Seizure Officer and even though, as contended by the learned counsel that Section 50 has not been complied with, it is not fatal to the case of the prosecution, since the contraband was not recovered from the body of the appellant/accused. Further prosecution has examined P.W.3, who accompanied P.W.2/Seizure Officer, which would suffice to prove the recovery and therefore non-examination of yet another Mahazar witness is not fatal to the case of the prosecution. This Court does not find any reason to discard the evidence of P.W.3.

11 From the evidence of P.W.1, it is proved that the seized contraband was Ganja and from the evidence of P.W.1, it

is clear that the appellant was in conscious possession of Ganja, which is prohibited under law. The evidence of P.W.3, Mahazar witness has also corroborated the evidence of P.W.2 and P.W.4. Further recovery has been proved through the evidence of P.W.3, who accompanied P.W.2/Seizure Officer. On reading of the entire evidence of prosecution witnesses, P.Ws.1 to 4, prosecution has proved its case beyond reasonable doubt and there is no reason to discard their evidence. The trial Court gone into all these aspects and found the accused guilty. From the oral and documentary evidences, this Court, as an appellate Court, while re-appreciating entire materials, does not find any perversity in the judgment of conviction made by the trial Court and this Court also finds the appellant guilty of offence under Section 8 (c) r/w 20(b)(ii)(B) of NDPS Act,

12 In the result, the criminal appeal stands dismissed and judgment of conviction dated 14.09.2012 in C.C.No.225 of 2005 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 sentence, if any.

13 While parting with the case, I appreciate the services rendered by Mr.R.Ganesh, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The learned legal aid counsel on record for the appellant is entitled for remuneration as per rules.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional Special Judge for NDPS Act, Chennai,
- 2.The Inspector of Police, NIB, CID, Chennai.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.
- 4.The Additional Public Prosecutor, High Court of Madras.
- 5.The Section Officer, Criminal Section, High Court, Madras.
- 6.The Secretary, High Court Legal Services, Legal Aid, Chennai (for remuneration of the counsel)

+1 cc to M/s.R.Ganesh, Advocate Sr.No. 64008

AKM/08.01.2020/5P-8C /

Cr1.A.No.755 of 2012