

BAIL SLIP

The Appellant/Accused namely 1) Karuppan @ Raju, S/o.Arumugam, was directed to be released on bail as per the order of this Court, dated 09.01.2013 in CRL.M.P.No.1/2012 in CrI.A.903/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2019

CORAM:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Criminal Appeal No.903 of 2012

Karuppan @ Raju .. Appellant/Petitioner

/Versus/

Inspector of Police L & O,
C1, Flower Bazaar Police,
Chennai. ..Respondent/Complainant

Criminal Appeal has been filed under Section 374 Cr.P.C., r/w Section 36-B of NDPS Act, 1985 praying to set aside the conviction and sentence rendered by the I Additional Special Judge for NDPS Act, Chennai dated 19.12.2012 in C.C.No.62/2008 in Crime No.333 of 2007 for the offence under Section 8(c)r/w 20 (b) (ii) (B) of NDPS Act.

For Appellant :Mr.M.Ramesh

For Respondent :Mrs.P.Kritika Kamal,
G.A.

JUDGMENT

The appeal is directed by the appellant/accused against the conviction and sentence of six months Rigorous Imprisonment with fine of Rs.3,000/- in default, to undergo one month Rigorous Imprisonment imposed on him by the trial Court for the offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985(in short "NDPS Act"). Aggrieved by the conviction and sentence, the present appeal is filed by the accused.

2. The case of the prosecution is that, on 09.06.2007 at about 21.00 hours, the appellant/accused Karuppannan @ Raju, S/o Arumugam was found in possession of 1.100 kg of ganja in an auto bearing Reg. No.TN-04-L- 4638 near Muthusamy Road and EVR Road junction without any valid permit. The recovery was made during the surveillance of vehicle and it is a chance recovery. After explaining the accused about the provision of Section 50(i) of the NDPS Act, he was subjected to personal search. The contraband was seized from a block colour plastic bag kept below the driver seat. After drawing two samples each containing 100 grams for chemical analysis, the entire contraband was sealed and brought to the police station. Thereafter, the appellant/accused was arrested on 21.30 hours. On that day, a case in Crime No.333 of 2007 was registered. After completion of investigation, final report was filed and the accused was tried for the offence of possession of 1.100 kg ganja without any valid license punishable under Section 8 (c) r/w 20(b) (ii) (B) of the NDPS Act.

3. To prove the charge, the prosecution has examined four witnesses as PW-1 to PW-4 and marked seven exhibits as Exs.P1 to P7 besides two material objects were marked as M.O.1 and M.O.2. PW-1 [S.Venkatachalam] Sub Inspector of Police attached to C1-Flower Bazaar Police Station has deposed about the interception of the auto bearing Reg. No.TN-04-L-4638 during the vehicle check up on 09.06.2007 at about 21.00 hours. Since the appellant/accused did not stop the vehicle, despite the signal to stop, PW-1 and his party chased the auto and interrogated the auto driver. Since he was not able to answer the query properly, they intensified interrogation. Thereafter, the appellant/accused disclosed that he was transporting ganja in the auto and that is the reason why, he did not stop the auto, when the police signaled to stop it. The option given to the accused under Section 50(i) of the NDPS Act was reduced into writing and the same was marked as Ex.P1. The contraband was seized under mahazar in the presence of Head Constables Munusamy and Srinivasan. The mahazar drawn on the spot was marked as Ex.P2.

4. Thereafter, the appellant/accused was brought to the police station after registering the First Information Report Ex.P3. PW-1[S.Venkatachalam] forwarded a detailed report to his immediate superior, as per Section 57 of the NDPS Act and the report forwarded to his immediate Superior Inspector of Police, C1-Flower Bazaar Police Station was marked as Ex.P5. The contraband seized from the accused has been forwarded to the Magistrate under Form-95, which was marked as Ex.P6. The first sample drawn from the bulk was marked as M.O.1 and the second sample was marked as M.O.2. One of the sample packets was

forwarded for chemical analysis through Court under the request of the Investigating Officer and the same was sent to Tamil Nadu State Forensic Laboratory for chemical analysis. The analysis report marked as Ex.P9 indicates that the sample contains cannabinoid called as "ganja".

5. PW-2 and PW-3 Head Constables, who accompanied to PW-1 and signatory to the mahazar as witnesses also corroborated the evidence of PW-1 regarding search, seizure, arrest and forwarding the samples to the laboratory for analysis. The Investigating Officer Augustin Paul Sudhakar, who was examined as PW-4, has endorsed the evidence of PW-1 regarding receipt of Section 57 report from PW-1 and further investigation conducted by him.

6. The trial Court, on appreciating the evidence placed before it, held the accused guilty and sentenced him to undergo six months Rigorous Imprisonment and to pay a fine of Rs.3,000/-. Aggrieved by the same, the present Criminal Appeal is preferred by the appellant/accused on the ground that during the search and seizure; there was no independent witness. Though the alleged place of seizure is a public place; the prosecution has not taken any effort to call for independent witness to oversee the search and seizure. The contraband was produced before the trial Court, after lapse of 24 days and no explanation has been placed by the prosecution for the same. The above lapse of the prosecution has to be taken adverse notice.

7. The learned counsel appearing for the appellant would further submit that in the arrest memo, which was alleged to have been preferred at the time of seizure, the crime number finds place. However, as per PW-1's evidence, the case was registered only after completion of search, seizure and arrest at the spot and after bringing the accused and contraband to the police station. Thus, the presence of crime number in the arrest memo prior to the registration of First Information Report causes doubt about the prosecution case.

8. The learned Government Advocate representing the State would submit that PW-1[Venkatachalam] in his deposition, has clearly narrated the circumstances under which the contraband was seized from the accused. It was a chance recovery made during the vehicle checkup by the police attached to C-1, Flower Bazaar Police Station(Law & Order) Wing. The conduct of the accused not heeding to the signal of the police has prompted PW-1 and his team members to intercept and interrogate the accused intensely, which led to voluntarily handing over of the black colour plastic bag containing ganja. In the above said manner, the entire interception, interrogation and seizure took place on 09.06.2007 at about 21.00 hours near E.V.R road and Muthusamy

road junction. Since there was no occasion to call for the independent witness, the Head Constables present were asked to be witnesses in the seizure. Therefore, the absence of independent witnesses for the seizure is not fatal for the prosecution, in the facts and circumstances of the case.

9. Regarding the delay in forwarding the contraband, the learned Government Advocate would submit that Form-95 (Ex.P6) along with the contraband was forwarded to the Magistrate on the next day of the seizure. The seal of the Metropolitan Magistrate was affixed in Form-95. Later, as per the direction of the Magistrate, the same was forwarded to the Special Court for NDPS Act Cases along with the requisition letter for forwarding the samples for chemical analysis. Therefore, there is no delay in forwarding the samples as alleged by the learned counsel appearing for the appellant.

10. This Court, on considering the rival submissions put forth by the learned respective counsels and the exhibits along with depositions of the witnesses, does not find any violation of mandatory provisions of the NDPS Act or doubt in the case of the prosecution. The absence of independent witnesses cannot be a reason to suspect the case of the prosecution, if the other witnesses and the evidence clinchingly prove the guilt of the accused. Here is the case wherein the accused by his conduct, has created suspicion and on his own has handed over the contraband to the police. Thereafter the provision of the NDPS Act has meticulously followed by PW-1. The contraband now seized was found to be a Narcotic Drugs, the possession of which is prohibited under NDPS Act. In the said circumstances, this Court finds no error or illegality in the judgment of conviction passed against the appellant/accused by the trial Court.

11. As far as the sentence of six months Rigorous Imprisonment is concerned, the learned counsel appearing for the appellant would submit that the appellant/accused is an auto driver by profession and he has not come to any adverse notice of the police for similar offence. Therefore, pray for leniency in sentence.

12. The learned Government Advocate, on verification would submit that the appellant is accused in two IPC cases, but has not come under any adverse notice of the police as far as NDPS Act is concerned.

13. In the light of the above submission, this Court, while upholding the conviction is inclined to reduce the period of sentence. It is stated by the learned Government Advocate after verifying the records that the petitioner has already undergone 61 days imprisonment i.e 38 days as under trial and 28 days

after conviction by the trial Court. Taking note of the period of sentence already undergone by the accused, this Court modifies the period of sentence to three months Rigorous Imprisonment instead of six months Rigorous Imprisonment.

14. Accordingly, this Criminal Appeal is partly allowed. The trial Court finding that the accused is guilty of offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is confirmed. The sentence of six months Rigorous Imprisonment is modified as three months Rigorous Imprisonment. The fine of Rs.3,000/- stands confirmed. The period of sentence already undergone by the accused is ordered to be set off. The respondent police is directed to secure the accused to undergo the remaining period of sentence. Bail bond, if any executed by the accused, shall stand cancelled.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional Special Judge
for NDPS Act,
Chennai.

2. The Inspector of Police L & O,
C1, Flower Bazaar Police,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

4.The Section officer,
Crl. section, High Court, Madras.

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

Crl.A.No.903 of 2012

Kak(01/04/2019)