



Bail Slip

Mr.M.Balsamy S/o.Mahathevar, age 52 years is released on bail vide court order dated 06.10.2019 made in MP(MD)1 of 2009 in Crl.A. (MD)No.285 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	13.04.2019
Date of Judgment	11.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A.(MD)No.285 of 2009

M.Balsamy : Appellant/A1

Vs.

The State represented by
The Inspector of Police,
NIBCID,
Dindigul, Dindigul District
(Crime No.76 of 2002)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgement, dated 07.09.2009 passed in CC No.510 of 2002 by the Special District and Sessions Judge, (NDPS Act cases), Madurai.

For Appellant : Mr.R.Anand

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgement, dated 07.09.2009 passed in CC No.510 of 2002 by the Special District and Sessions Judge, (NDPS Act cases), Madurai.

2.According to the prosecution, while the respondent police conducting vehicle check up on 24.06.2002 at 11.00 hours on Dindigul-Madurai road at Chinnalapatti, the appellant/accused was in possession of 5 kgs of Ganja. The Inspector of Police attached to NIBCID, Dindigul has filed a final report against the accused examining the witnesses.

3.The trial court, after proper appreciation of the evidence, both oral and documentary, found the appellant/accused



guilty under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced him to undergo three years RI and to pay a fine of Rs.1,000/-, in default to undergo one month SI. Aggrieved by the judgement passed by the trial court, the appellant/accused is before this court.

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4. Heard both sides and perused the materials available on record.

5. The first contention raised on the side of the appellant/accused is that the provisions under Sections 42, 50 and 57 of NDPS Act have not been complied with and the possession of Ganja from the appellant has not been proved and it is important to say herein even according to the prosecution, a lady who is said to have accompanied with the appellant/accused alone has got possession of the contraband and in such a situation, the appellant/accused cannot be blamed with and prays that the appellant/accused is entitled to acquittal.

6. PW2 is the Head Constable, who received the information from the informant. PW2 deposed that on 24.06.2002 at 9.00 am, when he was on duty, he received information from an informant stating that two persons were in possession of Ganja without any permission and he recorded the information and informed the above information to his superior officials and obtained orders to conduct raid.

7. PW5 is the Investigating Officer and he deposed that PW2 recorded the information received from the informant and informed the above fact to him and then he issued orders to PW2 for conducting raid. Hence, from the evidence of PW2 and PW5, it reveals that after receipt of the information from the informant, PW2 immediately informed the above information to PW5 and on the basis of the information, PW5 permitted PW2 to take necessary action as against the persons, who were in possession of Ganja without any permission.

8. In this case, the information recorded by PW2 was marked as Ex.P3. On perusal of Ex.P3, it is stated that on the information received from the informant regarding the possession of Ganja in the custody of the accused, he sent the above information to PW5 and PW5 directed PW2 to conduct raid along with party to the mentioned place with equipments and connected records and further, PW2 was directed to send confidential report to PW5. Hence, the evidence of PW5 is corroborated with the evidence of PW2. Therefore, from Ex.P3, it reveals that the information received by PW2 was intimated to PW5 within 12 hours and PW5 directed PW2 to conduct raid in respect of the occurrence. Hence, the provisions under Section 42 of NDPS Act is complied with.



9.The learned counsel appearing for the appellant/accused submitted that the appellant has not been properly informed about his right of getting himself searched either in the presence of the Gazetted Officer or in the presence of the nearest Judicial Magistrate in accordance with Section 50 of NDPS Act and hence, the provisions under Section 50 of NDPS Act was not complied with and prays that the appellant/accused is entitled to acquittal.

10.PW2 deposed that based on the orders of PW5, he along with informant and the Police Constable Ambika went to Chinnalampatti at 10.30 am and requested the persons Pandi and Subramani to stand as witnesses and for that, they agreed and with the above said persons, he reached the place of occurrence and when he tried to catch the accused, he caught hold A1, but A2 escaped from the place of occurrence and showed his ID Card to A1 and asked him to search in respect of possession of Narcotic substance before the Gazetted Officer or Judicial Magistrate and for that, A1 accepted to search by PW2 and for that, A1 gave consent letter and on the basis of the consent letter given by A1, he searched A1 and found possession of Ganja from A1.

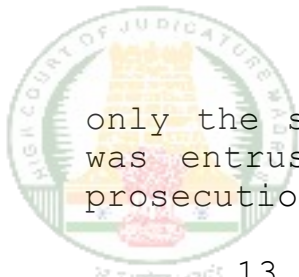
11.The consent letter given by A1 is marked as Ex.P1. On careful perusal of Ex.P1, it is stated as follows:-

“சோதனை உரிமம் அறிவிப்பின் சோதனை செய்வதற்கு சம்மதம் தெரிவித்து கொடுக்கும் சான்று

திண்டுக்கல் போதைப் பொருள் தடுப்பு நுண்ணறிவுப் பிரிவு த.கா.249 சேகர் ஆகிய நீங்கள் படித்து காண்பித்ததை நான் தெரிந்து கொண்டேன் நான் அருகில் உள்ள நீதித்துறை நடுவர் முன்பாகவோ அல்லது அரசிதழ் சான்று பெற்ற அதிகாரி முன்பாகவோ சோதனைக்குட்பட விரும்பவில்லை போதைப் பொருள் தடுப்பு நுண்ணறிவுப் பிரிவு தலைமைக் காவலராகிய தாங்கள் என்னையும் எனது உடமைகளையும் சோதனை செய்ய இதன் மூலம் நான் சம்மதம் தெரிவித்துக் கொள்கிறேன்.”

Hence, on careful perusal of Ex.P1, it reveals that reasonable opportunity was given to A1 for searching him and gave consent letter Ex.P1 and on the basis of Ex.P1, A1 was searched and he was found in possession of Ganja without permission. Hence, from the evidence of PW1 and PW2, it reveals that the provisions under Section 50 of NDPS Act was complied with.

12.Further, the learned counsel appearing for the appellant/accused argued that as per the prosecution version, the property though it has been allegedly seized on 24.06.2002, it has been impounded before the court only on 08.07.2002 and during such interregnum period, there had been every possibility for the Investigating Team to tamper the said property and moreover, not



only the said delay, but also the fact to whom the said property was entrusted during such period has not been explained by the prosecution and hence, it is fatal to the prosecution.

13.PW1 and PW2 deposed that after search, they found that A1 was in possession of 5 kgs of Ganja and further they took two sample 50 gms each one for analysis and other for sample by way of attachi and the samples taken for analysis were sent and after analysis, it was found that the material recovered from A1 is Ganja. In this case, PW1 is the independent person, who stood as witness at the time of recovery by PW2.

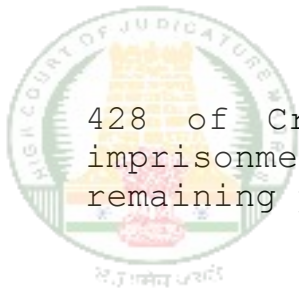
14.In this case, while cross examining PW5, no question was put to PW5 for the delay in sending the material objects to analysis. The Chemical Analysis was examined as PW4. He deposed that he received the samples and after completing investigation, he gave report under Ex.P9 stating that the materials found in the sample packets are chemically known as 'Ganja'.

15.It is pertinent to note that PW4 was not cross examined on behalf of the appellant/accused. Hence, it reveals that A1 admitted the evidence of PW4. Usually when the material objects were produced before the court, it was immediately sent for analysis. When the Investigating Officer failed to send the material objects within the time, it will show the improper action on the part of the investigating Officer. Hence, it will not affect the case of the prosecution.

16.Further, PW2 after the arrest of the accused, recovered the contraband, sent report under Section 57 of NDPS Act to his superior officer. Hence, the argument put forth on the side of the appellant/accused stating that the provisions under Section 57 of NDPS Act was not complied with is not at all acceptable.

17.For all the reasons stated above, this court is of the considered view that the trial court on proper appreciation of the entire materials available on record, had given a correct findings, which does not require any interference by this court. However, considering the fact that the appellant is sole breadwinner of the family, the punishment imposed on the appellant requires modification.

18.In the result, the criminal appeal is **partly allowed**. The punishment imposed on the appellant/accused for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act is reduced to 2 years RI and the appellant is directed to undergo 2 years RI for the said offence. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant, shall be given set off under Section



428 of Cr.P.C. The appellant after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

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Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To,

- 1.The Special Judge,
Special Court (NDPS Act Cases),
Madurai.
- 2.The Inspector of Police
NIBCID, Dindigul
Dindigul District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.A (MD) No.285 of 2009
11.07.2019

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