



Bail Slip

The Appellant / Accused namely Mohan was released on bail as per order of this Court dated 29.04.2013 and made in MP(MD)No.1 of 2012 in Crl.A(MD)No.166 of 2012 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.166 of 2012

Mohan

... Appellant

Vs

Superintendent of Customs,
Customs,CPU Mandapam,
Rameshwaram.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment of the conviction and sentence made in C.C.No.14 of 2007, dated 28.06.2012 on the file of the Additional District and Sessions Court cum Essential Commodities Act, Special Court, Pudukkotai.

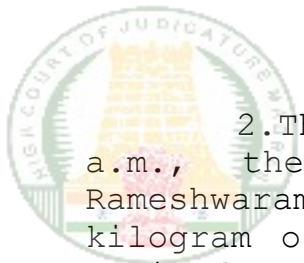
For Appellant
For Respondent

: Mr.B.Fazil Kirmani
: Mr.Arul Vadivel @ Sekar
Special Public Prosecutor
for Customs

JUDGMENT

The appellant Mohan and one Janarthanam were convicted and sentenced, vide Judgment dated 28.06.2012 in C.C.No.14 of 2007 on the file of the Additional District and Sessions Court cum Essential Commodities Act, Special Court, Pudukkotai as follows:-

Accused	Penal Provision	Punishment
A1	Section 8(c) r/w 21(c) of the NDPS Act	To undergo ten years rigorous imprisonment and to pay Rs.1,00,000/- as fine, in default, to undergo one year rigorous imprisonment.
A2	Section 8(c), r/w 21(c), r/w.29 of the NDPS Act	To undergo ten years rigorous imprisonment and to pay Rs.1,00,000/- as fine, in default, to undergo one year rigorous imprisonment.



2.The prosecution case is that on 18.08.2006 at about 10.00 a.m., the appellant and Janarthanam (A2) were waiting in Rameshwaram bus stand. They were planning to smuggle 3.200 kilogram of heroin to Srilanka. It was then that the respondent arrived on the spot. The respondent informed the appellant and the said Janarthanam that he proposed to search them. After complying with all the formalities set out in the NDPS Act, M.O.1-Balck Colour rexin bag was recovered from the appellant. On further examination, it was found to contain 3.200 kilogram of heroin. In this regard, Ex.P1- Mahazer was prepared. After complying with the usual formalities, the respondent filed a complaint in C.C.No.14 of 2007 before the Special Court for NDPS cases, Pudukottai. Both the accused were charged as follows:-

Accused	Charge
A1	Offence under Section 8(c), r/w 21(c)
A2	Offence under Section 8(c) r/w 21 (c) r/w 29
A1 and A2	Offence under Section 23 r/w 28
A1 and A2	Offence under Section 8(c) r/w 21 (c), r/w.29

The accused pleaded not guilty and claimed to be tried. The prosecution examined P.W.1 to P.W.5 and marked Ex.P1 to Ex.P32. M.O.1 to M.O.16 were marked. On the side of the accused, no evidence was adduced. On a detailed consideration of the evidence on record, the learned Special Judge by the impugned Judgment dated 28.06.2012 convicted and sentenced the accused as mentioned above.

3.It is stated that the second accused Janarthanam did not challenge the conviction and he underwent the sentence and he appears to have been let out. The appellant alone filed this criminal appeal. Bail was granted in favour of the appellant on 29.04.2013 in M.P.(MD)No.1 of 2012. The appellant was directed to report before the Superintendent of Customs, Chennai daily at 11.00 a.m., until further orders. It is now stated that the appellant not only did not adhere to the bail condition but also absconded thereafter. His current whereabouts are not known. Even though the order suspending the appellant's sentence was cancelled, the appellant could not be secured. Since this appeal has been listed for final hearing and it is an appeal of the year 2012, I am of the view that no purpose will be served by keeping the appeal pending. Therefore, it was decided to conduct the appeal on merits.

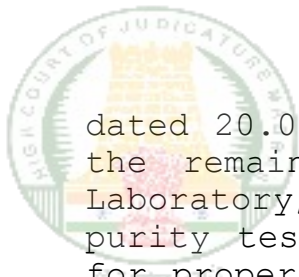
4.The appellant's counsel contended that even though the contraband was said to have been recovered in the bus stand, Ex.P1- Mahazer was prepared in the office of the respondent. According to him, the non preparation of the Mahazer at the spot itself vitiates the prosecution. In this regard, the learned counsel appearing for



the appellant drew my attention to the decision of the Hon'ble Supreme Court reported in **AIR 2002 SCC 1415(Khet Singh Vs. Union of India)**.

"10.The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation. It is true that when a contraband articles is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazare is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband articles allegedly seized from the accused. There may also be allegations that the article seized was by it self substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody."

5.A careful reading of the observations of the Hon'ble Supreme Court would indicate that it is only desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were recovered. Therefore, I am not inclined to accept the aforesaid submission of the learned counsel appearing for the appellant. The appellant's counsel would raise one more contention. He submitted that what was seized from the accused was the contraband weighing 3.200 kilogram. But then, the prosecution did not carry out quantitative test. It is true that the contra band contains diacetyl morphine But the extent of the content was not mentioned in Ex.P13. In fact, non conducting of the quantitative test was the principal ground for granting bail to the appellant herein. No doubt, this is a serious lacuna on the part of the prosecution. But then, this lacuna had been set right at the appeal stage. The prosecution filed M.P.(MD)No.3 of 2012 and by order



dated 20.06.2013, a direction was given to the trial Court to send the remaining sample of the contraband to the Revenues Control Laboratory, Hill Side Road, PUSA Complex, New Delhi to conduct purity test and to get the report and to take additional evidence for proper adjudication of the appeal. In fact, such a course of action has been expressly permitted by the Hon'ble Division Bench in the decision reported in **2012-1-law weekly (Crl.) 70 (M.Veludurain Vs. State)**. The report from the forensic Lab has also been received as an additional evidence. From the additional evidence, it is seen that the purity content in the contraband was 23.6 % in one packet and 23.7% in the another packet. Therefore, since the quantity of the contraband was 3.200 kilogram, one can come to the conclusion that it contained heroin to the extent of more than 600 grams. As per NDPS Act, 250 grams of heroin would constitute commercial quantity. Thus, both the contentions urged by the appellant's counsel will have to be rejected. The Court below rightly found the appellant guilty and the sentence imposed on him was the minimum sentence stipulated in the statute. I find no merit in this case. This criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Additional District and Sessions Court cum Essential Commodities Act, Special Court, Pudukkottai.
- 2.-DO-Thro The Principal District and Sessions Judge, Pudukkottai.
- 3.The Superintendent of Customs, Customs,CPU Mandapam,Rameshwaram.
- 4.The Superintendent, Central Prison, Puzhall, Chennai.

+1 CC to M/s.C.ARUL VADIVEL, Advocate (SR-79153[F] dated 01/08/2019

Crl.A(MD)No.166 of 2012
01.08.2019

sma/30/01/2020/4p/6c