



Bail Slip

Udayan @ Udayasuriyan, S/o.Rasu Thevar (Sole Accused), Male aged about 51/2018 years is released on bail vide Court Order dated 20.08.2018 made in Crl.MP(MD)No.5730 of 2018 in Crl.A(MD)No.326 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	27.01.2020
Date of Judgment	23.03.2020

CORAM

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

Crl.A.(MD)No.326 of 2018

Udayan @ Udayasuriyan

: Appellant/Sole Accused

Vs.

The State represented

by the Inspector of Police,

Chekanurani Police Station, Madurai City.

(Crime No.23 of 2012)

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the judgment of the Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai, passed in C.C.No.274 of 2013, dated 10.07.2018.

For Appellant

: Mr.P.Ponmanoharan

For Respondent

: Mr.V.Neelakandan

Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment of the Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai, passed in C.C.No.274 of 2013, dated 10.07.2018.

2. According to the prosecution, on 21.01.2012 at 12.45 pm, opposite to Old Vadivel Theatre, Chekanurani-Madurai Road, the appellant/accused was found in possession of 5.500 kilogram of Ganja.

3. The trial court, after proper appreciation of the entire materials available on record, both oral and documentary found the appellant/accused guilty for the offence under section 8(c) r/w 20 (b)(ii)(B) of NDPS Act, convicted and sentenced him to undergo two years of rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 3 months simple imprisonment. Aggrieved by the judgment of the trial court, the appellant/accused is before this court.

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 as far as the compliance of mandatory provisions namely sections 42 and 57 of the NDPS Act have not been scrupulously followed by the Investigating Officer during the course of investigation and in fact, though PW3 has stated in her evidence that she informed to the superior officer namely PW4, but to that effect there is no endorsement for receiving it by PW4, yet the learned trial Judge has simply accepted the prosecution version

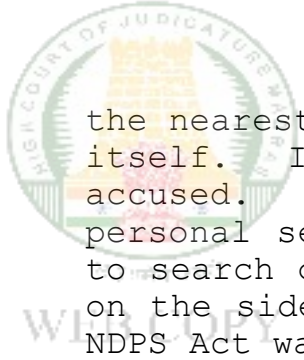


purely based on the oral version of the witnesses, whereas those compliances are required to be proved through documentary evidence and prays that the appellant/accused is entitled to acquittal. For that, the learned counsel for the appellant/accused submitted a ruling reported in **2017(4) Crimes 157 (Babulal Vs. State of Rajasthan)**.

6. In this case, it is to be decided as to whether the provisions under sections 42 and 57 of the NDPS Act was complied with or not. The Police Official, who received the secret information was examined as PW3. PW3 deposed that on 21.12.2012 at 12.00 hours, she received secret information through telephone and received the same and also obtained permission from her superior officer to conduct the raid and thereafter, she proceeded with the police party. PW4 is the Superior Officer of PW3. PW4 deposed that after he received the information from PW3, he permitted PW3 to conduct the raid. To prove that the secret information received by PW3, then she reduced into writing and sent it to PW4 for obtaining permission from him to conduct the raid, Exs.P5 and P6 are produced. On perusal of Ex.P5, it is stated that the informant informed that the appellant/accused attempted to sell Ganja opposite to Vadivel Theatre at Madurai, Theni Road. On perusal of Ex.P6, it reveals that PW3 sent the above information to PW4 for getting permission to conduct the raid and PW4 granted permission to PW3 to conduct the raid. Hence from Exs.P5 and P6, it reveals that the information given by the informant to PW3 and it was reduced into writing and it was sent to PW4, who is the superior officer of PW3 and PW4 granted permission to conduct raid to PW3. Hence, in this case, the provisions under section 42 and 57 of NDPS Act were correctly complied with. Hence, the argument put forth on the side of the appellant/accused stating that the provisions under section 42 and 57 of the NDPS Act are not complied with is not at all acceptable.

7. The next contention raised on the side of the appellant/accused is that section 50 of NDPS Act was not strictly followed and hence, the appellant/accused is entitled to acquittal.

8. PW3 deposed that after receiving the information and after obtaining permission from PW4, she along with police party went to the place of the occurrence and they saw that the accused with a plastic gunny bag and she explained to the accused about her entitlement to be searched in the presence of Gazetted Officer or nearest Magistrate and in this regard, the accused waived his right and agreed to search him by the police itself and thereafter, they searched the plastic gunny bag and they found that there was 5.500 kgs of Ganja and she recovered the above Ganja in the presence of PW1 and the police party, since she has taken steps to call the independent person to stand as witness, but no one came forward to stand as witness and then, she arrested the accused and recorded his statement and then, she returned to the police station and registered the case. Further, PW3 stated that the accused himself waived his right of search before the Gazetted Officer or before



the nearest Magistrate and he agreed to conduct search by the police itself. In this case, PW3 searched the plastic gunny bag of the accused. Further, section 50 of the NDPS Act only applies to personal search. Hence, section 50 of the NDPS Act does not extend to search of the bag of the accused. Hence, the argument put forth on the side of the appellant/accused stating that section 50 of the NDPS Act was not complied with is not at all acceptable.

9.The learned counsel appearing for the appellant/accused argued that in Ex.P1 Athatchi, PW3 did not obtain the signature of the appellant/accused and hence, it is fatal to the prosecution.

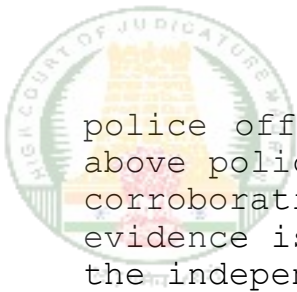
10.PW3 deposed that the appellant/accused voluntarily handed over the contraband to her and hence, she did not obtain the signature of the appellant/accused in Ex.P1. The evidence of the prosecution witnesses in respect of confession of the accused, search and seizure of the contraband is trust-worthy. Hence, the non-obtaining of the signature of the appellant/accused in Ex.P1 will not affect the case of the prosecution.

11.The further contention raised on the side of the appellant/accused is that there is a delay in sending the sample to the chemical analysis and hence, it is fatal to the prosecution.

12.PW3 deposed that she recovered the Ganja weighing 5.500 kgs from the accused under Ex.A1 Attachi and she took two samples weighing 50 grms each from the contraband and put the S.H.O seal and PW1 and the Head constable put their signature in the Attachi. The Scientific Officer, Forensic Laboratory, Madurai was examined as PW2. PW2 deposed that he received sample M01 and scientifically analysed and found cannabinoids on it and he prepared the analysis report. PW3 categorically stated after taking sample, she put the SHO seal. PW2 has not stated that he found any tempering in the seal. The sample was received on 21.01.2012 but it was sent for chemical analysis on 21.05.2012. It is fault on the side of the Investigating Officer. Hence, it will not affect the case of the prosecution. PW2 has not found any temper in the contraband. Hence, it shows that he received the material object intact. Therefore, the delay in sending the contraband to the chemical analysis will not affect the case of the prosecution.

13.The next contention raised on the side of the appellant/accused is that no independent person was examined on the prosecution side to prove the alleged search and seizure, even though the place of occurrence is a busy locality and hence, the non-examination of independent witness is fatal to the prosecution.

14.In this case, PW3 categorically deposed that she took steps to call the independent persons to stood as witnesses, but they refused and hence, in the presence of the police officials, she recovered 5.500 kgs of Ganja. In this case, in the presence of police witness, PW3 recovered the Ganja. When the evidence of



police officials are reliable and trustworthy, the evidence of the above police officials can be relied upon without having independent corroboration. On perusal of the evidence of PW1 and PW3, their evidence is reliable and trustworthy. Hence, the non-examination of the independent witness will not affect the prosecution case.

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15. On careful perusal of the evidence of PW1 and PW3, it reveals that the accused was in custody of the illegal possession of the contraband. PW3 prepared Ex.P11 with full particulars in terms of section 57 of the NDPS Act. It is the duty of the accused to rebut the evidence by way of preponderance of probabilities and if the accused failed to do so, the court has to presume that the accused was in possession of the contraband. But the accused failed to explain how he was in possession of the contraband. Further, the accused failed to produce any document to show the valid possession of the contraband. Hence, it is held that the accused failed to prove how he was in possession of the contraband. Hence, it is held that on the date of the occurrence, the accused was in illegal possession of the contraband. Hence, the trial court correctly came to the conclusion that the accused committed the offence and it is not necessary to interfere with the findings of the trial court.

16. For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is correct and accordingly, it is confirmed.

17. In the result, the criminal appeal fails and the same is **dismissed**.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

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To,

1. The Principal Special Judge for EC & NDPS Act Cases, Madurai.

2. The Inspector of Police,

Chekanurani Police Station, Madurai District.

3. The Superintendent, Central Prison, Madurai.

4. The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

Copy to: The Record Keeper, Criminal Section

Madurai Bench of Madras High Court,

Madurai. (2 copies)

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23.03.2020