



BAIL SLIP

The Appellant/Sole Accused Kalaiyarasi W/o.Chinnasamy was directed released on bail by the order of this court dated.30.01.2017 and made in Crl.MP(MD)No.847/2017 in Crl.A(MD) No.454/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
Crl.A(MD)No.454 of 2016

Kalaiyarasi : Appellant/Sole Accused

Vs.

State Rep. by
The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
(Crime No.908 of 2004)

: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records in C.C.No.311 of 2006 dated 22.11.2016 on the file of the learned II Additional Special Sessions Judge (NDPS Act Cases), Madurai and set aside the same.

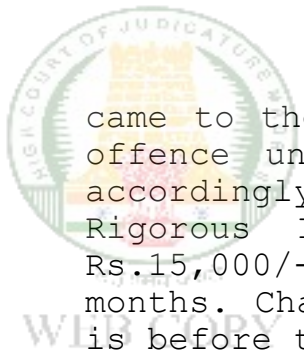
For appellant : Mr.M.Jegadeesh Pandian
For Respondent : Mr.M.Muthumanikkam
Government Advocate (crl.side)

JUDGMENT

The present appeal is directed against the conviction and sentence, dated 22.11.2016, made in C.C.No.311 of 2006, on the file of the II Additional Special Sessions Judge (NDPS Act Cases), Madurai.

2.The appellant is the sole accused. He stood charged for the offences punishable under Section 8(c) r/w 20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges.

3.After full-fledged trial, the learned Presiding Officer of the II Additional Special Sessions Court (NDPS Act Cases), Madurai,



came to the conclusion that the appellant was found guilty for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act and accordingly, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.15,000/-, in default, to undergo Rigorous Imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

4. The relevant facts of the case, which gave rise to the filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i) PW1-Sadaiyandi is the then Head Constable, Palani Taluk Police Station, Dindigul District. PW3-Mahamuni, is the then Sub Inspector of Police in the same police station. On 06.11.2004, around 11.00 a.m when they were on duty to find out the prohibition offences, they found the accused with one plastic white bag. Suspecting over the attitude of the accused, PW1 and PW3 along with team approached the accused and informed about the right having by the accused in respect to the search under Section 50 of NDPS Act. In this regard, the appellant/accused was not intended to exercising his right, further, he permitted the PW3 for making search. Thereafter, during the time of search, it was identified by PW3 that the accused possessed 7 kgs of ganja. From the said contraband, the Investigation Officer in this case collected 50 kms of ganja and by following the procedure, the same was sealed for the purpose of chemical examination. The remaining contraband was backed and sealed and thereafter, in the Mahazar prepared for the recovery, PW1 and other Police Personal who were accompanying at the time of search, signed as a witness. Subsequent to the recovery, the accused was brought to the police station and FIR has been registered against him in Crime No.908 of 2004 under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act. The Recovery Mahazar prepared by PW3 was marked as Ex.P1 and the copy of the printed FIR was marked as Ex.P5.

(ii) After completing the above formalities, the sealed contraband and the sample contraband were sent to the Court and thereafter, PW3 submitted the requisition letter dated 31.01.2005 to the jurisdictional Court praying to send the sample for chemical examination. The requisition letter given by PW3 was marked as Ex.P2. In turn, vide Ex.P3 dated 01.02.2005 the letter has been issued to the chemical examiner for chemically examine the sample contraband.

(iii) PW2-Mani was working as Assistant Director, Forensic Science Department, Madurai. On 01.02.2005, while he was on the same post, he received the contraband along with the requisition given by PW3. Subsequent to that, in view of the reference issued by the Court, he examined the contraband and issued the report under Ex.P4

<https://hcservices.mca.gov.in/hcservices/>



receipt of the said report, PW3 came to the positive conclusion that the accused herein was found illegal possession of ganja. He filed the final report accordingly.

5. Based on the materials available on record, the trial Court framed the charges for the offences under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, three witnesses were examined as PW1 to PW3 and 5 documents were exhibited as Ex.P1 to Ex.P5.

7. Out of the above said witnesses, PW1 the then Head Constable, Palani Taluk Police Station, Dindigul District, claims that during the time of recovering the contraband, he signed as witness in the Mahazar prepared by PW3 for recovering the contraband. PW2 is the Assistant Director, Forensic Department. He speaks about the examination of contraband. PW3-Mahamuni, the then Inspector of Police, Palani Taluk Police Station, Dindigul District, speaks about the search conducted over the accused, registration of the case and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, he did not choose to examine any witness nor mark any document on his side.

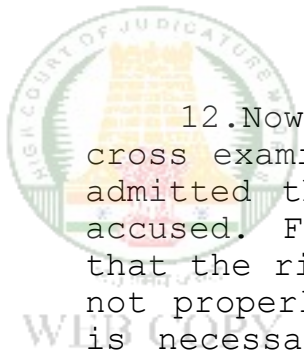
9. Having considered all the above, the learned Presiding Officer of II Additional Special Sessions Judge (NDPS Act Cases), Madurai, came to the conclusion that the accused found guilty for offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act and accordingly, the appellant was convicted and sentenced as stated in paragraph No.3 of this judgment, Aggrieved by the said conviction and sentence, the appellant/accused is before this Court with this appeal.

10. I have heard Mr.M.Jegadeesh Pandian, learned counsel appearing for the appellant/accused and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

11. The learned counsel appearing for the appellant challenges the impugned judgment in two folds:-

(i) before making search, in respect to the right having by the accused under Section 50 of NDPS Act, is not explained to him.

(ii) after recovering the contraband, the same has not been
<https://hcmrecords.gov.in/services> the trial Court immediately without any delay.



12. Now on considering the first submission, it is true in the cross examination of PW1 the investigation officer in this case had admitted that he has not obtained Consent Search Letter from the accused. Further on go through his chief examination, it appears that the right having by the accused under Section 50 of NDPS Act is not properly explained before making search. In this occasion, it is necessary and useful to see the judgment of our Hon'ble Apex Court reported in **(2011) 6 SCC 392** in the case of **Narcotics Control Bureau Vs Sukh Dev Raj Sodhi**, wherein it has been held as follows:-

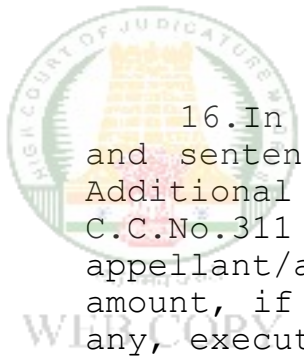
4. The obligation of the authorities under Section 50 of the NDPS Act has come up for consideration before this Court in several cases and recently, the Constitution Bench of this Court in Vijaysinh Chandubha Jadeja Vs State of Gujarat has settled this controversy. The Constitution Bench has held that requirement of Section 50 of the NDPS Act is a mandatory requirement and the provision of Section 50 must be very strictly construed.

Accordingly, as per the observation made by our Hon'ble Apex Court in this case, the mandatory provision under Section 50 of the NDPS Act has not been followed and therefore, the first submission made by the learned counsel appearing for the appellant is fully with aid of appellant.

13. In respect to the second submission, it is not in dispute that on 06.11.2004 itself, the contraband was recovered from the accused. Thereafter, the same had reached the Scientific Officer only on 01.02.2005. In respect to the delay, it was admitted by the Investigation Officer as the contraband has been sent to the Court with the delay of 2½ months. Therefore, in the said circumstances, it is the duty vested upon the Investigation Officer to show under whose custody the contraband was available from the date of recovery to the date on which the property was handed over to the Court.

14. In otherwise Section 52(A) of NDPS Act says that whenever any contraband goods under the NDPS Act is seized, an inventory should be made as per the procedure prescribed in the Section and a certificate issued by the Magistrate in the matter shall be a primary evidence in the case. The said provision has not also been followed in the present case.

15. In the light of the above discussions, I am of the opinion that while at the time of investigation, the prosecution agency has not followed the mandatory provisions which required by law. Thus, we hold that non-following the mandatory provision amounts to non-proving of prosecution.



16. In fine, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused, by the learned II Additional Special Sessions Judge (NDPS Act Cases), Madurai, in C.C.No.311 of 2006 dated 22.11.2016, is set aside and the appellant/accused is acquitted from all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The II Additional Special Sessions Judge (NDPS Act Cases),
Madurai.
2. Do Through The Principal Sessions Judge,
Madurai District.
3. The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
4. The Special Prison for women,
Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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GC/25.08.2021/5P/8C