



**Bail Slip**

Markandan, S/o.Veerana Thevar, Male, (Sole Accused) is released on bail vide Court Order dated 29/10/2010 made in MP(MD)No.1 of 2010 in Crl.A(MD)No.151 of 2009.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Dated : 31.08.2019**

**CORAM :**

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**Crl.A(MD).No.151 of 2009**

Markandan

... Appellant/Sole Accused

Vs

The State, represented by the  
Inspector of Police  
Usilampatti Taluk Police Station  
Madurai District  
(Crime No.61/2003)

... Respondent/Complainant

Prayer : Appeal filed under Section 374 of Code of Criminal Procedure, to set aside the Judgment and Conviction of the appellant/sole accused in C.C.No.145 of 2006 on the file of the Special District and Sessions Judge(NDPS), Madurai dated, 12.05.2009.

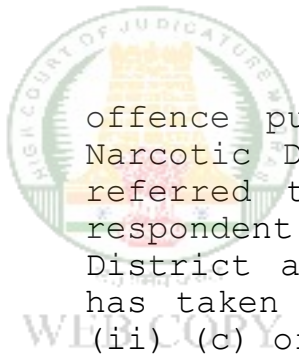
For Appellant :Mr.R.Anand

For Respondent :Mr.A.P.G.Ohm Chairma Prabhu  
Government Advocate (Crl.Side)

**JUDGMENT**

This appeal has been filed against the conviction and sentence imposed by the learned Special District and Sessions Judge (NDPS), Madurai in C.C.No.145 of 2006, dated 12.05.2009.

2.The case of the prosecution is that based on the secret information, on 29.01.2003 at 08.15 a.m, the respondent police found that the appellant/accused was in possession of 22 kg ganja. After the procedural formalities, the respondent police registered a case in Crime No.61 of 2003 against the appellant/sole accused for the



offence punishable under Section 8(C) r/w 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS ACT'). After completing investigation, the respondent police has laid a charge sheet before the learned Special District and Sessions Judge (NDPS), Madurai and the learned Judge has taken cognizance for the offence under Section 8(C) r/w 20(b)(ii) (c) of NDPS Act in C.C.No.145 of 2006.

3. In order to prove the case of the prosecution, on the side of the prosecution, as many as 4 witnesses were examined, viz., P.W.1 is the Head Constable, P.W.2 is the Sub Inspector of Police and P.W.4 is the Inspector of Police, 9 documents were marked and 3 material objects were exhibited. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses put before the accused, he had denied as false. On the side of the defence, no oral and documentary evidence has been produced.

4. After perusing the oral and documentary evidence and hearing the arguments on both sides, the learned Special District and Sessions Judge (NDPS), Madurai convicted the appellant for the offence under Section 8(C) r/w 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to undergo 10 years rigorous imprisonment and fine of Rs.1,00,000/-, in default to pay fine, to undergo 6 months simple imprisonment. Against the Judgment of the learned Special District and Sessions Judge (NDPS), Madurai, the convict has preferred this appeal before this Court.

5. The learned counsel appearing for the appellant would submit that the mandatory provisions of Section 42 of NDPS Act, have not been duly complied with. Though P.W.2, the Sub Inspector of Police has stated that usually, he received the secret information and the same was reduced into writing and intimated to the Superior Officer, but in this case, no such written information has been produced before the Court and also the direction of the Superior Officer has not been produced. Therefore, the learned Counsel submitted that there is a violation of mandatory provisions of Section 42 of NDPS Act.

6. The learned Counsel for the appellant further contended that the respondent police has not complied with Section 50 of the NDPS Act. He further contended that Section 57 of the NDPS Act prescribes the following;

*"whenever any person makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate Official Superior"*



But, in this case, the respondent police has not filed any report. The learned counsel further submitted that no independent witness has been examined and the prosecution have failed to prove his case beyond reasonable doubt and hence, he seeks this Court to interfere with the Judgment passed by the Court below.

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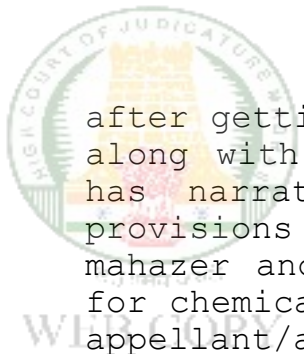
7. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that P.W.2, the Sub Inspector of Police, has received the information from the informant, which was then reduced into writing and informed the same to the Superior Officer, viz., P.W.4, the Inspector of Police. Thereafter, the respondent police along with police party went to the spot and intercepted the appellant/accused. At that time, they found that the appellant/accused was in possession of ganja weighing about 22 kg. After completing all the formalities, the contraband was recovered from the appellant/accused. The respondent police has taken 50 gm of ganja for sample and another 50 gm for chemical analysis. Thereafter, the contraband and the accused were produced before the Investigating Officer. After completing the investigation, the Investigating Officer has laid a charge sheet in this case. Therefore, there is no violation of mandatory provisions and the prosecution has proved the case beyond all reasonable doubts.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the State and also perused the materials available on record.

9. On a perusal of record, it is seen that on 29.01.2003 at about 8.15 a.m, the Sub Inspector of Police (P.W.2) has received the secret information, which was then reduced into writing and was informed to the Superior Officer. As per the direction of the Superintendent of Police, the Police Official went to the spot headed by the Inspector of Police (P.W.4). At that time, they found that the appellant/accused was in possession of 22 kg of Ganja. After completing the mandatory provisions of NDPS Act, the respondent police arrested the appellant/accused and produced him before the Court below. After examining the samples of contraband, the report has been submitted before the trial Court. In view of the above, it is proved that the alleged contraband recovered from the appellant/accused has substance of Ganja.

10. In this case, P.W.1 the Head Constable has clearly narrated that he along with P.W.2 intercepted the appellant/accused and found that the appellant was in possession of 22 kg of ganja. After completing all the mandatory provisions of NDPS Act, they called independent witness for getting signature, no one has come forward to stand as witness and hence, the Head Constable (P.W.1) himself stood as witness for the occurrence. After taking the samples of contraband for chemical analysis, they prepared the Mahazer and arrested the appellant/accused. The evidence of P.W.1 clearly shows

<https://hdservices.ejgls.gov.in/hcservices/>



after getting direction from the Superintendent of Police, they went along with P.W.4, the Inspector of Police, to the spot. The P.W.1 has narrated the event and after complying all the mandatory provisions as contemplated under the NDPS Act, they prepared the mahazer and recovered the ganja and also took the samples of ganja for chemical analysis. Therefore, the respondent police arrested the appellant/accused and produced with the report before the Investigating Officer. Subsequently, the same have been submitted before the Court below. The Court below sent the samples of contraband to the Forensic Department. Thereafter, the report was received which shows that alleged contraband recovered from the appellant/ accused has substance of Ganja.

11.Though the learned counsel for the appellant would submit that the mandatory provision of Section 42 of the NDPS Act has not been complied with in this case, on reading of the evidence of P.W.2 shows that after receiving information from the informant, he placed the same before the Superior Officer and after obtaining direction from the Superintendent of Police, they went to the spot. In this case, P.W.2 is the Sub Inspector of Police and P.W.4 is the Inspector of Police, who is the immediate Superior Officer to P.W.2. Therefore, the inspection has been conducted under the head of Superior Officer (P.W.4). It seems that there is no need to get permission from other Superior. As far as P.W.2 is concerned, P.W.4 is the immediate Superior Officer. Therefore, in this case, non submission of written information will not amount to violation of the mandatory provision Under Section 42 of the NDPS Act.

12.It is seen from the evidence of P.W.2 and P.W.4 that, on the date of occurrence, they went to the spot and intercepted the appellant/accused and they have also intimated right and obligation to the appellant/ accused and the appellant voluntarily gave his bag, which was in possession of him and the respondent police have also found that the appellant was in possession of 22 kg of ganja. After complying all the mandatory provisions of the NDPS Act, the respondent police has taken the samples of contraband and therefore, there is no violation of the mandatory provisions under Section 50 of the NDPS Act and in this case, there is no recovery from the body. Therefore, there is no violation of Section 50 of NDPS Act.

13.Further, it is seen from the evidence of P.W.1, P.W2 and P.W.4 that, they called independent witness, since no one has come forward to stand as witness, P.W.1, the Head Constable has stood as witness of the occurrence.

Section 57 of NDPS Act, reads as follows:

*" report of arrest and seizure, shall be intimated immediately to the Superior Officer"*

14.In the present case on hand, P.W.2 intimated the arrest of the accused to P.W.4, the Inspector of Police, who is the immediate Superior Officer to P.W.2, the Sub Inspector Police. The



Inspector of Police (P.W.4) himself accompanied with P.W.2 and therefore, the non submission of arrest report stipulated under the provision of Section 57 of NDPS Act does not arise. The appellant/accused, the contraband and other materials were produced before the Superior Officer.

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15. Under the above circumstances and considering the evidence of P.W.1, P.W.2 and P.W.4, there is no violation of mandatory provisions of NDPS Act and also from the evidence of P.W.3, the chemical analyzer shows that he received the sample pack from the Court with sealed cover and after examining his entire report, the Court below found that the alleged contraband has substance of Ganja. Therefore, the prosecution has proved its case beyond reasonable doubt.

16. Though the learned counsel for the appellant/sole accused has vehemently contended that there is a violation of the mandatory provision in this case, on reading of the entire records, this Court finds that there is no violation of the mandatory provisions of NDPS Act.

17. Considering the oral and documentary evidence and also considering the facts and circumstances of the case and quantum of contraband recovered from the appellant, this Court does not find any reason to interfere with the Judgment of the trial Court and there is no merit in the appeal. Under such circumstances, the conviction and sentence imposed in C.C.No.145 of 2006 by the learned Special District and Sessions Judge (NDPS), Madurai on 12.05.2009 is hereby confirmed.

18. Accordingly, this Criminal Appeal is dismissed. The respondent police is directed to secure the custody of the appellant/sole accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS )

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To

1. The Special District and Sessions Judge (NDPS),  
Madurai.



2. Inspector of Police,  
Usilampatti Taluk Police Station,  
Madurai District.
3. The Superintendent, Central Prison,  
Madurai.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. (2)

**Crl.A(MD).No.151 of 2009**  
**31.08.2019**

CS(06.11.2019) 5P 7C