



Bail Slip

The Appellant/Accused namely Palani, S/o.Ayyar Thevar was released on bail by this Hon'ble Court made in MP(MD).No.1/2009 in Crl.A.(MD).No.132 of 2009 dated 20.05.2009.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD)No.132 of 2009

and

M.P.(MD) No.1 of 2009

Palani

... Appellant/ Accused(Single)

Vs.

State through
The Inspector of Police
Usilampatti Police Station
Madurai District,
(Crime No.379/2006)

... Respondent/ Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure as against the conviction and sentence imposed by the Learned Special District and Sessions Judge (for NDPS Act cases) Madurai in C.C.No.612 of 2006 vide his judgment dated 24.04.2009 by convicting the appellant under Section 8(c) r/w 20 (b) (ii) (B) of NDPS Act and sentenced to undergo six months R.I. and to pay a fine of Rs.5,000/- in default to undergo one month S.I.

For Appellant : Mr.R.Anand

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu,
Govt., Advocate(Criminal Side)

J U D G M E N T

This Criminal Appeal is filed against the judgment and conviction rendered by the Learned Special District and Sessions Judge (for NDPS Act cases) Madurai in C.C.No.612 of 2006 vide judgment, dated 24.04.2009, convicting the appellant under Section 8 (c) r/w 20 (b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and sentenced him to undergo six months Rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple



imprisonment.

2.The brief facts leading to this case are as follows:-

The case of the prosecution is that on 15.11.2006 at about 11:45 a.m. the Sub Inspector of police was conducting usual check up along with P.C.1583 and also with other P.C. near the junction of Usilampatti Seerpatti Boviyampatti road. In a nearby bus stand, the accused was standing in a suspicious manner. Therefore, the police party surrounded the appellant and when they enquired him, he voluntarily confessed that he is in possession of Ganja. The respondent police after complying with the mandatory provisions of the NDPS Act, recovered the contraband from the appellant through the seizure mahazar. Subsequently, after duly complying with the provisions of the NDPS Act and after the preparation of mahazar, the respondent police sent the recovered sample for forensic laboratory for examination of the sample. The Court has received the report which states that the seized contraband was ganja. On completion of investigation, the prosecution laid the final report against the accused before the Special Court.

3. Before the Trial Court, on the side of the prosecution, P.Ws.1 to 4 were examined, Exhs.P1 to 8 and M.O.1 to M.O.3 were marked. On questioning under Section 313 Cr.P.C., the accused denied charges. On the side of the defence, no oral and documentary evidence were served. After completing the trial and hearing of the arguments advanced on either side and considering the oral and documentary evidence produced by the prosecution, the trial Court had found the accused guilty for the offence under section 8(c) r/w 20 (b) (ii) (B) of NDPS Act and convicted him as above. Aggrieved over the same, the present Criminal Appeal came to be filed.

4. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent police.

5. The learned counsel for the appellant would submit that, in this case, various statutory provisions as contemplated under the NDPS Act have not been duly complied with. One among them is that Section 42 of the NDPS Act and its sub clauses have not been complied with. Though P.W.1 has stated that during the usual search and patrol duty, they found the suspected person and when the appellant was enquired, he voluntarily produced the packet in which there was material of contraband. Whereas P.W.3 has stated that after receiving secret information, they went to the spot. That being the case, they have to comply with Section 42 of the NDPS Act. The secret information received by the prosecution witness has to be



reduced into writing and placed before the superior official and permission has to be obtained to proceed to the spot, which is absent in this case.

6. He would further submit that Section 50 of the NDPS Act has not been duly complied with. Even before the search and arrest of the appellant, in the arrest memo, the quantity of the contraband has been mentioned and that itself creates suspicion that P.W.3 came to a conclusion that the contraband which was kept in the polythene bag weighs about 4 kg and the rights contemplated under Section 50 of NDPS Act have not been duly intimated to the appellant before conducting the search which requires interference of this Court.

7. It is further stated that Section 57 of the NDPS Act also has not been duly complied with. P.W.3 has not reported before P.W.4 and therefore, there are material contradictions in the prosecution witnesses which affect the case of the prosecution and the learned Special Judge failed to consider the material contradictions and also the non-compliance of the mandatory provisions of the NDPS Act. Therefore, the learned Special District and Sessions Judge has wrongly convicted the appellant for the offence under Section 8(c) r/w 20 (b) (ii) (B) of NDPS Act, which warrants the interference of this Court.

8. The learned Government Advocate(criminal side) appearing for the State would submit that P.W.1 has clearly stated that during the usual check up, they found the appellant in a suspicious manner. Therefore, they intercepted him and when enquired, he handed over the polythene bag in which the contraband ganja was found. Therefore, the search was not made based on the secret information, following procedure under Section 42 does not arise. Since he has voluntarily given the packet and therefore, the violation of the mandatory provisions of Section 50 of the NDPS Act cannot be contended, since no body check up was done. Even otherwise, when the right of the accused was duly informed in writing through Ex.P.5, he himself stated that he would not be brought either before the Magistrate or a Gazetted officer. He has also given the consent that the police party themselves shall conduct a search on him and since there was no independent witness to come forward, there is no independent witness. All the mandatory provisions of the NDPS Act have been duly complied with and there is no violation of mandatory provisions. Since the seized contraband is ganja and the evidence of P.W.1, chemical analysis clearly stated that the sample contained ganja, the prosecution has proved the case beyond doubt and there is no need to interfere with the order of the learned Special Judge.

<https://hcservices.courts.gov.in/hcservices/> carefully considered the submissions made on either

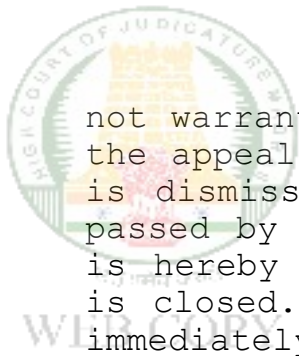


side and perused the records placed before this Court.

10. The case of the prosecution is that on 15.11.2006 at about 11:45 a.m. the Sub Inspector of police was conducting usual check up along with P.C.1583 and also with other P.C. near the junction of Usilampatti Seerpatti Boviampatti road. In a nearby bus stand, the accused was standing in a suspicious manner. Therefore, the police party surrounded the appellant and when they enquired him, he voluntarily confessed that he is in possession of Ganja. The respondent police after complying with the mandatory provisions of the NDPS Act, recovered the contraband from the appellant through the seizure mahazar. Subsequently, after duly complying with the provisions of the NDPS Act and after the preparation of mahazar, the respondent police sent the recovered sample to the Court to forward the same to forensic laboratory for examination of the sample. The Court has received the report which states that the seized contraband was ganja. The prosecution laid down the charge sheet before the Special Court, after the trial. The trial Court found that the appellant was guilty under Section 8(c) r/w 20 (b) (ii) (B) of NDPS Act. Therefore, the learned Special District and Sessions Judge (for NDPS Act cases) Madurai in C.C.No.612 of 2006 vide his judgment dated 24.04.2009 sentenced the appellant to undergo six months rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment.

11. On a reading of the deposition of P.W.1, chemical analyst, wherein he has clearly deposed that he received a sample tagged from the Court through a requisition letter and after analyzing, he found that the sample contains ganja. P.W.1 and P.W.2 are the members of the team who participated in the general check up. At the time of occurrence, they found the appellant standing in the bus stand in a suspicious manner. Therefore, they surrounded the appellant and after duly complying with the statutory provisions of the NDPS Act, they caught the appellant and filed a report under section 57 of the NDPS Act. The entire reading of the evidences of P.W.1 and P.W.3 clearly narrated that they found the appellant in a suspicious manner and therefore, they surrounded the appellant and enquired him and after explaining him about the rights under Section 50 of NDPS Act, search was conducted and the appellant himself voluntarily confessed about the possession of contraband ganja. All the incriminating materials along with the report of PW.4 the Investigating Officer prove the case of the prosecution.

12. Therefore, this Court does not find any violation of the provisions of the NDPS Act and therefore, the evidence of P.W.2 clearly shows that the recovered sample on chemical analysis, is a substance of ganja. Under these circumstances, the judgment of



not warrant the interference of this Court and there is no merit in the appeal filed by the appellant. Accordingly, the Criminal Appeal is dismissed. The judgment dated 24.04.2009 in C.C.No.612 of 2006 passed by the learned Special District and Sessions Judge, Madurai is hereby confirmed. Consequently, connected M.P.(MD) No.1 of 2009 is closed. Trial Court is directed to secure the appellant/accused immediately to serve remaining period of imprisonment, if any.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Special District and Sessions Judge (for NDPS Act cases),
Madurai
- 2.The Inspector of Police
Usilampatti Police Station
Madurai District,
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison, Madurai.

Judgment made in
Crl.A.(MD)No.132 of 2009

Dated: **31.08.2019**

JMN(06.02.2020) 5P : 5C