

FIR No. : 214/17
PS : Crime Branch
State v. Gulshan etc.

19.02.2019

Present: Sh. Absar Ahmed, Counsel for accused-applicant
James Kumar (**in bail application no. 50/19**).
Sh. Wasi-Ur-Rehman, Public Prosecutor for the
State.

Arguments heard. File perused.

This is second regular bail application on behalf of
accused-applicant. First bail application came to be dismissed
vide order dated 15.03.2018.

Learned Counsel for accused-applicant submits
that fresh ground is that this is a case of non-compliance with
provisions of Section 50 of the Act as the accused-applicant
was not taken to any Gazetted Officer or Magistrate for the
purpose of search. In support of his contention, Learned
Counsel for accused-applicant has relied on decision in "**Arif
Khan @ Agha Khan v. State of Uttarakhand**", Criminal
Appeal No.273 of 2007, by Hon'ble Supreme Court of India on
27.04.2018 and in "**Dharambir v. State, Crl. A.658/17**", on
13.11.2018 by our own Hon'ble High Court.

As per prosecution version, secret information was
received against one Gulshan and on the basis of secret
information, the police party reached the disclosed place I.e.

near bus stop, DDU hospital. Accused-applicant James Kumar came there and had conversation with Gulshan and then, the accused-applicant delivered one packet containing 1 kilogram charas to Gulshan, non-applicant. At the same time, from the possession of James 300 grams of charas was further recovered.

On the basis of said accusation, charge for an offence u/s 29 of NDPS Act has been framed against the accused-applicant and his co-accused as on 05.12.2017, they entered into criminal conspiracy for supply and transportation of charas. Charge for an offence u/s 20(b) (ii) (C) has also been framed against the accused-applicant for supply of 1 kilogram of charas and for keeping in possession 300 grams of charas.

The entire quantity of 1 kilogram 300 grams of charas falls in commercial category. In case of commercial category, there is bar u/s 37 of NDPS Act to the grant of bail.

Charge has already been framed and accused having pleaded not guilty and claimed trial, case has been listed for prosecution evidence.

In **Ram Gopal v. State**, Crl. Appeal No.676/2016 decided by our own Hon'ble High Court, on 16.10.2018, while referring to decision in Arif Khan's case and then referring to **Vijaysinh Chandubha Jadeja v. State of Gujarat** (2011) 1 SCC 609, it has been observed in the manner as :-

“The Supreme Court therefore, has held that while the obligation of the authorised officer under Section 50 (1) of the Act is mandatory and requires strict compliance, the suspect may or may not choose to exercise the right provided to him under the said provision. It was further held that the question whether or not the procedures prescribed under Section 50(1) of the Act has been followed and the requirement prescribed therein has been met, is a matter of trial”.

Case is pending trial. At this stage, accused-applicant James Kumar cannot take advantage of decision in Arif Khan and Dharambir's case (Supra). In view of the bar u/s 37 of NDPS Act, the accused-applicant is not entitled to bail at this stage. As a result, bail application is hereby dismissed.

Copy of the order be given dasti, as requested.

Announced.

(Narinder Kumar)
Special Judge NDPS – 02 (Central)
Tis Hazari Courts, Delhi.19.02.2019