

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

**03.07.2018**

Present: Sh.Wasi-Ur-Rehman, Addl. PP for the State with  
IO-Inspector Shiv Darshan.

Accused Gulshan in JC, with Counsel Ms. Shefali  
Sharma, who has filed vakalatnama just now.

Accused James in JC, with Counsel Sh.Afsar  
Ahmed.

Heard on the point of charge. File perused.

In brief, case of prosecution is that on the basis of  
secret information Gulshan accused was found present near  
Bus Stop, DDU Hospital, Hari Nagar, whereas co-accused  
James Kumar came there and delivered one packet containing  
substance I.e. charas weighing 1 kg., to Gulshan.

Accused James was also found in possession 300  
grams of charas. He is said to have carried the whole quantity  
I.e. 1kg. 300 grams in a bag. Before the recoveries, notices u/s  
50 of NDPS Act are said to have been served upon the accused  
persons.

2. Learned Counsel for accused James Kumar has  
submitted that in view of decision in “**Arif Khan @ Agha Khan  
vs. The State of Uttarakhand**” Criminal Appeal NO.273 of  
2007 decided on 27.04.2018, compliance with provisions of

Section 50 of NDPS Act by way of production of accused persons before Gazetted Officer or Magistrate was mandatory and since they were not produced before any Gazetted Officer or Magistrate, this is a case fit for discharge of James Kumar accused.

3. Learned Addl. Public Prosecutor has opposed the contention while rightly submitting that in the present case the contraband was being carried by James in a bag and recovery having been made from the said bag, provisions of Section 50 of NDPS Act are not attracted, but even then Investigating Officer served notices u/s 50 of the Act and when the accused opted to be subjected to search by the police party even in absence of Gazetted Officer or Magistrate, decision in “**Arif Khan @ Agha Khan vs. The State of Uttarakhand**” Criminal Appeal NO.273 of 2007 decided on 27.04.2018 does not come to the aid of accused at this stage.

4. Learned Counsel for accused Gulshan submits that let charge be framed against the accused in view of the allegations levelled against him.

5. In view of the material available on record, which includes the electronic evidence regarding conversation between two accused on respective mobile phones on the concerned date, statements of witnesses, seizure memo and report received from the expert of FSL, prima facie case for an offence u/s 20 (b) (ii) © is made out against both the accused,

and prima facie case for an offence u/s 29 of NDPS Act is also made out against both the accused persons. Charge be framed against them.

(Narinder Kumar)  
Special Judge NDPS – 02 (Central)  
Tis Hazari Courts, Delhi.03.07.2018

Present: As above.

Charge framed to which accused persons have pleaded not guilty and claimed trial.

PWs cited at sl.no. 5 and 9 be summoned for 25.09.2018.

Learned Addl. Public Prosecutor submits that inadvertently concerned ACP has not been cited as a witness and he be allowed to be arrayed as a witness.

Reader to ACP has already been arrayed as a witness at serial no.7. In view of the request of Learned Addl. Public Prosecutor, ACP is allowed to be cited as a witness.

(Narinder Kumar)  
Special Judge NDPS – 02 (Central)  
Tis Hazari Courts, Delhi.03.07.2018