

IA No. 02/2020  
SC No. 25/18  
FIR No. 145/17  
PS: Crime Branch  
State Vs. Mohd. Irshad

11.03.2020

**File taken up today on an application for grant of bail moved on behalf of applicant/accused Mohd. Irshad.**

Present: Sh. Mukul Kumar, Ld. Sub. Addl. PP for the State.  
Sh. K.N. Sharma, Ld. LAC for applicant/accused Mohd. Irshad.

Submissions on bail application heard.

1. The applicant has been put on trial on the charge of offence punishable u/s 21 (c) of NDPS Act on the allegations that he was found having 800 grams of Heroin without license or permit on 29.08.2017.

2. The applicant is seeking bail in the present case on the grounds that he is innocent and falsely implicated in the present case and nothing has done by the applicant/accused and nothing was recovered from the possession of the applicant/accused or at his instance and that the recovered contraband was planted by the police only for false implication of the applicant/accused in this case. It is submitted that police have not complied with the mandatory provisions of Section 42 & 50 of NDPS Act as the police has failed to join the Gazetted Officer / Magistrate at the time of alleged recovery and that police have failed to join any independent person in the proceedings or at the time of alleged recovery, while the place of apprehension is a thorough fare and that applicant/accused is aged about 25 years and is neither involved in any case nor a previous convict and is having clear antecedents. Reliance is placed upon the case of Akhilesh Bharti Vs State, Bail application No. 973/2019 decided on

18.02.2020 by Hon'ble High Court of Delhi.

3. On the other hand, the application is opposed by Ld. Substitute Addl. PP for State with the submissions that the witnesses examined so far have supported the charge and there was recovery of commercial quantity of Heroin from the accused therefore he cannot be released on bail. It is submitted that the provisions of Section 50 was duly complied as prior to the personal search of the accused, he was made aware of his right to be searched in the presence of a Magistrate or Gazetted Officer and only upon his denial to avail his right, his personal search was conducted. It is submitted that no contraband was recovered from the personal search of the accused but the accused was having bag in which the Heroin was recovered. It is submitted that all the mandatory provisions under the NDPS Act were duly complied with.

4. I have gone through the file with the assistance of the counsel for the accused and Ld. Substitute Addl. PP.

5. Non joining of the public witnesses during the search is not fatal in all cases and the court is required to deal with the facts of each case individually. In respect of compliance of Section 50 of NDPS Act and its effect on the bail application is considered by Hon'ble High Court of Delhi in case of Akhilesh Bharti Vs State.

5. In the case of **Akhilesh Bharti Vs State**, which is also for recovery of ganja of commercial quantity in a bag held by accused, the Hon'ble High Court of Delhi upon consideration of case of **Vijaysinh Chandubha Jadeja (2011) 1 SCC 609**, case of **Arif Khan AIR 2018SC2123** and case of **S. K. Raju (2018) 9 SCC 708** has come to the opinion that the provisions of Section 50 of NDPS Act

has not been complied with as per law and has found the case to admit the accused on bail. It is the requirement of law that the person whose search is to be taken has to be apprised of his right to be searched before a Gazetted Officer or before a Magistrate and despite his denial, he is to be produced before Gazetted Officer or a Magistrate for his search. It is also observed that the provision of Section 50 NDPS Act also attracts in the case in which the contraband is recovered from a bag or a vehicle carried by the person and his personal search is taken after the recovery.

6. In the facts of the present case, in light of observation of Hon'ble High Court of Delhi in case of Akhilesh Bharti where the accused has not been produced for his search before any Gazetted Officer or the Magistrate in compliance of Section 50 of the NDPS Act, I am of the view that the case is made out to admit the applicant/accused on bail. **Hence application for grant of bail of applicant is allowed.** Applicant/accused Mohd. Irshad is admitted to bail on furnishing of bail bond in the sum of Rs. 50,000/- with one surety of the like amount.

Application is disposed off accordingly.

(SUNIL CHAUDHARY)  
Special Judge (NDPS)/ASJ/  
NE/KKD/Delhi/11.03.2020