

S.T-5(11)22

NDPS-57/19

15.11.2022

Accd Karan Panchal, Priyam Panchal and Dhee Majumder on C.B are present in court.

Record is taken up for hearing on the point of charge along with prayer of the defence U/s. 36A NDPS Act to send the C.R to the court of J.M of first class considering the offence made out in the charge sheet U/s. 20(b)(ii)a/27 NDPS Act as well as the alleged offence involving small quantity of contraband substance where maximum punishment prescribed for a term which may extend to six months.

Hd. ld. Defence counsel as well as ld. P.P.

It has been submitted by the ld. Defence counsel that since the case involves small quantity of contraband substance, it would be required to be sent to the court of Magistrate in view of provision U/s. 36A NDPS Act where the case may be tried summarily since punishment prescribed is below three years. Defence has relied upon a judgment titled *Ekhlaq @ Vilsan V/s State of Rajasthan* wherein Hon'ble Rajasthan High Court was pleased to observe that if any offence under NDPS Act is punishable with imprisonment for a term of three years or less, the case shall be governed by Class-II classification offence under First Schedule of Cr.P.C and such would be triable by Magistrate.

Ld. P.P has submitted that since the offence made out in the C.S has prescribed punishment for fine upto Rs.10,000/-, the instant case cannot be sent to the court of Magistrate for trial since prescribed punishment is beyond the scope of punishment that may be awarded by a court of Chief Judicial Magistrate.

Ld. P.P has further submitted that the question of consumption U/s. 27 NDPS Act would be required to be defended by the accd person and unless it is established, the instant case stands for offence U/s. 20(b)(ii) (a) NDPS Act .

Having hd both sides and perusing the materials on record the court is inclined to note the Section-36A(1) (a) NDPS Act where it has been prescribed for trial under this Act by the Special Court when the offences are punishable with imprisonment for a term of more than three years and Section-37A (5) which prescribes for summary trial for the offence punishable with imprisonment for a term of not more than three years. None of the provisions are mandatory and nowhere the word 'shall' has been used by the legislation. Further since the NDPS Act being a Special Act has overriding effect and Section-36A NDPS Act has non obstante clause, this court humbly considers that when statute is clear, there would be no

reason to follow the provisions of Cr.P.C as mutatis mutandis . Moreover to echo the submission of Ld. P.P, it is to be noted about the maximum punishment that a court of Ld. CJM can award his below the prescribed punishment of fine of Rs.10,000/- in respect of Section-20(b)(ii)(a) NDPS Act, the instant case cannot be placed before Ld. Magistrate for trial.

The brief fact of the case is that on 5.7.2019 at about 21.00 hrs all the three accd persons were intercepted in the vehicle bearing Regn No. W.B-02AP/0069 in front of 120 DPS Rd, Kol-40 and on search total 160 gms of flowering and fruiting top of cannabis plant commonly known as Ganja were recovered and all the three accd persons were arrested and during investigation positiv chemical report was obtained and thereafter C.S was submitted against all the three accd persons namely Karan Panchal, Priyam Panchal and Dhee Majumder for the offence U/s. 20(b)(ii)(a)/27 NDPS Act.

There has been sufficient materials prima facie available on record to establish the charge and scope of success in the trial . Accordingly charge U/s. 20(b)(ii)(a)/27 NDPS Act. are considered and framed against all the three accd persons namely Karan Panchal, Priyam Panchal and Dhee Majumder .

Accordingly prayer U/s. 36A NDPS Act is considered and rejected.

The substance of accusation are read over and explained to the accd persons separately, to which they pleaded not guilty by individually saying Ami nirdosh.

Charge so framed in separate sheet be kept with the record along with the draft charge.

Let the case be registered as S.T-5(11)22.

Ld. Defence counsel has urged the court for speedy trial considering the age and status of the accd persons being student. Submission is considered.

Fix 15.2.23, 16.2.23, 17.2.23 and 18.2.23 for appearance and evidence of all prosecution witnesses.

Prosecution is at liberty to produce the witnesses according to convenience and availability of thee witnesses and also directed to produce the witnesses positively on the date fixed.

Produce alamats.

D/corr by me,

4th ASJ, Alipore.

(J.O Code—WB00729)