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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 736/2018, Crl. M. (Bail) 1135/2018, Crl. M.A. 12755/2018
SHAHEEN @ CHANDBI Appellant
Through: Mr. Rahul Sharma, Adv.
versus
STATE OF NCT OF DELHI Respondent
Through: Mr. Rajat Katyal, APP for State

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 31.10.2018

CRL.A. 736/2018

Admit.

List in due course.

Crl. M. (Bail) 1135/2018

Issue notice. Mr. Rajat Katyal, the learned counsel for the State accepts notice.

At joint request, the application is taken up for final disposal.

It is the petitioner's case that she was not duly served a notice under section 50 of the NDPS Act; that she was searched by a police officer on her purported acquiescence in lieu of the mandatory notice under section 50; the said search was not in the presence of a gazetted officer; therefore, the recoveries allegedly effected from her cannot be held in evidence against her. The petitioner further contends that she is not literate enough to read or understand the notice, therefore, it was all the more imperative that she be produced before a gazetted officer or Magistrate. The learned counsel for the petitioner relies upon the dicta of the Supreme Court in **Arif Khan v. State of Uttarakhand**, Criminal Appeal No. 273 of 2007, decided on April



27, 2018 which held inter alia as under:

“First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “Charas” was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “Charas” from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “Charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

29. Though, the prosecution examined as many as five police officials (PW-1 to PW-5) of the raiding police party but none of them deposed that the search/recovery was made in presence of any Magistrate or a Gazetted Officer.”

He further submits that the petitioner has a good case on merit and that she has already served a sentence of three and a half years out of a total sentence of ten years and looking at the pendency of cases, this petition may not reach at final conclusion in near future.

In view of the above, the remaining sentence of the petitioner is



suspended till the pendency of the appeal subject to her furnishing a personal bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

Dasti. A copy of this order be also communicated to the Jail Superintendent concerned.

NAJMI WAZIRI, J

OCTOBER 31, 2018/acm