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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 2014/2019**

VAIBHAV GUPTA

..... Petitioner

Through: Mr. Girish Kr. Sharma, Ms. Sushma
Sharma and Mr. Prashant Kr. Singh,
Advs.

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State
with SI Tinku Shokeen, PS – Tilak
Nagar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

20.09.2019

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Vide the present, the petitioner/ accused prays for admitting the petitioner on bail till the final disposal of the case, in FIR No. 581/17 registered at Police Station - Tilak Nagar, punishable under Sections 20/21/25/61/85 NDPS Act & 25/54/59 Arms Act.

Learned counsel appearing on behalf of the applicant submits that after the investigation, the prosecuting agency filed charge-sheet and charges were framed on 13.09.2018 under Sections 20(b) (ii B), 21 (b), 25 of NDPS Act and 25 Arms Act against the applicant.

Learned counsel for the petitioner has argued that the compliance of Section 50 of the NDPS Act is mandatory which has not been complied with in the present case.

Learned APP appearing on behalf of State submits that the police informed the accused about his right that the search may be conducted before the Magistrate/Gazetted Officer. However, he declined for the same and replied that he was aware of his rights and they can proceed in the absence of Magistrate or the Gazetted Officer. Thus, the Section 50 of the NDPS Act is complied with.

However, the Hon'ble Supreme Court in *Criminal Appeal No.273/2007, Arif Khan @ Agha Khan vs State of Uttarakhand*, decided on 27.4.2019, it is held that *the compliance of Section 50 NDPS Act is mandatory and even if the accused has denied the same, still the search has to be conducted in the presence of the magistrate or Gazetted Officer*, which is missing in the present case.

Since the case is pending for trial, I am of the view that the present case is fit for bail. Accordingly, the applicant shall be released on furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

The applicant shall not involve himself in any other case and in the event of any report against him, this Court would consider the desirability of cancelling the suspension of sentence.

The application is allowed and disposed of.

Order *dasti* under the signatures of Court Master.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

SURESH KUMAR KAIT, J

SEPTEMBER 20, 2019/PB