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

+ **CRL.REV.P. 240/2019 and CRL.M.A. Nos. 4153/2020 & 4154/2020**

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for
State.

SI Rakesh Rana, PS Special Cell.

versus

JEHANGIR AHMAD BHAT & ORS

..... Respondents

Through: Mr Jitesh Vikram Srivastava,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.02.2020

1. The State has filed the present petition impugning an order dated 03.12.2018, whereby the respondents had been discharged in a case arising out of FIR No. 31/2018, under Section 21 of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered with PS Special Cell (SB).
2. It is the case of the prosecution that they had found the accused in possession of illicit substances. The Trial Court has discharged the respondents, *inter alia*, on the ground of non-compliance of Section 50 of the NDPS Act. The Court relied upon the decision of **Arif Khan @ Agha Khan v. State of Uttarakhand: (2018) 18 SCC 380** and proceeded on the basis that the accused were required to be searched before a Magistrate or a Gazetted Officer, irrespective of whether they had declined to be searched in presence of such officers.

3. This Court in *Innocent Uzoma v. State: CRL.A. 139/2017*, decided on 14.01.2020 had examined the aforesaid issue and concluded that the decision of the Supreme Court in *Arif Khan @ Agha Khan* (*supra*) had turned on its own facts. The Court had also referred to the decision of the Constitution Bench of the Supreme Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat: (2011) 1 SCC 609* and held that it is established that the if the person sought to be searched had declined to be searched before a Magistrate or a Gazetted Officer, after having been duly informed of their rights to be so searched, the provisions of Section 50 of the NDPS Act would stand complied with.

4. The question whether provisions of Section 43 of the NDPS Act were complied with, is also a matter of trial.

5. In view of the above, the impugned order dated 03.12.2018 is set aside and the matter is remanded to the Trial Court for further proceedings.

6. The pending applications are also disposed of.

FEBRUARY 26, 2020
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VIBHU BAKHRU, J