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

+ CRL.REV.P. 664/2019 & CRL.M.A. 12033/2019

STATE

..... Petitioner

Through: Ms Kusum Dhalla, APP for State with
ASI Om Prakash, Narcotics Cell
Crime Branch.

versus

BITTAN

..... Respondent

Through: Mr C. M. Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.02.2020**

1. The State has filed the present petition impugning an order dated 31.01.2019, whereby the respondent was discharged in Sessions Case No.05/2019 arising out of FIR No.192/2018 under Section 21 of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered with PS Crime Branch.
2. A plain reading of the impugned order indicates that the respondent was discharged of the alleged offence only for the reason that the respondent's search was not conducted before a Magistrate or a Gazetted Officer. The Court had concluded that the same violated the mandatory provisions of Section 50 of the NDPS Act. It proceeded on the basis that irrespective of whether the respondent had declined to be searched in presence of the Magistrate or Gazetted Officer; it was, nonetheless,

necessary that the respondent be searched before the Magistrate/Gazetted Officer.

3. This Court in ***Innocent Uzoma v. State: CRL.A.139/2017 decided on 14.01.2020*** had considered the aforesaid issue and following the decision in the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat: (2011) 1 SCC 609*** and ***State of Punjab v. Baldev Singh: (1999) 6 SCC 172*** had held that the question whether provisions of Section 50 of the NDPS had been complied with would be a matter of trial. If a proper notice under Section 50 of the NPDS Act had been issued and the person concerned had voluntarily declined, after understanding his/her rights to be searched before a Magistrate or a Gazetted Officer, Section 50 of the NDPS Act would stand complied with notwithstanding that the accused was not searched before a Magistrate/Gazetted Officer.

4. In view of the above, the impugned order is set aside and the case is remanded to the Trial Court for further proceedings. The respondent is directed to appear before the Trial Court on 03.03.2020. The respondent's bail application is also restored on file. The Trial Court shall consider the same in accordance with law.

5. The present petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 07, 2020
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