

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 566 of 2010**

- The State of MP (Now State of Chhattisgarh) Through Police Station, Police Station Tongpal, Distt. Bastar (CG)

---- Petitioner**Versus**

Anita alias Sujata W/o. Vikash Mandal, Aged 30 years, R/o. MPY, 36, Malkhangiri, Police Station Motu district Malkhangiri (Orissa)

---Respondent

For Petitioner/State	: Shri Ravi Bhagat, Dy. Govt. Advocate
For Respondent	: None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****28.01.2021.**

1. This application for leave to appeal under Section 378(1) of the Code of Criminal Procedure, 1973 has been filed against the judgment of acquittal dated 02.11.1996 passed by Second Additional Sessions Judge in Special Case No.17/1996 whereby the said Court acquitted the respondent for the charges under Section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act')

2. Case of the prosecution, in brief, is that the respondent was found in possession of narcotic drug, thereby committed the offence. The learned Special Judge after appreciating the documentary evidence, acquitted the respondent herein from the aforesaid offence on the ground that before the search on the accused no notice has been given and she was not made aware of her right being searched in the presence of a Magistrate in addition of gazetted officer. Against the said finding instant appeal has been preferred.

3. I have heard learned counsel for the petitioner/State and perused the record.

4. The learned Special Judge rightly held in para 8 of the impugned judgment that the respondent/accused was not informed her right to be searched in the presence of Magistrate or Gazetted officer before seizure (Ex-P/1), which is totally a non-compliance of Section 50 of the NDPS Act. The Hon'ble Supreme Court in the matter of **Arif Khan Vs. State of Uttarakhand** reported in **(2018) 18 SCC 380**, hold it mandatory to comply the provisions of Section 50 of the NDPS Act, as such the learned Special Judge rightly acquitted the respondent/accused from aforesaid offence for want of non-compliance of the provisions of Section 50 of the NDPS Act. I do not find any merit in the application for leave to appeal.

5. Accordingly, instant CrMP is dismissed.

Sd/-
(Sanjay K. Agrawal)
JUDGE