

..Appellant.

..Respondent.

Mr.Dilip Mishra i/b Mr.Ayyaz Khan for the Respondent.

Date : July 14, 2021

1. Heard learned APP Mrs.M.M.Deshmukh for Appellant-State and learned counsel for respondent. Learned APP vehemently submitted that the learned special judge committed an error in arriving at the finding of non compliance of Sections 42 and 50 of N.D.P.S. Act inspite of there being evidence to that effect showing the compliance of the said Sections.

2. Learned APP also submitted that NDPS Special Case No.82 of 2016 was not the solitary case registered against the respondent-accused. By inviting our attention to the judgment, learned APP submitted that prior to the present case, respondent-accused was found involved in similar type of offence and NDPS Special Case No.41 of 2014 was registered against the respondent-accused by Azad

Maidan Police Station for the offence punishable under Section 8C read with Sections 20 and 29 of the NDPS Act, 1985. It was the case against the accused for possessing the contraband article-*Charas*.

3. On the other hand learned counsel Mr. Mishra appearing with Mr. Ayyaz Khan for the respondent supported the impugned Judgment of the trial Court.

4. We have perused the evidence on record and the Judgment of the trial Court. Prima facie, the trial Court appears to have taken very hyper-technical view of the matter. Thus, we find considerable merit in the submissions of the learned APP that the matter requires consideration. Accordingly, the application for leave to appeal preferred by the State is allowed. Leave is granted. Action under Section 390 of the code of Criminal Procedure, 1973 be initiated against the respondent-accused.

[N.R.Borkar, J]

[Prasanna B. Varale, J]