



Magnum Lex
Advocates & Consultants

NEWSLETTER

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JUDGEMENTS

1. Jitender Bhati vs. Narcotics Control Bureau

A statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act – High Court of Delhi

The Brief Facts of the case are that Petitioner has been accused of having committed offences under Sections 22(C), 23(C) & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and in this regard, a complaint case has been filed before the Court of learned Special Judge. The learned trial Court dismissed Petitioner's bail application vide impugned order. The present petition has been filed by the Petitioner on the ground that, he is innocent and has been falsely implicated in this case.

Pertinently, besides confessional statement recorded under Section 67 of NDPS Act, no other evidence is available on record to show Petitioner's involvement in the offence in question. No recovery has been made at the instance of Petitioner. Since Petitioner has retracted from his confessional statement so recorded, its' worth has to be proved at trial by the prosecution.

In the present case, no recovery has been made from petitioner. Admittedly, on the day, his ID was used, he was on leave and no other similar case is pending against him. No material such as call detail record etc. has been placed by the prosecution to establish that petitioner was in contact with the main accused, namely, Monte Alexander. Accordingly, this Court has a reason to believe that Petitioner is not likely to commit the offence if released on bail. Charge under Section 29 NDPS Act has already been framed by the trial court against the Petitioner and thereby, prosecution has an

opportunity to prove its case during trial. Hence, requirements under Section 37 of NDPS Act are fulfilled.

The Hon'ble Supreme Court, by majority view while answering to a reference with regard to the evidentiary value of Section 67 of NDPS Act in Tofan Singh Vs. State of Tamil Nadu held "that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

The Hon'ble Supreme Court in Noor Aga Vs. State of Punjab held that, the provisions of Sections 35 & 54 of the Act are not ultra vires the Constitution of India, however, procedural requirements laid down therein are required to be strictly complied with. Applying the dictum of Noor Aga to the facts of present case, present Court find that the burden is on the prosecution to prove that accused is guilty and also on the accused to prove his innocence and this recourse can only be taken during trial. However, keeping in view the majority view taken by the Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu, coupled with the fact that petitioner fulfils the conditions stipulated in Section 37 NDPS Act, present Court is inclined to release petitioner on bail.

Link: http://164.100.69.66/jupload/dhc/SKT/judgement/18-03-2021/SKT18032021BA40052020_104303.pdf

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