

shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior."

The provision *vide* sub-section (1) mandates that when an officer duly authorized under Section 42 is about to search a person under the provisions of Sections 41, 42 or 43, he shall, if

the person about to be searched so requires, take the person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

It is obvious that the intent behind the provision is to ensure that the person about to be searched is made aware of the option to be taken before a third person other than the one who is conducting the search. Use of the expression "nearest" refers to the convenience as the suspect is to be searched. Delay should be avoided, as is reflected from the use of the word "unnecessary delay" and the exception carved in sub-section (5) to Section 50 of the NDPS Act. Nothing more is articulated and meant by the words used, or the intent behind the provision.

Having said so, we are unable to appreciate the reasoning given by the High Court in the impugned judgment, which states that use of the word 'any' does not satisfy the mandate of the 'nearest' Gazetted Officer and, hence, the respondent, Mohd. Jabir, is entitled to bail. The option given to the respondent, Mohd. Jabir, about to be searched, with reference to a Gazetted Officer or a Magistrate, does not refer to the authorized person in the raiding team itself.

It is pertinent to mention that the respondent, Mohd. Jabir, did not exercise the option.

The aforesaid *ratio* is not in conflict with the decision of this Court in *Arif Khan alias Agha Khan v. State of Uttarakhand*,²

2 (2018) 18 SCC 380.

wherein this Court has observed that requirements of Section 50 of the NDPS Act are mandatory and must be strictly complied with. Section 50 casts an obligation on the police officer to apprise the person intended to be searched that under Section 50, he is required to be searched only before a Gazetted Officer or a Magistrate. The requirement is that the authorized officer must make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate. We are satisfied that in the present case, there is compliance with the said provision.

The recovery in the present case is 500 gms. of heroin, which is a substantial commercial quantity. It is also pointed out and accepted that the respondent, Mohd. Jabir, is involved in another case, being First Information Report No. 217/2019, in which the quantity involved was an intermediate quantity. The respondent is on bail in the said case.

In view of the aforesaid position, we set aside the impugned judgment and allow the present appeal.

The respondent, Mohd. Jabir, will surrender on or before 27.12.2024. In case he does not surrender by the said date, the police authorities/courts will take steps to detain and arrest the respondent, Mohd. Jabir.

We are informed that the trial is proceeding and 5 out of 19 witnesses have already been examined. The trial may proceed expeditiously. Liberty is granted to the respondent, Mohd. Jabir, to apply for grant of bail in case of a change in circumstances or if the trial gets prolonged due to reasons not attributable to the

respondent, Mohd. Jabir.

We clarify that the observations in this order will not be treated as an expression of opinion on the merits of the case, which would be determined and decided on the basis of the evidence which is led. The trial Court will adjudicate and decide the prosecution's case as per law.

Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
DECEMBER 02, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition for Special Leave to Appeal (Crl.) No. 1173/2024

[Arising out of impugned final judgment and order dated 28-03-2023 in BA No. 1725/2022 passed by the High Court of Delhi at New Delhi]

STATE OF NCT OF DELHI

Petitioner(s)

VERSUS

MOHD. JABIR

Respondent(s)

(FOR ADMISSION and I.R. and IA No.266516/2023-EXEMPTION FROM FILING O.T. and IA No. 171957/2024 - EXEMPTION FROM FILING O.T)

Date : 02-12-2024 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s)

Mrs. Aishwariya Bhati, A.S.G.
Mrs. Swarupama Chaturvedi, Sr. Adv. (N/P)
Mrs. Ruchi Kohli, Sr. Adv. (N/P)
Mr. Mukesh Kumar Maroria, AOR
Mr. Suyash Pandey, Adv.
Mr. Prashant Singh-ii, Adv.
Mr. Raman Yadav, Adv.

For Respondent(s)

Ms. Mukta Gupta, Sr. Adv.
Mr. U.A. Khan, Adv.
Mr. Shakeel Ahmed, AOR
Mr. Tushar Upadhyaya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed order is placed on the file)