

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

Cr. Appl. 26 of 2019

Date: 05.10.2019

In the matter of:

Nikhil Gurung

.....Petitioner

v.

State (N.C.T. of Delhi)

.....Respondent

**Coram: Hon'ble Mr. Justice Rupesh Singh
Hon'ble Mr. Justice Anil K. Thakur**

Present : Mr. Shahzeb Ahmed, Ld. Add. Government Advocate for the State.
Ms. Sharmishta Sharma, Ld. Counsel for Petitioner.

Heard Ld. Counsel for the petitioner Ms. Sharmishta Sharma appearing on behalf of the accused Mr. Nikhil Gurung and Ld. Additional Government Advocate Mr. Shahzeb Ahmed appearing on behalf of the State.

Ld. Counsel for the petitioner submits that FIR no. 138/19 has been registered in Malviya Nagar Police Station on 07.09.2019 at 10:15 am. After the registration of the FIR the police conducted the search after giving the notice to the accused under section 50 of NDPS Act 1985. Ld. Counsel for the petitioner submits that the FIR is implanted only for the purpose of maligning the image of the accused as *First*, there are two over writings in the FIR that is FIR no. and case dairy number. *Secondly*, the time of arrest that is shown in the arrest memo is 10:30 am (evident from the copy of arrest and seizure memo filed by the police). By the perusal of the FIR and the arrest memo it is evident that before the arrest the police has mentioned in FIR that accused was in possession of 1 kg of Charas (as mentioned in the separate sheet of FIR) at 10:15 whereas when the arrest was made at 10:30. There is no mentioning of 1 kg of charas in the arrest/ seizure memo that raises a grave suspicion on police as to how when information was received at 10:15, police omitted to mention at 10:30. This is not a normal omission rather it is a material omission on the part of the police. Reliance is placed on the apex court of Judgment *State of Haryana v. BhajanLal AIR 1992 SC 604* where Supreme Court has said in paragraph 5 that is "*where theallegations made in the F.I.R in or the complain are so absurd and inherently improbable on the basis of which no prudent person can ever reach*

to a conclusion that there is sufficient ground for proceeding against the accused”.

Ld. AGA, Counsel for the State submits that the FIR was given on call and after that *rukka* was sent to the police station and FIR was registered on that basis only, later on after the investigation they have arrested the accused. After that the police has given details of the incident by attaching the separate sheet where it is clearly mentioned accused was in possession of 1 kg of charas. Ld. Counsel further submits that there was technical error on 07.09.2019 on the server of Delhi police by which FIR No. as well as Diary No. entry suffer a discrepancy and in support of that there is a notification from the office of Commissioner of the Police Delhi (unstamped without designation and name) that says there was technical snap in the registering in the FIR. We are of the opinion that commissioner of the police being the head of the commissary in Delhi cannot pass such kind notification within his power. As registering of the FIR is to be done as per CrPC 1973 which is settled law and Commissioner of police cannot bypass it.

For the same the Commissioner of Police, Delhi is issued the show cause the notice to appear before this bench and give the personal explanation as to how could he pass such order going beyond the law.

Having heard both the counsel the court as of the opinion that the present FIR deserves to be quashed and hereby quashed with the immediate effect and any order passed by the police authority in the said FIR is also uashed with immediate effect with no cause to party.



High Court of Delhi
Lloyd Trial Advocacy Competition

(Rupesh Singh, J.)
(Anil K. Thakur, J.)

High Court of Delhi
New Delhi: 05.10.2019