

**(2022-1)205 PLR 162 (SC) : 2021 SCEjournal 1340**

SUPREME COURT OF INDIA

*Before: Justice Sanjiv Khanna and Justice Bela M. Trivedi, JJ.*

SANJEEV CHANDRA AGARWAL & anr – Appellant

*versus*

UNION OF INDIA – Respondent.

Criminal Appeal No(s).1273/2021

**Narcotic Drugs And Psychotropic Substances Act, 1985, Section 27-A and 29-A – No narcotic drugs or psychotropic substances were recovered from the premises of the two appellants – High Court was not correct in relying on the statements made by other accused under Section 67 of the NDPS Act – Charges framed under Sections 27-A and 29-A of the NDPS Act cannot be sustained and is set aside. *Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, relied..***

ORDER

(25.10.2021) – Mr. Kailash Vasudevan, learned senior counsel appeared for the petitioners and Mr. S.V. Raju, Additional Solicitor General appeared on behalf of the respondent.

2. Delay condoned.

3. Leave granted.

4. We are inclined to set aside the impugned order of the High Court directing framing charges under Sections 27-A and 29-A of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short “NDPS Act”) against the appellants, namely, Sanjeev Chandra Agarwal and Rajiv Sethi.

5. The factual position is that no narcotic drugs or psychotropic substances were recovered from the premises of the two appellants. As per the prosecution, 4 kilograms of Acetic Anhydride (Controlled Substance) was allegedly found from the premises of the appellants located at Gyan Scientific Agency, Varanasi. The High Court was not correct in relying on the statements made by other accused under Section 67 of the NDPS Act, in light of the judgment of this Court in *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*. It is pointed out that the charges under Sections 9-A and 25 of the NDPS Act have been framed and to this extent there is no challenge and dispute.

6. While not interfering with the order directing framing of charges under Section 9-A and 25, direction in the impugned order to frame charges against the two appellants namely, Sanjeev Chandra Agarwal and Rajiv Sethi under Sections 27-A and 29-A of the NDPS Act cannot be sustained and is set aside. The appeal is allowed in the aforesaid terms. We

clarify that the bail granted to the appellants has not been cancelled and we have not commented and made any observations on merits of the allegations in the charge-sheet. Pending application(s), if any, stand disposed of.

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