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**Current's
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CASES**

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E-mail: jainabook@gmail.com

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ARREST COMPLIANCE

Arrest Compliance - Bail sought alleging arrest illegal under BNSS and Article 22 - Petitioner claimed family not informed - Arrest memo produced showing witness attestation and petitioner's countersignature - Court held compliance sufficient under law - No proof of violation or mala fide arrest - Found contraband recovered in commercial quantity - Observed that NDPS offences non-bailable and stringent conditions apply - Held that arrest legal and prayer for bail not maintainable - Petition Rejected - Bail Application Rejected [*Md Shabir @ Sabir Khamn vs. State of West Bengal* (CALCUTTA HIGH COURT) 2026(1)CNC59]

BAIL IN NDPS OFFENCE

Bail in NDPS Offence - Accused sought bail in NDPS case involving commercial quantity of contraband - He was arrested solely on basis of co-accused's statement recorded in custody - No recovery made from him - Call records showed one telephonic conversation prior to seizure - Court observed that statement of co-accused in custody not admissible evidence and solitary call record insufficient to establish nexus with contraband - Following Supreme Court decision, petitioner held entitled to bail having overcome bar of Sec. 37 NDPS Act - Bail Granted with conditions for weekly reporting and non-tampering of evidence - Bail Granted [*Chhamad Ali Alias Ali Chhamad vs. State of West Bengal* (CALCUTTA HIGH COURT) 2026(1)CNC45]

BAIL REJECTION

Bail Rejection - Application filed for bail under NDPS Act by accused alleged to be involved in drug trafficking through pharmaceutical firms - Investigation revealed nexus between multiple companies and seizure of commercial quantity of codeine-

based drugs - Petitioner argued absence of direct evidence and parity with co-accused - Court held offence covered under commercial quantity attracting Section 37 embargo - Found sufficient material showing conspiracy and role of petitioner - Observed that leniency in such offences not justified - Bail denied - Bail Application Dismissed [*Garv Bhambri vs. Union of India* (JAMMU AND KASHMIR HIGH COURT) 2026(1)CNC36]

BAIL REJECTION

Bail Rejection - Petition filed under Sec. 483 of BNSS seeking bail for offences under Sec. 8(c) and 22(c) of NDPS Act - Petitioner contended that search conducted after sunset without authorization and grounds of arrest not informed - Arrest made without communication of grounds under Sec. 52 - Qualitative and quantitative reports delayed - Government Pleader submitted contraband seized positive for MDMA and commercial quantity - Search and seizure conducted properly and FSL report supports prosecution - Court observed grounds of arrest communicated prior to production before Magistrate - Contraband weight confirmed commercial quantity attracting Sec. 37 NDPS - Investigation ongoing and petitioner failed to make out case for bail - Petition Dismissed [*Jeelan Pasha S/o Hafeez Ulla Pasha vs. State of Karnataka* (KARNATAKA HIGH COURT) 2026(1)CNC110]

BAIL UNDER NDPS

Bail under NDPS - Appeals filed against orders granting bail to accused prosecuted under NDPS Act - Officers seized consignment containing cocaine imported in name of concern where accused acted as Director - Statements under Sec. 67 indicated active involvement in import and coordination - High Court granted bail holding absence of knowledge and prolonged custody - Contention raised that High Court failed to apply embargo under Sec. 37 and overlooked prior seizure showing antecedent involvement - Observation made that High Court did not consider material indicating conscious possession or presumption under Sec. 35 - Held that satisfaction under Sec. 37(1)(b) must be recorded with reasons before grant of bail - High Court orders set aside and matter remitted for fresh consideration keeping statutory parameters in view - Interim bail to continue till reconsideration - Appeals Allowed [*Union of India vs. Vigin K Varghese* (SUPREME COURT OF INDIA) 2026(1)CNC7]

BAIL UNDER NDPS

Bail Under NDPS - Applicant arrested for possession of 460 grams of Mephedrone and supplying same to co-accused - Contended non-compliance of Sec.42 and Sec.50 NDPS Act - Prosecution produced contemporaneous record and notices showing compliance - Court observed that personal search was taken by gazetted officer with lady panch and lady police officer - Held that procedural safeguards complied - Recovery being commercial quantity and applicant being foreign national with expired visa, risk of absconding high - Bail denied - Bail Application Rejected [*Blessing Amaka Okonko vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)CNC13]

BAIL UNDER NDPS

Bail under NDPS - Applicant arrested for possession of 100 grams of Mephedrone and alleged involvement in drug trafficking - Contended non-compliance of Sec.42 and 50 NDPS Act, delay in FIR and long custody - Prosecution argued search under Sec.43 valid as recovery during patrolling, and compliance made - Court examined Section 37 restrictions and found commercial quantity involved - Observed applicant failed to show reasonable grounds for believing he not guilty and that continued custody justified under statutory bar - Long incarceration alone insufficient to override limitations of Sec.37 - Bail refused considering gravity of offence and recovery circumstance - Bail Rejected [*Arbaz Aslam Shaikh vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)CNC70]

BAIL UNDER NDPS ACT

Bail under NDPS Act - Applications filed for regular bail in case involving recovery of ganja - Applicants alleged false implication and irregularities in recovery process including non-supply of video and lack of independent witnesses - Prosecution claimed commercial quantity recovered and CDRs showed frequent communication between accused - Court observed that non-production of rent agreement, absence of landlord as witness and incomplete videography created prima facie doubt about recovery - Co-accused granted bail earlier - Considering circumstances and period of custody, bail granted subject to conditions - Applications Allowed [*Vakil Ray; Rishipal vs. State (Nct of Delhi)* (DELHI HIGH COURT) 2026(1)CNC17]

BAIL UNDER NDPS ACT

Bail under NDPS Act - Bail petitions filed for offences under NDPS Act relating to small recoveries of heroin and alleged drug money - Investigating agency invoked Sec. 27A NDPS Act terming currency found with contraband as drug money - Petitioners claimed misuse of Sec. 27A to obstruct bail - Court analyzed legislative intent of Sec. 27A and Sec. 37 NDPS Act and held that mere possession of small cash with contraband cannot constitute financing illicit traffic - Observed that financing illicit traffic requires evidence of organized activity or investment in drug trade - Held that invoking Sec. 27A mechanically to attract rigors of Sec. 37 is illegal - Directed that cash recovered with contraband can only be considered under forfeiture provisions of Sec. 68C NDPS Act or Prevention of Money Laundering Act - Found no basis for treating small cash as drug financing - Both petitioners entitled to bail on merits - Investigation authorities cautioned against misuse of Sec. 27A - Ensured constitutional liberty under Art. 21 safeguarded - Bail Allowed [*Sukhchain Masih @ Lalla; Amit Sharma Alias Veeru vs. State of Punjab* (PUNJAB AND HARYANA HIGH COURT) 2026(1)CNC95]

GANJA CULTIVATION

Ganja Cultivation - Appeal filed against conviction under Section 20(a)(i) of NDPS Act for cultivating ganja - Excise officers detected cultivation and arrested accused from forest area - Defence contended absence of authorization under Section 53 empowering investigating officer and non compliance of Sections 42 and 57 - Court noted delay in production of sample and lack of proof of safe custody - Observed that investigating officer had no notified power as officer in charge for investigation - Evidence of seizure and sampling doubtful and not corroborated by independent witnesses - Found material contradictions in prosecution version and failure to establish chain of custody - Held conviction unsustainable as prosecution failed to prove case beyond reasonable doubt - Appellants acquitted accordingly - Appeal Allowed [*Biju S/o Ramankutty; Jomon Thomas S/o Thomas vs. State* (KERALA HIGH COURT) 2026(1)CNC64]

GROUND OF ARREST

Grounds of Arrest - Petitioner sought bail in case under NDPS Act - Contended that grounds of arrest not communicated in writing violating Art. 22 of Constitution - Claimed memo of arrest only contained reasons for arrest and not personal grounds - State opposed stating grounds were recorded and communicated to wife who signed memo - Court examined memo and held endorsement specifying arrest for involvement in NDPS case constituted sufficient communication of grounds - Distinction between reasons and grounds explained - No violation of Art. 22 found - Bail Rejected [*Santosh Kumar Singh vs. State of West Bengal* (CALCUTTA HIGH COURT) 2026(1)CNC30]

ILLEGAL POSSESSION OF GANJA

Illegal Possession of Ganja - Appeal against conviction under NDPS Act for possession and transportation of contraband - Accused intercepted on information and recovery of ganja effected after compliance of Sec. 50 NDPS Act - Defence raised absence of independent witness and irregular sampling under Sec. 52A - Court held non-examination of independent witness not fatal if official testimony consistent - Procedural irregularity in sampling not material unless integrity of sample compromised - Evidence of seizure and chain of custody found reliable - Plea of non-marking on sample rejected as minor discrepancy - Court considered mitigating factors but held conviction justified - Conviction and sentence imposed by the Trial Court and affirmed by the High Court confirmed - Criminal Appeal dismissed [*Jothi @ Nagajothi vs. State* (SUPREME COURT OF INDIA) 2026(1)CNC1]

ILLEGAL REARREST

Illegal Rearrest - Petitioner arraigned as second accused in a crime registered under NDPS Act alleged violation of Article 22(2) as he was produced before Magistrate beyond twenty-four hours of arrest - Learned Sessions Judge found delay in production but ordered only release from jail instead of granting bail - Immediately

after release, police rearrested petitioner and remanded him to custody - It was contended that such rearrest nullified protection guaranteed under Article 22 and rendered arrest illegal - Prosecution argued power under Section 483(3) of BNSS authorized rearrest - Found that fundamental right to be produced within twenty-four hours is sacrosanct and breach vitiated arrest - Delay violated personal liberty under Article 21 - Sessions Judge erred in not enlarging petitioner on bail which permitted police to subvert constitutional safeguard - Constitutional guarantee under Article 22 reaffirmed - Custody beyond twenty-four hours without judicial sanction held impermissible - Petition Allowed [*Muhammed Nashif U vs. State of Kerala; Station House Officer, kozhinjampara Police Station* (KERALA HIGH COURT) 2026(1)CNC77]

NDPS BAIL PLEA

NDPS Bail Plea - Accused arrested for transporting narcotics challenged arrest citing violation of Article 22 and Section 36 BNSS - Claimed non-communication of grounds of arrest to family - State argued proper compliance with procedure and presence of arrest memo - Court examined memo and found signatures of witness and accused showing compliance - Noted that petitioner produced before Magistrate promptly and no such objection raised - Held arrest followed legal requirements - No violation of constitutional safeguards - Bail Denied - Application Dismissed [*Md Mustaf Ali vs. State of West Bengal* (CALCUTTA HIGH COURT) 2026(1)CNC55]

NDPS POSSESSION

NDPS Possession - Accused challenged conviction under NDPS Act for possession of psychotropic substance - Contended delay in production and non-compliance of mandatory provisions - No independent witnesses examined - Procedural lapses in taking samples and conversion of quantity - Prosecution failed to prove compliance under Sections 42, 50, 52A and 57 - Court held recovery doubtful - Conviction set aside - Appeal Allowed [*Aneesh S/o Nassar vs. State of Kerala* (KERALA HIGH COURT) 2026(1)CNC120]

POSSESSION OF GANJA

Possession of Ganja - Appellant convicted under Sec.20(b)(ii)(C) NDPS Act for recovery of 50 Kgs Ganja from abandoned vehicle - Prosecution based solely on statements of police and Assam Rifles personnel - No independent witness examined - No proof that accused was present or had control over seized vehicle - Chain of custody and certification under Sec.52A NDPS Act not followed - FSL samples varied in weight and procedure defective - Confessional statement under Sec.161 CrPC inadmissible - Trial Court relied on uncorroborated evidence and presumptions without establishing conscious possession - Conviction set aside - Appellant acquitted - Appeal Allowed [*Weshete Lohe S/o Veselie Lohe vs. State of Nagaland* (GAUHATI HIGH COURT) 2026(1)CNC48]

PREVENTIVE DETENTION

Preventive Detention under PITNDPS Act - Petitioner challenged detention under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act for six months - Detaining authority based order on petitioner's involvement in three NDPS cases for small quantity of heroin - Petitioner contended adherence to bail conditions and absence of fresh material showing likelihood of engaging in illicit trade - State relied upon dossier and alleged habitual trafficking - Court noted that detention based only on earlier FIRs without new evidence of imminent activity cannot be sustained - No material produced to show live link between earlier offences and preventive detention - Held that preventive detention cannot substitute punitive action and must rest on real apprehension based on cogent material - Detention order quashed - Petition Allowed [*Babli vs. State of Haryana and Others* (PUNJAB AND HARYANA HIGH COURT) 2026(1)CNC87]

PREVENTIVE DETENTION

Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 Sec. 3 - Preventive Detention - Petition challenged preventive detention order issued under Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act - Detention extended based on advice of Advisory Board - Contention raised that opportunity to file representation was not provided resulting in violation of constitutional safeguards - State justified action based on prior conviction and recovery cases under NDPS Act - Detaining authority relied on assumptions about illegal income from alleged drug trade - Court observed that Advisory Board overlooked essential procedural requirement and that preventive detention cannot be based on suspicion or past cases without proper justification - Detention orders found to infringe fundamental rights - Orders quashed - Petitioner directed to be released if not required in other cases - Pending applications disposed of. - Petition Allowed [*Uved Khan vs. State of Hp & Others* (HIMACHAL PRADESH HIGH COURT) 2026(1)CNC116]

PREVENTIVE DETENTION ORDER

Preventive Detention Order - Petition filed challenging detention under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act - Petitioner detained for six months based on old FIRs and a complaint allegedly signed by deceased person - No recent recovery proved - Complaint and source report found vague and unverified - Detention based on stale material - Authorities failed to justify preventive detention - Subjective satisfaction not based on fresh grounds - Detention orders set aside as unsustainable - Liberty protected against arbitrary exercise of preventive powers - Detaining authority acted mechanically without proper verification - Petition Allowed [*Pala Ram vs. State of Haryana and Others* (PUNJAB AND HARYANA HIGH COURT) 2026(1)CNC82]

PREVENTIVE DETENTION QUASHED

Preventive Detention Quashed - Appellant challenged detention under PITNDPS Act alleging delay and non-consideration of representation - Court found last offence dated a year prior to detention and no activity thereafter - Delay of eleven months snapped live link between grounds and purpose of detention - Representation remained undecided for long without explanation violating constitutional safeguard - Writ Court had ignored both aspects - Court held detention order unsustainable due to unexplained delay and breach of procedural mandate - Order and judgment set aside - Appellant directed to be released forthwith if not required in other case - Detention quashed - Appeal Allowed [*Jugal Kishore @ Lucky, S/o Inder Dev Sharma vs. Union Territory of Jammu and Kashmir; Divisional Commissioner, Jammu; Senior Superintendent of Police; Superintendent Central Jail, Kot* (JAMMU AND KASHMIR HIGH COURT) 2026(1)CNC41]

PROLONGED CUSTODY

Prolonged Custody - Petition for bail under BNSS in offence involving recovery of commercial quantity of Tramadol - Petitioner in custody for more than two years - Trial progressing slowly with few witnesses examined - Prosecution opposed bail citing embargo under Sec. 37 NDPS Act - Court referred to several Supreme Court decisions holding that prolonged incarceration violates Art. 21 and statutory embargo under Sec. 37 cannot override constitutional protection when trial delayed - Observed that only two witnesses examined out of many and further detention unjustified - Found no likelihood of tampering or absconding - Held that right to speedy trial includes right to reasonable bail where proceedings delayed without petitioner's fault - Extended benefit of bail following parity with recent precedents emphasizing constitutional balance between liberty and procedure - Bail Granted [*Sunil Kumar vs. State of Punjab* (PUNJAB AND HARYANA HIGH COURT) 2026(1)CNC25]

CURRENT NDPS CASES

2026(1)CNC1

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

(Hon'ble Judge: Sanjay Karol; Vipul M Pancholi)

Criminal Appeal No 259 of 2025 **dated 11/12/2025**

Jothi @ Nagajothi

Versus

State

ILLEGAL POSSESSION OF GANJA

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 52A, Sec. 50, Sec. 29 - Illegal Possession of Ganja - Appeal against conviction under NDPS Act for possession and transportation of contraband - Accused intercepted on information and recovery of ganja effected after compliance of Sec. 50 NDPS Act - Defence raised absence of independent witness and irregular sampling under Sec. 52A - Court held non-examination of independent witness not fatal if official testimony consistent - Procedural irregularity in sampling not material unless integrity of sample compromised - Evidence of seizure and chain of custody found reliable - Plea of non-marking on sample rejected as minor discrepancy - Court considered mitigating factors but held conviction justified - Conviction and sentence imposed by the Trial Court and affirmed by the High Court confirmed - Criminal Appeal dismissed

Law Point: Procedural lapse in sampling under Sec. 52A NDPS Act does not vitiate prosecution unless integrity of seized sample affected - Reliable and consistent official evidence sufficient to uphold conviction.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 52A, Sec. 50, Sec. 29

Counsel:

M P Srivignesh, Lakshman Raja T, Sharavena Raghul Asr, Mithun Kumar N, Gokul Athithya R P, Manu Srinath, Sabarish Subramanian

JUDGEMENT

Vipul M. Pancholi, J.- [1] This is an appeal challenging the judgment dated 27.06.2024 passed by the High Court of Judicature at Madras in CrI.A. No. 125 of

2021, whereby the conviction and sentence imposed upon the appellant under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "the NDPS Act") were affirmed.

[2] The Trial Court, by judgment dated 01.02.2021 in C.C. No. 15 of 2020, convicted the appellant and imposed 10 years' rigorous imprisonment and a fine of Rs. 1,00,000/- for each count (sentences running concurrently). The High Court upheld the same.

[3] The case of the prosecution was that on 21.09.2019, PW-1 (SubInspector) received secret information that ganja was being transported on a two-wheeler bearing TN-03-M-0585. PW-1 reduced this information into writing, informed PW-5 (Inspector) and proceeded with two constables, PW-2 and PW-3.

[4] The appellant (A-2) and her husband (A-1) were intercepted. After informing them of their rights under Section 50 of the NDPS Act, the police searched the vehicle and seized 23.500 kg of ganja, along with Rs. 21,140/-. Two samples of about 50g each were drawn, sealed and marked as 'S-1' and 'S-2'. PW-1 also recorded the confession of A-1 at the spot.

[5] After reaching the police station, PW-1 submitted a report to PW-5 under Section 57 of the NDPS Act. On receiving the report, PW5 registered the F.I.R. No. 462/2019 dated 21.09.2019 for offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act and prepared the intimation memos. A-1 and A-2 were sent for remand and PW-5 took up the investigation.

[6] During investigation, PW-5 forwarded the seized samples to the Court along with a requisition for chemical analysis. The samples were received by PW-6 (Scientific Officer) through PW-4. PW-6 analysed the sample, detected cannabinoids and furnished the report.

[7] Thereafter, PW-5 recorded the statements of PW-6 and the remaining members of the raiding team under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred as "the Cr.P.C"). The seized cash was deposited to the Reserve Bank of India. After completing the investigation, PW-5 filed the final report against A-1 and A-2 for the aforesaid offences.

[8] The prosecution examined 6 witnesses. A-1 and A-2 were questioned under Section 313(1)(b) of the Cr.P.C., during which they denied all incriminating circumstances.

[9] The trial court found A-1 and A-2 guilty under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the NDPS Act, convicted them and imposed 10 years' rigorous imprisonment and a fine of Rs. 1,00,000/- for each count (sentences running concurrently).

[10] Aggrieved thereby, A-1 and A-2 approached the High Court, which held that the Trial Court has rendered proper findings on the basis of the materials placed by the prosecution to prove the case against A-1 and A-2. Accordingly, the criminal appeal

filed by A-1 and A-2 was dismissed, confirming the conviction and sentence imposed by the trial court.

[11] Aggrieved by the conviction and sentence, the appellant (A-2) has filed the present appeal.

[12] Learned counsel for the appellant contends that the prosecution case suffers from multiple infirmities. First, it is urged that the seizure took place in a residential locality containing about 50-60 houses, yet no independent witness was secured and only police witnesses attested the mahazar, thereby casting doubt on the genuineness of the seizure.

[13] Secondly, it is submitted that the representative samples were drawn at the spot itself, contrary to the mandate of Section 52-A of the NDPS Act and without the presence or certification of a Magistrate, rendering the samples legally infirm. Reliance is placed on *Simranjit Singh v. State of Punjab*, 2023 SCCOnLineSC 906 and *Yusuf @ Asif v. State*, 2023 SCCOnLineSC 1328 to urge that sampling at the spot vitiates the prosecution case.

[14] Thirdly, learned counsel pointed to the absence of the markings 'S-1' and 'S-2' on the sample packets upon removal of labels, thereby questioning the identity and integrity of the samples sent for chemical analysis.

[15] Fourthly, it is argued that there was non-compliance with the statutory requirements under Sections 52-A(2) and 52-A(4) of the NDPS Act, which vitiates the evidentiary value of the samples and undermines the prosecution case.

[16] Thus, learned counsel for the appellant submitted that the impugned judgment is liable to be set aside.

[17] In the alternative, it was urged that the appellant was only 24 years of age at the time of the incident, is a first-time offender with no prior criminal antecedents and is the sole caregiver of her minor child. On these mitigating considerations, learned counsel pleaded for remission or, at the very least, a reduction of the sentence to the period already undergone, which presently stands at over 5 years and 9 months.

[18] Per contra, learned counsel for the State submitted that all alleged discrepancies were minor, thoroughly explained and incapable of discrediting the prosecution case which stood firmly proved by the consistent testimony of official witnesses. The integrity of the samples was never compromised and the High Court had rightly rejected the appellant's contentions.

[19] We have considered the rival submissions and perused the material available on record.

[20] The contention of the appellant with regard to the absence of independent witnesses has been examined in detail by the High Court, noting that PWs 1-3 consistently deposed that no persons were present in the vicinity at the time of seizure, despite the presence of houses and no suggestion was made to the contrary in cross-examination. The relevant paragraph of the impugned judgment reads as under:

"23. It is to be pointed out that it is the consistent view of the courts that non-examination of independent witnesses cannot be a ground to doubt the prosecution version so long as the witnesses, who have been examined have deposed in unison. As stated above, P.W.s 2 and 3 have corroborated the evidence of P.W.1 on all material particulars. In fact, P.W.s 2 and 3 have deposed that though at a distance of 50 mtrs., there are houses, yet no person was available and, therefore, P.W.s 2 and 3 were made witnesses to the seizure, it is not the case of the defence/appellants that the locality where the vehicle of the appellants was intercepted, there was frequent movement of pedestrians or vehicles so that there would have been no difficulty to obtain signatures from independent witnesses. There is no suggestion made in this regard to the witnesses by the defence at the time of cross examination and in the absence of any suggestion and eliciting a response, the mere non-examination of independent witnesses or attesting of the mahazar by the official witnesses could form the basis to doubt the prosecution version. Therefore, the said contention deserves to be rejected."

[21] This Court has consistently held that the non-examination of independent witnesses is not, by itself, fatal to the prosecution, particularly in prosecutions under the NDPS Act where operations often take place under challenging circumstances. In **Surinder Kumar v. State of Punjab**, 2020 2 SCC 563, this Court reiterated that the mere absence of independent witnesses does not lead to the conclusion that the accused has been falsely implicated. Referring to **Jarnail Singh v. State of Punjab**, 2011 3 SCC 521, the Court underscored that the testimony of official witnesses cannot be discarded solely on the ground of their official status and that their evidence must be assessed on its own merits like that of any other witness.

[22] In the present case, upon careful evaluation, the evidence of the official witnesses stands out as consistent and coherent. Their depositions corroborate each other on all material particulars and no material has been brought out in cross-examination to cast doubt on their credibility. The absence of independent witnesses, therefore, cannot be said to weaken the prosecution case in any manner.

[23] The appellant's primary submission is that the representative samples ought to have been drawn only before a Magistrate in terms of Section 52-A of the NDPS Act and that sampling at the spot itself renders the entire prosecution void. This contention is legally untenable. In **Bharat Aambale v. State of Chhattisgarh**, 2025 8 SCC 452, this Court has comprehensively clarified the scope, purpose and effect of Section 52-A. Most significantly, paragraphs 56.5 and 56.6 of the said judgment make it clear that mere noncompliance or delayed compliance with Section 52-A is not fatal unless the irregularity creates discrepancies affecting the integrity of the seized substance or rendering the prosecution case doubtful. Equally, even where some procedural lapse is shown, if the remaining oral or documentary evidence inspires confidence regarding the seizure and conscious possession, the conviction may still be upheld.

[24] Applying these principles to the present case, the appellant has failed to lay any foundational material to suggest that the sampling process was unreliable or that the integrity of the samples stood compromised. On the contrary, the record demonstrates a clear and unimpeached sequence of events: (i) the samples were drawn at the spot in the presence of PWs 1 to 3, (ii) the sample packets were duly sealed with signatures and seizure details, (iii) the seized material, along with the samples, was produced before the Magistrate, and (iv) pursuant to the judicial order dated 20.10.2019, sample 'S-1' was forwarded to the Forensic Science Laboratory while 'S-2' was retained in judicial custody. The Scientific Officer (PW-6) affirmed that the seal on the packet received for analysis was intact and bore the correct identifying particulars.

[25] The appellant's contention that the markings 'S-1'/'S-2' were absent upon removal of labels also lacks merit. PW-1 explained that markings had been made and any fading could be attributed to normal handling over time. More importantly, the Magistrate's order dated 20.10.2019 itself expressly refers to the sample packets as 'S1' and 'S-2', conclusively establishing their identity and dispelling any doubt. The Scientific Officer (PW-6) further confirmed that the sample received by the Laboratory corresponded to the seizure.

[26] In addition, the chain of custody in the present case remains clear and continuous. At no stage has any evidence been brought out to indicate tampering, substitution or mishandling. The forensic report confirms the presence of cannabinoids in the sample, which stands in complete harmony with the seizure.

[27] In these circumstances, even assuming some deviation from the ideal procedure envisaged under Section 52-A, such irregularity does not go to the root of the matter nor does it create any reasonable doubt regarding the authenticity of the seized contraband or the identity of the samples analysed. The prosecution has demonstrated substantial compliance with the statutory requirements and the integrity of the material evidence stands fully preserved. Accordingly, the appellant's contention founded on non-compliance with Section 52-A is rejected.

[28] The decisions in **Simranjit Singh (supra)** and **Yusuf @ Asif (supra)** are distinguishable on facts, as both involved serious doubts regarding identity of samples, broken seals and unexplained discrepancies. None of those infirmities have been proved by the appellant in the present case.

[29] The reduction in weight (from "about 50g" to 40.6g) is sufficiently explained by natural drying and loss of moisture, a fact also recorded by PW-6 in the Analysis Report, which notes that the sample contained dry, broken fragments. The High Court rightly held that minor variations in weight, particularly where the sample quantity is described as "about", do not affect the identity or integrity of the sample. The relevant observations of the High Court read as follows:

"31. The deposition of P.W.5 proves that he received a quantity of 40.6 grams in one sealed cover from the court, as evidenced by Ex.P-9. The letter of P.W.6, which has been annexed with Ex.PP-9 also reveals that two samples of about 50 grams each were taken for the purpose of chemical analysis. Therefore, not only there is corroboration, but there is not too much variance in the quantity sent for chemical analysis and, therefore, the contention that the samples, which were alleged to have been sent were not the ones that were drawn out of M O.3 does not merit acceptance. The minor discrepancy in the quantity does not have much relevance, moreso, when it is the specific case of the prosecution that about 50 grams was taken as sample and not exactly 50 grams.

32. Further, it should also not be lost sight of that the initial seizure and recovery was made on 21.09.2019 and, thereafter, on 30.10.2019, on the orders of the court, one of the sample packet, viz., S-1 was sent for chemical analysis. The time lapse between 21.9.2019 and 30.10.2019 also has to be taken into consideration while the weight of the sample is considered as the freshness of the sample on 21.9.2019 would have waned by 30.10.2019, as even the recording of P.W.5 in Ex.P-9 shows that the leaves along with the seeds were found broken, which clearly shows that the samples, which were received by P.W.5 were dry. The seizure had been made on 21.9.2019 and the sample was sent on 30.10.2019 and during the interregnum 40 day period, the sample would have dried and the loss of moisture in the sample would have been the cause of reduction in weight of the sample from about 50 grams to 40.06 grams Therefore, the reduction in weight, not being too enormous, the decision in Rojesh Jagdamba Avasthi case would not be of any assistance to the appellants. Further, even in the said decision, the Supreme Court had held that minor discrepancies in the weight could not be given too much weightage so long as the discrepancy in the weight is not too enormous. Therefore, the contention of the appellants with regard to discrepancy in weight, creating a doubt with regard to the samples does not merit acceptance."

[30] This Court, in **Noor Aga v. State of Punjab & Anr**, 2008 16 SCC 417, has similarly observed in paragraph 98 that a slight difference in the weight of the sample is not so material as to undermine the prosecution case, and cannot by itself justify discarding otherwise reliable evidence.

[31] Therefore, upon careful evaluation, the prosecution has proved, beyond reasonable doubt, that the appellant was in conscious possession of 23.500 kg of ganja, a commercial quantity. The minor procedural irregularities pointed out do not affect the core of the prosecution case. The chain of custody remains intact and sampling and sealing have been sufficiently established.

[32] The appellant urges this Court to consider her youth, lack of prior criminal history and responsibility towards her minor child. While we are not unmindful of the appellant's circumstances, the NDPS Act prescribes minimum mandatory sentences for possession of commercial quantity. The Court has no discretion to reduce the sentence below the statutory minimum under Section 20(b)(ii)(C) of the NDPS Act.

Humanitarian considerations, though relevant for executive remission, cannot override statutory minimum punishment mandated by the legislature. Thus, no interference with sentence is permissible.

[33] For the said reasons, we find no infirmity in the impugned judgment of the High Court. The conviction and sentence imposed by the Trial Court and affirmed by the High Court call for no interference.

[34] The Criminal Appeal is accordingly dismissed.

[35] The conviction and sentence of the appellant under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the NDPS Act, as imposed by the Trial Court in C.C. No. 15 of 2020 and affirmed by the High Court in CrI.A. No. 125 of 2021, are hereby upheld.

[36] The appellant, however, is at liberty to pursue any remedy available in law for statutory remission before the appropriate authority.

[37] Pending applications, if any, stand disposed of

2026(1)CNC7

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge: N V Anjaria; Aravind Kumar)

Criminal Appeal No 4857 of 2025 **dated 13/11/2025**

Union of India

Versus

Vigin K Varghese

BAIL UNDER NDPS

Constitution of India Art. 136, Art. 21 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 23, Sec. 37, Sec. 21, Sec. 29, Sec. 30, Sec. 35, Sec. 67 - Bail under NDPS - Appeals filed against orders granting bail to accused prosecuted under NDPS Act - Officers seized consignment containing cocaine imported in name of concern where accused acted as Director - Statements under Sec. 67 indicated active involvement in import and coordination - High Court granted bail holding absence of knowledge and prolonged custody - Contention raised that High Court failed to apply embargo under Sec. 37 and overlooked prior seizure showing antecedent involvement - Observation made that High Court did not consider material indicating conscious possession or presumption under Sec. 35 - Held that satisfaction under Sec. 37(1)(b) must be recorded with reasons before grant of bail - High Court orders set aside and matter remitted for fresh consideration keeping statutory parameters in view - Interim bail to continue till reconsideration - Appeals Allowed

Law Point: Bail under NDPS Act requires strict compliance with twin conditions under Sec. 37 before grant of relief - Absence of reasoned satisfaction regarding innocence or likelihood of non-offending vitiates order of bail.

Acts Referred:

Constitution of India Art. 136, Art. 21

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 23, Sec. 37, Sec. 21, Sec. 29, Sec. 30, Sec. 35, Sec. 67

Counsel:

Gurmeet Singh Makker, Malak Manish Bhatt, Arshdeep Singh Khurana, Neena Nagpal, Vishvendra Tomar, Rohan Tewari, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Shrirang B Varma, Bharat Bagla, Sourav Singh, Aditya Krishna, Adarsh Dubey

JUDGEMENT

Aravind Kumar, J.- [1] Leave granted.

[2] These appeals, being Special Leave Petition (Crl.) Nos. 7768 of 2025 and 11097 of 2025, are directed against the orders dated 22.01.2025 and 12.03.2025 passed by the High Court of Judicature at Bombay granting bail to the respondent accused Vigin K. Varghese on prosecutions instituted by the Directorate of Revenue Intelligence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act". The first order, rendered in Criminal Bail Application No. 1416 of 2024, relates to the seizure of approximately 50.232 kilograms of Cocaine imported from South Africa in the name of M/s Yummito International Foods India Pvt. Ltd., of which the respondent is a Director. The second order, rendered in Criminal Bail Application No. 1540 of 2024, granted bail on the ground of parity in a connected prosecution arising from a seizure effected within a few days of the first. As both appeals concern the same accused, the same investigating agency, and substantially overlapping facts and legal issues, they are heard together and disposed of by this common order.

[3] On 05.10.2022, Officers of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, acting on specific information, identified a refrigerated shipping container bearing No. MSDU-9809038, declared to contain pallets of pears, imported from South Africa in the name of M/s Yummito International Foods India Pvt. Ltd. The respondent is stated to be a Director and the operative mind of said concern. The container was escorted from the terminal at Jawaharlal Nehru Port to EFC Logistics CFS for examination in the presence of two independent panch witnesses and the respondent.

[4] On 06.10.2022 and 07.10.2022, upon opening the said container and segregating the cartons, officers allegedly recovered fifty brick-shaped white packets concealed within cartons of green apples (pears) that were intermixed with the

declared consignment of pears. On weighment, these packets were found to weigh approximately 50.232 kilograms. Field testing indicated the presence of cocaine. The contraband was seized under a panchnama dated 06.10.2022 and 07.10.2022.

[5] Statements of the respondent came to be recorded under Section 67 of the NDPS Act wherein it is alleged that he admitted to ordering the consignment from a South African supplier, to having imported the goods using the Import Export Code of his firm, and for supervising the clearance and delivery operations through his logistics handlers. The Directorate further alleges that he identified one Mansoor Thachaparamban as his overseas collaborator who arranged the shipments and that the respondent described the commercial arrangement and coordination undertaken for the consignments.

[6] The Directorate also asserts that the present seizure was not isolated. On 02.10.2022, in a separate operation, approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine had been seized, allegedly traceable to the same network involving the respondent and the aforesaid Mansoor Thachaparamban. A separate complaint bearing No. 428 of 2023 in respect of that seizure stands filed before the Special Court for NDPS cases, Panvel. The Union relies on this to show antecedent involvement.

[7] The respondent came to be arrested in October 2022 and has remained in custody since then. Upon completion of investigation, a complaint came to be filed before the Special Court on or about 01.04.2023, registered as DRI/MZU/C/INT-96/2022. The application for bail preferred by the respondent was rejected on 24.01.2024, inter alia holding that the material prima facie disclosed his active role and that the fetters of Section 37 were attracted.

[8] The respondent thereafter approached the High Court of Judicature at Bombay by way of Criminal Bail Application No. 1416 of 2024. By order dated 22.01.2025, the High Court enlarged the respondent on bail. The High Court reasoned that although a large quantity of contraband was seized, there was prima facie no material to show that the applicant had knowledge of the cocaine concealed in the cartons of apples; that there were no antecedents; and that the trial was unlikely to conclude in the near future. On that basis, it concluded that there existed reasonable grounds to believe that the applicant was not guilty of the alleged offence and that he was entitled to bail.

[9] A subsequent order dated 12.03.2025 passed on a later bail application arising from the same chain of events proceeded on similar reasoning and extended the benefit of bail by invoking parity and reiterating absence of knowledge and prolonged custody. The Union of India has assailed both these orders in the present appeals which have been directed to be heard together.

[10] Shri Raghavendra P. Shankar, Learned Additional Solicitor General appearing for the appellant submits that High Court has erred in granting bail despite the recovery of a commercial quantity of narcotic substances under Sections 21(c),

23(c), 29 and 30 read with Section 8(c) of the NDPS Act. It is urged that the statutory bar under Section 37 was not properly applied and the reasoning adopted by the High Court is contrary to settled law. It is contended that the High Court had granted bail without recording any satisfaction that the respondent was not guilty or that he would not commit any offence while on bail. The order, it is submitted, is devoid of reasons demonstrating compliance with the twin conditions prescribed under Section 37(1)(b).

[11] The appellant further submits that incriminating materials such as call data records, seizure memos, and statements recorded under Section 67 of the NDPS Act clearly implicate the respondent and reveal his active participation in facilitating import and concealment of narcotic consignments. The High Court, according to the appellant, misapplied considerations such as delay of trial and health, which cannot override the statutory embargo. It is contended that offences of this magnitude undermine public interest and that a liberal approach in granting bail defeats the object of the NDPS Act. The Union accordingly prays that the impugned orders be set aside and the respondent be directed to surrender.

[12] Per contra, learned senior counsel appearing for the respondent submits there is no direct material linking respondent to the possession or conscious control of the contraband seized. It is urged that the recovery was from a shipping container arriving from abroad and not from the personal custody or premises of the respondent. The statements relied upon by the prosecution, are recorded by the enforcement officers and lack independent corroboration. The respondent emphasizes that he has been in custody since October 2022 and that the trial having not commenced in real earnest, it is unlikely to happen in the near future.

[13] It is contended that the High Court exercised sound discretion by harmonizing the rigour of Section 37 with the right to personal liberty under Article 21 of the Constitution. Reliance is placed on the principle that prolonged incarceration without trial cannot be justified, particularly when delay is not attributable to the accused. The respondent submits that he has cooperated throughout the investigation; has no prior criminal antecedents; and, poses no risk of absconding or tampering with the evidence. It is argued that the impugned orders reflect a reasoned exercise of judicial discretion after examining the case diary and no interference under Article 136 of Constitution of India is warranted. It is also pointed out that appellants suffer from unexplained delay in filing.

[14] We have perused the impugned orders dated 22.01.2025 and 12.03.2025. Both orders proceed essentially on four planks, absence of knowledge of the cocaine to the respondent in the imported consignment, absence of antecedents, length of custody and perceived delay in conclusion of the trial, and a consequent conclusion that there exist reasonable grounds to believe that the accused is not guilty of the offence.

[15] At this stage, two features stand out. The High Court's conclusion that there is no material to show that the applicant had any knowledge of the cocaine in the consignment has been arrived at without discussion of the statements of the respondent

and circumstances relied upon by the prosecution, including the assertion that the respondent had placed the orders for import, controlled the logistics chain, coordinated with the overseas supplier, and was present when the consignment was opened. The High Court has not examined whether those circumstances, taken at face value for the limited purpose of bail, could prima facie indicate conscious control or involvement sufficient to attract the presumption of culpable mental state indicated under Section 35 of the NDPS Act.

[16] Further, while granting bail, the High Court recorded that there were no antecedents against the applicant. The material before this Court includes the Union's assertion that the respondent had already been apprehended in connection with an earlier seizure of approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine allegedly imported through the same channel only days before the present seizure. That assertion is neither noticed nor answered in the impugned orders.

[17] The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

[18] This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

[19] In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b).

[20] We are of the view that, in the facts of this case, it would not be appropriate for this Court at the threshold stage itself to render findings on whether there are or not reasonable grounds, for believing that the respondent is not guilty, or on whether he is likely to commit any offence while on bail. That factual assessment, which the statute

requires to be made and recorded with reasons, is one that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.

[21] In our considered view, the interests of justice would be met if the impugned orders are set aside and the matter is remitted to the High Court for fresh consideration of the respondent's prayer for bail, keeping in view the parameters of Section 37 of the NDPS Act, the nature and quantity of contraband alleged to have been seized including 50.232 kilograms of Cocaine on 06.10.2022 and 07.10.2022, the role attributed to the respondent in the said import, the allegation of his involvement in an earlier seizure of 198.1 kilograms of methamphetamine and 9.035 kilograms of cocaine in early October 2022, the period of custody undergone since October 2022, and the stage of trial before the Special Court.

[22] In the result, the following order is passed:

(1) The impugned orders of the High Court of Judicature at Bombay dated 22.01.2025 and 12.03.2025 are set aside.

(2) The matters are remitted to the High Court of Judicature at Bombay for fresh consideration of the respondent's prayer for bail. The High Court shall, after affording an opportunity of hearing to both the sides and upon adverting to the statutory requirements of Section 37 and to the relevant material on record, pass a reasoned order keeping in mind the observations made hereinabove within four weeks from the date of receipt of this order.

(3) Until the High Court takes a decision, and purely as an interim arrangement, the respondent shall continue to have the benefit flowing from impugned orders including the terms and conditions of bail as presently operative. It is made clear that any infraction of the conditions of bail, including any attempt to contact witnesses or tamper with evidence, shall entitle the prosecuting agency to move for immediate cancellation before the High Court during the interregnum.

(4) We clarify that we have not expressed any opinion on the merits of the case and all contentions of both parties are left open to be urged before the High Court.

[23] The Appeals are disposed of in the above terms

2026(1)CNC12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Bail Application No 1627 of 2025 **dated 03/12/2025**

Blessing Amaka Okonko

Versus

State of Maharashtra

BAIL UNDER NDPS

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 22, Sec. 50, Sec. 29, Sec. 42 - Bail Under NDPS - Applicant arrested for possession of 460 grams of Mephedrone and supplying same to co-accused - Contended non-compliance of Sec.42 and Sec.50 NDPS Act - Prosecution produced contemporaneous record and notices showing compliance - Court observed that personal search was taken by gazetted officer with lady panch and lady police officer - Held that procedural safeguards complied - Recovery being commercial quantity and applicant being foreign national with expired visa, risk of absconding high - Bail denied - Bail Application Rejected

Law Point: When recovery of commercial quantity of contraband is proved and statutory provisions under Sections 42 and 50 NDPS Act are duly complied, court cannot infer reasonable belief of innocence-bail cannot be granted unless twin conditions under Section 37 satisfied.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 22, Sec. 50, Sec. 29, Sec. 42

Counsel:

Khushal Parmar, Anjali More, Manisha R Tidke

JUDGEMENT

Dr. Neela Gokhale, J.- [1] By this Application, the Applicant seeks her enlargement on bail in connection with FIR No. 01 of 2023 dated 01st January 2023 registered with the ANC, Ghatkopar Unit, Mumbai, for the offences punishable under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

[2] The facts of the case, in brief, are as under:-

2.1 On 31st December 2022, at around 1800 hours, the officials of the ANC, Ghatkopar Unit, Mumbai, received information of sale of narcotics in Mumbai City. Armed with this information, the officials formed a team and set off for patrolling. They carried with them all the necessary material required for compliances under the NDPS Act. During patrolling, they found 2 persons lurking in suspicious circumstances near the Lotus Prime Cloth Store, Navrang Compound, Mahim-Sion Link Road Bridge, Mumbai. The Police stopped their vehicle a little ahead of them, and kept a watch on the activities of those two persons. It appeared that the said two persons were waiting for someone. Finally, the Police officials started to go upto them to make inquiries.

2.2 On seeing the Police, the said two persons scrambled to disperse. The Police caught up with them and began making inquiries. The persons gave evasive answers. Finding their behaviour suspicious, the Police proceeded to call two panchas. Thereupon, after complying with the requisites of the NDPS Act, they undertook a

search of the said persons. 40 grams of Mephedrone ('MD') was recovered from the person of one of them namely, Nitin Chandrakant Adsul @ Papyia. It was stored in a zip lock plastic pouch. Some cash was also recovered from him. Further, 110 grams of MD along with some cash were recovered from the other person namely, Reddy Mallesh Shadkinur @ Raju. The same was also stored in a zip lock plastic pouch.

2.3 Papyia and Raju were brought to the Police Station and were arrested. Panchanamas were recorded and other formalities of the provisions of the NDPS Act were complied. On interrogation, Raju informed the Police that one lady namely, Blessing Okonko supplied 150 grams of MD to him out of which he had sold 40 grams to Papyia. This lady is the Applicant herein.

2.4 At 4:55 am of 1st January 2023, the officials of the ANC, Ghatkopar Unit, Mumbai set off on patrolling duty to look for the Applicant at the location revealed by Raju. Raju accompanied the officials. The officials reached the location at about 6.30 am and laid a trap. The Applicant came near the location at around 7.15 am. She was pointed out to the Police by Raju. The Police stopped the Applicant and made inquiries regarding her identity. She gave evasive answers. She was also searched after following due process of law. A plastic zip lock pouch containing 460 grams of MD was recovered from the pocket of her jacket. Accordingly, the Applicant was also arrested on 1st January 2023.

[3] The Applicant filed an application seeking bail in the Special Court for NDPS at Greater Bombay, however, by order dated 17th March 2025, the bail application was rejected. Hence, the Applicant is before this Court seeking reliefs as prayed.

[4] Mr. Khushal Parmar, learned counsel appeared for the Applicant. He submitted that the Police have not complied with the provisions of Section 42 of the NDPS Act; there was no CDR, bank transactions or any WhatsApp chats of the Applicant with the co-accused; there is non-compliance of Section 50 of the NDPS Act as the personal search of the Applicant was taken by a Senior Police Inspector along with a lady police Sepoy and a lady panch. He submitted that they are not authorized to search an accused. He also submitted that the panchas failed to sign the letter under Section 50 of the NDPS Act although they have signed the notice under Section 50 of the NDPS Act. Mr. Parmar further submitted that the Applicant is in custody for more than 2 years, however, the trial has not concluded as yet. He thus, prays that the Applicant be released on bail. He placed reliance of a decision of Supreme Court in **Sarija Banu (A) Janarthani @Janani and Anr. v. State through Inspector of Police**, 2004 12 SCC 266 and in the matter of **Aarif Akram Singh Shaikh v. State of Maharashtra**, 2023 BHC(AS) 5149.

[5] Ms. Manisha Tidke, learned APP representing the State in the matter, submitted that all the compliances under the NDPS Act are made. She pointed to the detailed panchanamas on record. She also drew my attention to the letter addressed to the Senior Police Officer by the Officer-in-Charge of the ANC, Smt. Lata Sutar, conveying to him the details of the information received and reduced into writing. The

said letter is signed by Smt. Lata Sutar. Thus, she submitted that Section 42 of the NDPS Act is complied with. She thereafter pointed to the letter addressed to the Applicant, apprising of her rights under Section 50 of the NDPS Act, to which the Applicant consented. Ms. Tidke, thus submitted that compliance under Section 50 of the NDPS Act is also complete. Personal search of the Applicant was taken by an authorized officer. She further submitted that the Applicant is residing in India unauthorisedly as her visa has already expired. She also submitted that the charges are framed and the trial is soon to commence. There is no long incarceration, hence, the Bail Application be rejected.

[6] Heard learned counsel appearing for the parties and perused the record with their assistance.

[7] The essential objections of Mr. Parmar are that of non-compliance of Section 42 and Section 50 of the NDPS Act. As far as Section 42 is concerned, I have gone through the letter reducing the information received from the coaccused in writing and forwarded to the Senior Officer. The entire sequence of events took place in continuation of the arrest of the co-accused. There was no specific intelligence regarding the co-accused. The generic intelligence was regarding narcotic trade being plied in Mumbai City. The officials thus, set out on patrolling duty and nabbed coaccused Raju and Papya. There is a panchanama recorded, detailing the events of the intervening night of 31st December 2022 and 1st January 2023. The arrest of the co-accused followed by the Applicant's arrest is reduced into writing and forwarded to Senior Officer. The extract of the Station Diary also shows an entry recorded at 04:30 a.m. of 1st January, 2023, regarding the information given by Raju. There is compliance of Section 42 of the Act and the objection of Mr. Parmar regarding non-compliance of Section 42 of the NDPS Act is not sustainable.

[8] I have perused the decision of the Supreme Court in **Sarija Banu (Supra)**, which observes, it is necessary for the Court to consider alleged violation under Section 42 of the Act at the stage of bail. I have considered the objection raised by Mr. Parmar in this regard. I have found that Section 42 of the Act is complied with. Hence, the observations in the said decision does not apply to the facts of the present matter. Similarly, the facts in the decision of **Aarif (Supra)** are distinct from the present case and hence, inapplicable.

[9] As regards, objection of non compliance of Section 50 is concerned, there is a letter apprising the Applicant regarding her rights, to which the Applicant has penned the following words, signifying her willingness to be searched by the Police and waiving her right to be searched by the Magistrate/Gazetted Officer:

" I am aware about my rights. Police can take my personal search. I have no objection."

The Applicant has signed and dated the said letter. The only lapse is that the Panch have not signed the said letter. According to Mr. Parmar, this lapse is sufficient

to record satisfaction that the Applicant has not committed the said offence. In my view, Section 50 of the Act does not require the Panchas to countersign the letter under Section 50 of the Act. The said lapse is thus not sufficient to record a reasonable belief that the Applicant has not committed the offence.

[10] The Applicant's personal search was conducted by PI - Sutar, who is a Gazetted Officer herself in the presence of the lady panch and another lady police officer namely Ms. Korpe in a secluded place. Thus, there is no contravention of the provisions of Section 50 of the Act.

[11] The Applicant is also residing illegally in India as her visa stands expired as on date. Hence, it is likely that the Applicant may not remain present to attend the trial and her presence will be difficult to secure. The quantity of contraband recovered from the pocket of the Applicant's jacket is 460 grams of MD, which is a commercial quantity.

[12] The conditions imposed in Section 37 (1) of the Act is that the Public Prosecutor ought to be given an opportunity to oppose the bail Application; if opposed by the Public Prosecutor, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and additionally must be satisfied that the accused persons is unlikely to commit any offence while on bail.

[13] As observed by the Apex Court in **Collector of Customs, New Delhi v. Ahmadalieva Nodira**, 2004 3 SCC 549 'reasonable grounds' means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(emphasis supplied)

[14] Thus, the focus is on the availability of reasonable grounds to believe that the accused is not guilty of the offence as charged. In the facts of the present case, the Applicant was not only apprehended with a large quantity of MD i.e. 460 grams, but also, she was supplying for sale, the said substance to dealers, including Raju and Papya. In view of the magnitude of the offence, the wider societal implications of releasing the Applicant from whose possession commercial quantity of narcotic is recovered, the possibility of the Applicant returning to the same network and re-offending, and the difficulty in securing the presence of the Applicant to face the trial, I am not inclined to release the Applicant on bail.

[15] Mr. Parmar's objection on various alleged infirmities in the prosecution case including alleged procedural lapses, discrepancies in Pancha's signatures on Section 50 letter etc., relate to evaluation of evidence, which matters can be properly appreciated by the Trial Court. The Constitutional Court is not required to decide the question of guilt or innocence of the Applicant at the bail stage and the scope of consideration is limited.

[16] Moreover, this Court is of the view that as the Applicant is charged with offences punishable with 10 to 20 years rigorous imprisonment, it cannot be said that the Applicant has been incarcerated for an unreasonably long time. Furthermore, since this Court is of the prima facie opinion that the Applicant is involved in drug trafficking, no case is made out for dispensing with the mandatory requirement of Section 37 of the NDPS Act. In any case, in the facts and circumstances of this case, I am unable to record a finding that there is reasonable ground to believe that the Applicant has not committed the said offence.

[17] The Bail Application is thus, rejected.

[18] It is made clear that the observations made herein are prima facie and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein

2026(1)CNC17

DELHI HIGH COURT

(Hon'ble Judge: Amit Mahajan)

Bail Application; Crl M A (Criminal Miscellaneous Application) No 3217 of 2025,
3392 of 2025; 24936 of 2025, CRL M A 26542 of 2025, 31771 of 2025
dated 03/12/2025

Vakil Ray; Rishipal

Versus

State (Nct of Delhi)

BAIL UNDER NDPS ACT

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 37, Sec. 8 - Bail under NDPS Act - Applications filed for regular bail in case involving recovery of ganja - Applicants alleged false implication and irregularities in recovery process including non-supply of video and lack of independent witnesses - Prosecution claimed commercial quantity recovered and CDRs showed frequent communication between accused - Court observed that non-production of rent agreement, absence of landlord as witness and incomplete videography created prima facie doubt about recovery - Co-accused granted bail earlier - Considering circumstances and period of custody, bail granted subject to conditions - Applications Allowed

Law Point: When serious procedural lapses and evidentiary doubts exist in NDPS cases, and parity with co-accused is established, conditional bail can be granted despite Section 37 restrictions

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 37, Sec. 8

Counsel:

Ankaj Giri, Aditya Aggarwal, Naveen Panwar, Ritesh Kumar Bahri, Divya Yadav

JUDGEMENT

Amit Mahajan, J.- [1] The present applications are filed seeking regular bail in FIR No. 515/2024 dated 30.11.2024, registered at Police Station Najaf Garh for offences under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

[2] Briefly stated, on 30.11.2024, on the basis of a secret information, a raiding party was constituted, and thereafter a raid was conducted at Plot No. 155, Krishna Vihar, Najafgarh, New Delhi. It is alleged that thereafter, the applicant Rishipal was caught coming out of the said plot with a white coloured plastic katta in his hand. Upon checking the said bag, the same was allegedly found to contain 5.050Kg of ganja. It is alleged that upon further search, two more white coloured bags were found in the said plot, and a recovery of approximately 20.93 kg of ganja was effected. A video of the search and seizure was made on the e-Sakshya App. The applicant was thereafter arrested on 30.11.2024.

[3] During the course of investigation, the applicant Rishipal disclosed that the applicant Vakil Ray had supplied the contraband to him. Thereafter, during PC remand, the applicant Rishipal telephonically contacted the applicant Vakil Ray on the instructions of the police, and asked the applicant Vakil Ray to supply contraband to him. Thereafter, at the instance of the applicant Rishipal, a raid was conducted near Old Khaira Road, Near Petrol Pump, Najafgarh, Delhi and the applicant Vakil Ray along with co-accused Mukul were apprehended and were found to be holding separate bags. Upon the search of the bag in the possession of the applicant Vakil Ray, two packets wrapped in brown coloured tape were found, and a total recovery of 3.860 Kg of ganja was effected. Further, upon the search of the bag of co-accused Mukul, three packets wrapped in brown colour tape aggregating to 5.930 kg of ganja was recovered. The videography of the search and seizure was made on the e-Sakshya App. The applicant Vakil Ray and co-accused Mukul were thereafter arrested on 03.12.2024.

[4] The learned counsel for the applicant Rishipal submitted that the applicant Rishipal is innocent and has been falsely implicated in the present case. He submitted that the applicant Rishipal was living in a residential area and was caught around 11:20 AM in broad daylight, however, no independent witness was joined by the prosecution which casts a doubt on the story of the prosecution.

[5] He submitted that the videography/photography of the alleged recovery was done by the police officials through e-Sakshya App. He submitted that an application was filed by the applicant Rishipal to provide a copy of the photography/videography of the alleged recovery, however, the same was dismissed with the contention that the same BAIL APPLN. 3217/2025 & BAIL APPLN. 3392/2025 Page 4 of 15 could not

be preserved in pendrive or any other device and can only be played in court using login ID of the concerned Investigating Officer during the evidence. He submitted that the denial of a vital piece of evidence to the applicant would be a denial of fair trial.

[6] He submitted that as per the version of the prosecution, the alleged recovery was effected from the rented premises of the applicant Rishipal, however, neither any rental agreement has been produced nor has the statement of the owner of the premises been recorded which renders the alleged recovery from the applicant Rishipal doubtful. He submitted that the landlord has not even been named as a witness which further casts a doubt on the case of the prosecution.

[7] He submitted that while the applicant Rishipal was previously implicated in similar cases, he has been admitted on bail in all the other cases. He submitted that the applicant Rishipal was previously admitted on interim bail and he had not misused the liberty granted to him.

[8] The learned counsel for the applicant Vakil Ray submitted that the applicant Vakil Ray is innocent and has been falsely implicated in the present case. He submitted that no actual recovery has been effected from the applicant and that the alleged recovery of 3.860 kg ganja has been planted. He submitted that in any event, the alleged recovery effected from the applicant Vakil Ray is only of intermediate quantity and in such circumstances, the bar under Section 37 of the NDPS Act does not apply.

[9] He submitted that at the time of the alleged recovery from the applicant Vakil Ray, no independent witness was joined by the prosecution. He submitted that the alleged videography made by the prosecution is also not continuous which raises doubts regarding the recovery effected from the applicant Vakil Ray and the veracity of the case of the prosecution.

[10] He submitted that it is the case of the prosecution that the applicant Rishipal called the applicant Vakil Ray during PC remand to supply the contraband, however, the same was not recorded or photographed which further raises suspicion on the recovery effected from the applicant Vakil Ray. He consequently submitted that in such circumstances, the possibility of false implication cannot be ruled out.

[11] He submitted that the applicant Vakil Ray was previously granted interim bail by the learned Trial Court and he had not misused the liberty granted to him.

[12] He submitted that co-accused Mukul who was apprehended along with the applicant Vakil Ray and from whose possession an alleged recovery of 5.93 kg of ganja had been effected has already been admitted on bail by the learned Trial Court vide order dated 09.06.2025. He consequently submitted that the applicant Vakil Ray be also enlarged on bail on the ground of parity.

[13] Per Contra, the learned Additional Public Prosecutor vehemently opposed the grant of any relief to the applicants and submitted that the present case involves a

recovery of commercial quantity of contraband, and consequently, the rigours of Section 37 of the NDPS Act are attracted against the applicants.

[14] He submitted that the recovery of contraband from the applicants, though not supported by independent witnesses, have been videographed using the e-Sakshya App.

[15] He submitted that as per the CDRs, the applicants Rishipal and Vakil Ray exchanged approximately 220 phone calls in the three months preceding the date of the alleged incident. He further submitted that the applicant Rishipal has multiple antecedents and consequently submitted that the present applications be dismissed.

Analysis

[16] It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

[17] It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

"37. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail."

[18] The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail (1) The court must be satisfied that there

are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

[19] It is the case of the prosecution that on the basis of a secret information, a raid was conducted at Plot No. 155, Krishna Vihar, Najafgarh, New Delhi alleged to be the rented premise of the applicant Rishipal, and a recovery of 25.980 kg of ganja was effected. It is also the case of the prosecution that during the course of the investigation, the applicant Rishipal disclosed that the contraband was supplied to him by the applicant Vakil Ray. It is further the case of the prosecution that during PC remand, the applicant Rishipal, on the instructions of the police, contacted the applicant Vakil Ray for supply of contraband. Subsequently, a raid was conducted at Old Khaira Road, Near Petrol Pump, Najafgarh, Delhi and the applicant Vakil Ray along with his accomplice Mukul were apprehended and a recovery of 3.860 Kg and 5.930 Kg of ganja respectively was effected.

[20] The learned counsel for the applicants have pressed the respective bail applications of the applicants primarily on the following grounds failure to provide the video of the alleged search and seizure to applicant Rishipal/discrepancy in the video of the alleged search and seizure conducted which renders suspect the recoveries made from the applicants and the non-joinder of independent witnesses.

[21] On the other hand, the bail applications of the applicants have been opposed on the ground that the present case involves a recovery of commercial quantity of contraband. It is further the case of the prosecution that there existed CDR connectivity between the applicants and as many as 220 calls were exchanged between the applicants in the three months preceding the date of the alleged incident.

Prima facie doubt cast on the recoveries effected from the applicants

[22] Insofar as the applicant Rishipal is concerned, it is contended that the applicant's right to fair trial has been impinged as he has not received a copy of the alleged videography of search and seizure. It is pointed out that as per the prosecution, the video has been uploaded on e-Sakshya App and it can only be played in the Court by using the login ID of the concerned IO. It is further argued that the recovery is rendered doubtful as the prosecution has not been able to make out a case that the plot from where the recovery was effected had been rented by the applicant Rishipal.

Undisputedly, an applicant is ordinarily entitled to receive a copy of the evidence being used against him by the prosecution. It is unfathomable that an accused person is only allowed to view the videography of the search and seizure in the Court, when the same is undoubtedly an essential piece of evidence. The same would severely impede the accused from defending against any such evidence. Even so, in the opinion of this Court, the same alone may not ipso facto entitle the applicant to grant of bail. Be that as it may, this Court has perused the aforesaid recording uploaded on the e-Sakshya App. The video recording only shows a room in which the applicant is present, along with kattas of the recovered contraband. Prima facie, at this stage, it cannot be

ascertained where the room is situated or whether the room is in the plot which was allegedly rented by the applicant Rishipal. Moreover, even though it is the case of the prosecution that the contraband has been recovered from a plot which had been taken on rent by the applicant Rishipal, no Rent Agreement has been produced and the owner of the said plot has also not been made a witness in order to corroborate the case of the prosecution. In the opinion of this Court, the aforesaid factors prima facie cast doubt on the recovery effected from the applicant Rishipal.

[23] As far as the applicant Vakil Ray is concerned, it has been emphasised that his role in the present case is not as grave as that of applicant Rishipal and only intermediate quantity of contraband was recovered from him. It is argued that the video of the alleged recovery is not continuous and no audio/video recording was done of the alleged call made by the applicant Rishipal to the said applicant during PC remand, which ultimately led to the arrest of the applicant Vakil Ray. While the sheer lack of videography or photography may not be fatal to the case of the prosecution, in the facts of the present case, the same prima facie casts a shadow on the recovery.

Pertinently, co-accused Mukul, who was apprehended along with applicant Vakil Ray, has been granted bail on the ground that only intermediate quantity of contraband was recovered from him. The applicant Vakil Ray's bail was only rejected due to his connectivity with the applicant Rishipal. While the probative value of the material on record will be tested during the course of trial, at this stage, when this Court has found the recoveries from both the applicants to be prima facie doubtful, bail cannot be denied to the applicants on account of mere telephonic conversations.

[24] Much emphasis has also been placed by the applicants on the absence of any independent witnesses apart from the infirmities and grievances in respect of the respective video recordings.

[25] It is not in doubt that the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of appropriate photography and videography of the recovery. The same would not be fatal to the prosecution's case. It is also not in dispute that the reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

[26] It can however not be denied that the lack of independent witnesses and improper/doubtful photography or videography, in some circumstances, casts a shadow over the case of the prosecution. This Court in the case of *Bantu v. State Govt of NCT of Delhi*: 2024: DHC: 5006 has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case. It was held that when the

Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

[27] Pertinently, the recovery was effected from the applicant Rishipal on the basis of secret information and from the applicant Vakil Ray at a public place on a call made by the applicant Rishipal, when he was in PC remand. In both instances, the prosecution had ample opportunity to join independent witnesses. Despite the same, the prosecution has failed to do the same and only a mechanical explanation has been tendered by the prosecution that although efforts were made to join independent witnesses for both the recoveries, however, the persons nearby refused and left by citing reasons. While the truthfulness of the explanation rendered by the prosecution for non-joinder of independent witnesses as well as prima facie improper videography will be tested during the course of the trial, at this stage, the benefit of the same cannot be denied to the applicants.

[28] Although it is argued that the rigours of Section 37 of the NDPS Act are attracted against the applicants, at this stage, having found that prima facie doubt has been cast on the respective recoveries which are further rendered suspect due to absence of independent corroboration, the benefit of bail cannot be denied to the applicants.

Pace of the trial

[29] It is pertinent to note that the applicants Rishipal and Vakil Ray were arrested on 30.11.2024 and 03.12.2024 respectively. The charge sheet has been filed in the present case and the charges are yet to be framed. Additionally, the prosecution has cited 24 witnesses in the charge sheet. In such circumstances, there is no likelihood of the trial being completed in the near future.

[30] The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

Antecedents of the applicants & their conduct on interim bail

[31] It is argued on behalf of the prosecution that although the applicant Vakil Ray has no other criminal involvements, the applicant Rishipal has multiple criminal antecedents apart from the present case, with some involvements being for offences under the NDPS Act, and he is thus likely to commit similar offences if enlarged on bail.

[32] Undisputedly, an accused being involved in multiple cases is a relevant factor to be kept in mind while considering an application for bail. However, the same cannot be a sole basis for refusal of prayer of bail where the applicant is otherwise entitled to relief on the facts of the case, especially when he has already been enlarged on bail in the other cases.

[33] Pertinently, the applicants were also admitted on interim bail and it is not the case of the prosecution that they had misused the liberty during that period. Even otherwise, appropriate conditions can be imposed to allay any apprehension that the applicants will evade trial or tamper with the evidence.

Conclusion

[34] Therefore, in the opinion of this Court, the applicants have prima facie established a case for grant of bail. The applicants are directed to be released on bail on furnishing personal bonds for a sum of Rs.25,000/- each with two sureties of the like amount each, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

b. They shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;

c. They shall appear before the learned Trial Court as and when directed;

d. They shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;

e. They shall, upon their release, give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

[35] In the event of there being any FIR/ DD entry/ complaint lodged against any of the applicants, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

[36] It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

[37] The bail applications are allowed in the aforementioned terms.

[38] A copy of this order be placed in both the matters

2026(1)CNC24

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge: Surya Partap Singh)

Criminal Miscellaneous No 43064 of 2025 **dated 29/11/2025**

Sunil Kumar

Versus

State of Punjab

PROLONGED CUSTODY

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 37, Sec. 22C - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483 - Prolonged Custody - Petition for bail under BNSS in offence involving recovery of commercial quantity of Tramadol - Petitioner in custody for more than two years - Trial progressing slowly with few witnesses examined - Prosecution opposed bail citing embargo under Sec. 37 NDPS Act - Court referred to several Supreme Court decisions holding that prolonged incarceration violates Art. 21 and statutory embargo under Sec. 37 cannot override constitutional protection when trial delayed - Observed that only two witnesses examined out of many and further detention unjustified - Found no likelihood of tampering or absconding - Held that right to speedy trial includes right to reasonable bail where proceedings delayed without petitioner's fault - Extended benefit of bail following parity with recent precedents emphasizing constitutional balance between liberty and procedure - Bail Granted

Law Point: Section 37 NDPS Act cannot bar bail where trial delayed and accused already undergone long incarceration; constitutional right under Article 21 prevails over statutory restriction.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 37, Sec. 22C
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483

Counsel:

L S Sekhon, Rohit Bansal

JUDGEMENT

Surya Partap Singh, J.- [1] For the commission of offence punishable under Sections 22C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred as "the NDPS Act" only, the FIR No. 115 dated 28.08.2023 has been lodged in Police Station Cantt. Bathinda, District Bathinda, Punjab. This is first petition for bail, filed by the petitioner, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter being referred to as "BNSS" only.

[2] Briefly stating the facts emerging from the record are that the FIR of this case came into being when a chance recovery of 80000 tablets of Tramadol was effected. As per the facts projected by the prosecution, the FIR in this case came into being when a police party headed by ASI Gursewak Singh was on patrolling duty on 28.08.2023 at about 06:00 P.M., and it spotted a car bearing registration No. HR-10-P-6777 inside the gate of a house. As per prosecution, from the car a young person carrying a black coloured kit bag alighted and the moment he noticed the police party around him, he got frightened and tried to sit back in the car. As per prosecution, on the basis of above mentioned suspicious behaviour, the above said person was checked and it was found that in the back seat of the car there were three heavy boxes of

cardboard. As per prosecution, when the contents of the above mentioned boxes were checked, it was found that in the boxes the abovesaid person was carrying 80000 tablets of Tramadol.

[3] Heard.

[4] It has been contended on behalf of petitioner that the petitioner has been falsely implicated in the present case and otherwise also, he has already suffered a long incarceration for being in custody for a period of more than two and a half years. As per learned counsel for the petitioner, the trial is taking place at snail's pace, as the prosecution, in the last more than two years, has been successful in examining only two out of 21 prosecution witnesses. The learned counsel for the petitioner has further contended that nothing is left to be recovered from the possession of the petitioner, and that the trial is not likely to be concluded in the near future, and therefore, the petitioner is entitled for the benefit of bail. In support of his arguments, the learned counsel for the petitioner has placed reliance upon the principles laid down by the Hon'ble Supreme Court of India in the cases of **Samimbanu alias Sammo v. State of Gujarat** (Special Leave to Appeal (Criminal) No. 5513 of 2025, decided on 06.08.2025), **Sajedabanu Munnabhai Shekh alias Saraswati Manoj Rajubhai Rajput v. State of Gujarat** (Special Leave Petition (Criminal) No. 8135 of 2025, decided on 04.08.2025), **Bhadresh Kumar Patel v. Union of India** (Special Leave to Appeal (Criminal) No. 2622 of 2025, decided on 29.07.2025), and **Md. Tajiur Rahaman alias Tajiur Rahaman v. The State of West Bengal** (Special Leave to Appeal (Criminal) No. 12225 of 2024, decided on 08.11.2024).

[5] On the other hand, the learned State counsel has controverted the above mentioned arguments. According to learned State counsel, in the present case, the recovery of contraband from the possession of the petitioner is very heavy, and that the quantity of contraband recovered from the possession of petitioner being commercial quantity unless the twin conditions enshrined under Section-37 of the NDPS Act are complied with, the petitioner cannot claim the benefit of bail.

[6] In addition to above, the learned State counsel has also argued that long incarceration is not a ground for release of petitioner on bail. In this regard, the learned State counsel has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the cases of **Narcotics Control Bureau v. Mohit Aggarwal**, 2022 18 SCC 374 and **Union of India v. Ajay Kumar Singh alias Pappu** (Special Leave Petition (Criminal) No. 2351 of 2023, decided on 28.03.2023).

[7] It has also been pointed out by the learned State counsel that the present petition is the second petition for bail, and that from the date of dismissal of former bail application, there is no significant change in the circumstances.

[8] The record has been perused carefully.

[9] As far as the principles governing the benefit of bail in a case related to NDPS Act, are concerned, the principles of law laid down by the Hon'ble Supreme Court in

the case of 'Mohd. Muslim alias Hussain v. State (NCT of Delhi), 2023 18 SCCa 166 are relevant, wherein the Hon'ble Supreme Court has held that grant of bail on account of undue delay in trial cannot be said to be fettered under Section 37 of the NDPS Act, given the imperative of Section 436-A which is applicable to offences under the Act.

[10] In this regard it is also relevant to mention here that the Hon'ble Supreme Court of India in the case of **Man Mandal and Another v. The State of West Bengal**, Special Leave Petition (Criminal) No.8656 of 2023 decided on 14.09.2023 and **Rabi Prakash v. State of Odisha**, 2023 SCCOnlineSC 1109, extended the benefit of bail to the accused, who had been incarcerated for a period of almost 2-3 years and the trial was likely to take considerable time. The above-mentioned benefit has been given by observing that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article-21 of the Constitution, and in such a situation, the constitutional principles must override the statutory embargo contained under Section-37 of the NDPS Act.

[11] In addition to above, in a recently pronounced verdict in the case of **Santosh Pawar v. State of Chhattisgarh & Another** (Criminal Appeal No.4883/2025, decided on 14.11.2025) the Hon'ble Supreme Court observed that rigors of Section 37 of NDPS Act will not be a bar for considering the case of an accused for bail as it comes with a condition that the prosecution would press for an early completion of trial. In the abovementioned case the Hon'ble Supreme Court of India held that appellant who was being prosecuted for being in possession of commercial quantity of narcotic substance, was entitled for bail in view of her incarceration for a period of 19 months.

[12] In another case, i.e. in the case of **Satender Kumar Antil v. Central Bureau of Investigation**, 2022 10 SCC 51 prolonged incarceration and inordinate delay engaged the attention of the Hon'ble Supreme Court of India, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.

[13] In the case of **Ismail Khan alias Pathan v. State of Rajasthan** (Criminal Appeal No.4911 of 2025, decided on 18.11.2025) with regard to recovery of commercial quantity of narcotic substance the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in view of prolonged incarceration for a period of 02 years and 08 months of the accused.

[14] The similar benefit has been taken in another appeal i.e. **Ebrahim alias Ibrahim SK v.. The State of West Bengal** [Special Leave Petition (Criminal) No.15699 of 2025, decided on 14.11.2025] and in the case of **Pamesh Arora v.. UT Chandigarh** (Criminal Appeal No.4872 of 2025, decided on 14.11.2025).

[15] Similarly in the case of **Sajedabanu Munnabhai Shekh alias Saraswati Manoj Rajubhai Rajput** (supra), the Hon'ble Supreme Court of India accorded the benefit of bail to the accused in a case where there was recovery of commercial quantity of contraband and this benefit was given on the ground of prolonged incarceration.

[16] In the case of **Md. Tajiur Rahaman alias Tajiur Rahaman** (supra), the conditions enshrined under Section 37 of the NDPS Act has been relaxed by the Hon'ble Apex Court, in view of long period spent by the accused in custody.

[17] If the facts and circumstances of the present case are analyzed in the light of above-mentioned principles of law, it transpires that:-

i) that the petitioner is already facing prolonged incarceration for a period of almost two years & three months;

ii) that the trial is not likely to be completed in near future as it taking place at a slow pace, as out of 21 only two prosecution witnesses have been examined so far;

iii) that former petition for bail, moved by the petitioner, was not decided on merits;

iv) that nothing is left to be recovered from the possession of petitioner;

v) that there are certain arguable points with regard to violation of various rules/procedures in collection of samples and conduct of investigation;

vi) that there is nothing on record to show that if released on bail, the petitioner will tamper with the prosecution evidence or influence the witnesses;

vii) that detention of the petitioner behind the bars is not likely to serve any purpose;

viii) that there is nothing on record to show that while on bail, the petitioner is likely to tamper with the evidence or influence the witnesses; and

ix) that there is nothing on record to show that while on bail the petitioner will not participate/cooperate in the trial.

[18] With regard to the legal aspect involved in the instant case, it is relevant to mention that the Hon'ble Supreme Court in the case of **Dataram v. State of Uttar Pradesh and Another**, 2018 3 SCC 22, has observed that "a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case."

[19] The principles laid down by the Hon'ble the Supreme Court of India in the case of **Satender Kumar Antil** (supra), are also relevant in this case. In the above mentioned case, it has been observed that "the rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice."

[20] Recently, in the case of **Tapas Kumar Palit v. State of Chhattisgarh**, 2025 SCCOnlineSC 322 the Hon'ble Supreme Court of India has observed that "if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed." It has also been observed by the Hon'ble Supreme Court of India in the above mentioned case that "delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently."

[21] Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as mandated by Hon'ble Apex court in **Balwinder Singh versus State of Punjab and Another**, 2024 SCCOnlineSC 4354.

[22] If the cumulative effect of all the above mentioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

[23] Accordingly, without commenting anything on the merits of the case, the present petition is hereby allowed. The petitioner is hereby ordered to be released on bail on his furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court, subject to the following conditions:-

a) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;

b) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the conclusion of trial; and

c) that the petitioner shall not leave India without prior permission of the trial Court.

[24] In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

[25] It is, however, made clear that any observation made here-inabove is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case

2026(1)CNC30

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Md Shabbar Rashidi)

Cr M (N D P S) (Criminal Miscellaneous Case (N D P S)) No 488 of 2025

dated 28/11/2025

Santosh Kumar Singh

Versus

State of West Bengal

GROUND OF ARREST

Constitution of India Art. 22 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 21, Sec. 27 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 50, Sec. 47 - Grounds of Arrest - Petitioner sought bail in case under NDPS Act - Contended that grounds of arrest not communicated in writing violating Art. 22 of Constitution - Claimed memo of arrest only contained reasons for arrest and not personal grounds - State opposed stating grounds were recorded and communicated to wife who signed memo - Court examined memo and held endorsement specifying arrest for involvement in NDPS case constituted sufficient communication of grounds - Distinction between reasons and grounds explained - No violation of Art. 22 found - Bail Rejected

Law Point: Communication of grounds of arrest under Art. 22(1) of Constitution satisfied when memo of arrest contains clear statement of offence and is duly

acknowledged; mere allegation of insufficiency not ground for invalidation of arrest

Acts Referred:

Constitution of India Art. 22

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 21, Sec. 27

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 50, Sec. 47

Counsel:

Rajdeep Mazumdar (Senior Advocate), Regean Lama, Debabrata Rai, Sanjeev Kr Gupta, Nancy Gurung, Nevidita Lama, Supriya Singh, Nilay Chakraborty, Biswarup Ray

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] Petitioner Santosh Kumar Singh seeks bail.

[2] This is a case under Sections 21(B)/27/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS' Act).

[3] Learned Senior Advocate for the petitioner submits that in terms of the provisions of Article 22 of the Constitution of India, an accused is required to be necessarily communicated with the ground of his/her arrest and non-intimation of the grounds of arrest to the detenu, vitiates the arrest. In support of his contention, learned Senior Advocate for the petitioner relies upon *Mihir Rajesh Shah vs. State of Maharashtra and Another*, 2025 SCCOnLine SC 2356.

[4] Learned Senior Advocate for the petitioner further submits that the petitioner has been informed of the grounds of arrest which is violative of Article 22 of the Constitution of India. Learned Senior Advocate for the petitioner submits that there is a difference between the grounds of arrest and the reasons for arrest. Although, a memo of arrest was prepared at the time of the arrest of the petitioner, certain endorsements regarding the grounds were made in Column 11 of such memo of arrest. However, such endorsements cannot be accepted as grounds of arrest. According to learned Senior Advocate for the petitioner, at best, it may be considered as reason for arrest. Mere intimation of reason of arrest cannot be said to comply requirements under Article 22 of the Constitution of India. To such proposition, learned Senior Advocate for the petitioner relies upon **Prabir Purkayastha vs. State NCT of Delhi**, 2024 8 SCC 254.

[5] It is further submitted by learned Senior Advocate for the petitioner that the petitioner was arrested in connection with the instant case on September 24, 2025 on the basis of statement of coaccused made while in custody. No contraband narcotic was recovered from his possession. Learned Senior Advocate for the petitioner also submitted that the co-accused, from whose possession contraband narcotics were seized, has been released on bail. Learned Senior Advocate for the petitioner refers to the copy of charge-sheet and submitted that the charge-sheet was submitted against

three accused persons including one foreign national which does not include the name of the petitioner. However, in such charge-sheet, the petitioner is alleged to have been involved in the business of contraband narcotics on the basis of a statement made by the co-accused. He is also said to have money transactions with the other accused persons which, according to the police, was for the purpose of running racket dealing in contraband articles. It is alleged that it is on such statement, the petitioner has been implicated in this case in course of further investigation of the case after, the initial charge-sheet was filed in the case.

[6] Learned Senior Advocate for the petitioner also submits that the contraband articles seized from the possession of the co-accused were below commercial quantity and on this score, the co-accused was granted bail earlier. According to learned Senior Advocate for the petitioner, there is no justification in keeping the petitioner behind the bars merely on the basis of statement of co-accused made while in custody.

[7] Learned Additional Public Prosecutor for the State, on the other hand, submits that the petitioner is kingpin of the racket dealing in contraband narcotics. He refers to various materials in the case diary including the Call Detail Records (CDRs) as well as bank statement. He submits that there are several calls in between the petitioner and the other accused. There are many bank transactions between such persons.

[8] As to the intimation of the grounds of arrest, learned Additional Public Prosecutor submits that at the time of arrest of the petitioner, a memo of arrest was drawn up which contains the grounds of arrest in clear terms. Moreover, the grounds of arrest were also communicated to the wife of the petitioner who acknowledged the same by putting her signature on the memo of arrest. As such, there is no violation of the provisions of Article 22 of the Constitution of India as stated by learned Senior Advocate for the petitioner. Accordingly, the petitioner does not deserve to be enlarged on bail.

[9] Having heard the submissions made on behalf of the parties, it is evident that the petitioner was arrested in connection with Siliguri Police Station Case No. 30 of 2025 dated January 12, 2025 under Sections 21(B)/29/27 of the NDPS Act. Memo of arrest of the petitioner goes to show that the wife of the petitioner signed on the memo of arrest as a witness. Column 11, with regard to reasons/grounds, contains an endorsement by the arresting officer to the effect 'for the involvement in connection with the above referred case and for purpose of investigation'. Such endorsement in the memo of arrest, according to learned Senior Advocate for the petitioner, does not constitute sufficient grounds of arrest for the purpose of Article 22 of the Constitution of India.

[10] In **Mihir Rajesh Shah** (supra), the Hon'ble Supreme Court held as follows:-

"45. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of

fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1). There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

46. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands."

[11] The Hon'ble Supreme Court further held in the aforesaid case that,

"48. The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for noncompliance of the provisions of Section 50 of Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.

49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says 'as soon as may be' which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately."

(Emphasis supplied)

[12] As regards the sufficiency of the grounds of arrest, the Hon'ble Supreme Court in **Prabir Purkayastha** (supra) laid down that

"48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature.

49. From the detailed analysis made above, there is no hesitation in the mind of the court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the appellant-accused or his counsel before passing of the order of remand dated 4-10-2023 which vitiates the arrest and subsequent remand of the appellant.

50. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in **Pankaj Bansal**."

(Emphasis supplied)

[13] I have noted hereinabove that a memo of arrest was drawn at the time of securing arrest of the petitioner and the petitioner himself signed on such memo of arrest. Not only that, his wife also signed on the memo of arrest as a witness. Column 11 of such memo of arrest does contain that the petitioner was arrested for his involvement in connection with Siliguri Police Station Case No. 30 of 2025 dated January 12, 2025 under Sections 21(B)/29/27 of the NDPS Act. In my opinion, such memo of arrest was sufficient for the purpose of Article 22(1) of the Constitution of India as also in terms of the ratio laid down in the case of **Prabir Purkayastha** (supra) which ordained that the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail.

[14] In consideration of the ratio laid down in the case of **Mihir Rajesh Shah** (supra), the endorsements in Colum 11 of the memo of arrest appertain to the present petitioner. It does not merely set out the reasons of his arrest but it indicates the

grounds of his arrest which notified the petitioner as to in connection with which case and for what offence he was being arrested.

[15] From the materials on record, it transpires that the instant case was initiated with the arrest of one co-accused with a total of 93.60 gms. of Cocaine. The co-accused arrested with the possession of such contraband was granted bail by the learned Jurisdictional Court by an order passed on March 24, 2025 in consideration of the fact that the quantity of seized contraband was below commercial quantity as also in view of the fact that he was a local. Later on, another coaccused was arrested on the basis of statement of the accused arrested with contraband articles, made while in custody. Such coaccused was granted bail by an order passed by a Co-ordinate Bench on May 23, 2025 in CRM (NDPS) 183 of 2025. In such order, it was noted that the quantity of the seized contraband was below commercial quantity and nothing was recovered from the possession of such person. According to the allegations made in the charge-sheet, which is relied upon by learned Additional Public Prosecutor, the present petitioner had telephonic conversation as well as monetary transactions with such co-accused. There is no positive evidence in the case diary, collected so far, to establish or at least indicate that the petitioner happens to be the kingpin of the racket dealing in contraband articles.

[16] Considering the aforesaid facts and circumstances and taking into account with the quantity of narcotic drugs seized was below commercial quantity and also taking into account that the coaccused who was arrested with the contraband narcotics has been enlarged on bail, the petitioner deserves to be extended the same facility as that of the other co-accused who was granted bail by an order dated May 23, 2025 in CRM (NDPS) 183 of 2025.

[17] Accordingly, I am inclined to grant bail to the petitioner. Therefore, bail prayer of the petitioner is **allowed**.

[18] Accordingly, I direct that the petitioner, namely, **Santosh Kumar Singh** shall be released on bail upon furnishing a bond of Rs. 20,000/- (Rupees Twenty Thousands), with two sureties of Rs. 10,000/- (Rupees Ten Thousands) each, one of whom must be local, to the satisfaction of the Learned Special Judge, under NDPS Act, Siliguri subject to condition that the petitioner shall meet the Investigating Officer of this case once in a fortnight and on further condition that he shall not leave the jurisdiction of the concerned police station until conclusion of the investigation and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

[19] **C.R.M. (NDPS) 488 of 2025** is, thus, disposed of.

[20] Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities

2026(1)CNC36

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge: Shahzad Azeem)

Bail Application No 217 of 2025 **dated 28/11/2025***Garv Bhambri***Versus***Union of India***BAIL REJECTION**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 29, Sec. 37, Sec. 26, Sec. 8 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483 - Bail Rejection - Application filed for bail under NDPS Act by accused alleged to be involved in drug trafficking through pharmaceutical firms - Investigation revealed nexus between multiple companies and seizure of commercial quantity of codeine-based drugs - Petitioner argued absence of direct evidence and parity with co-accused - Court held offence covered under commercial quantity attracting Section 37 embargo - Found sufficient material showing conspiracy and role of petitioner - Observed that leniency in such offences not justified - Bail denied - Bail Application Dismissed

Law Point: Under NDPS Act, when recovery involves commercial quantity, bail cannot be granted unless twin conditions of Section 37 satisfied even if investigation completed

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 29, Sec. 37, Sec. 26, Sec. 8

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483

Counsel:

Koshal Parihar, Kaushal Kait, Rahul Sharma, Vishal Sharma, Eishan Dadhichi, Anishwar Chatterji Koul

JUDGEMENT

Shahzad Azeem, J.- [1] The petitioner has invoked the jurisdiction of this Court in terms of Section 483 of BNSS, seeking enlargement on bail and also has questioned the legality of order dated 31.07.2025, passed by learned Special Judge (NDPS Cases), Jammu [the trial Court] whereby, bail application of the petitioner came to be dismissed, arising out of Crime No. 02/2024 under Sections 8/22/26/29 NDPS Act. This application came to be filed and rejected during further investigation, insofar as petitioner is concerned.

[2] Before heading further, it is important to note that in Crime No. 02/2024, the first complaint was filed on 11.07.2024 however, on further investigation, supplementary complaint has been filed on 08.08.2025, against as many as 08 accused, including the petitioner herein (A-5) and matter is pending before the trial Court at the stage of charge/discharge.

[3] Relevant facts, in brief are that on 14.01.2024, a source information received that co-accused namely, Rayees Ahmed Bhat is illegally trafficking Codeine based Cough Syrup (CBCS), accordingly, team of Narcotic Control Bureau, Jammu (NCB) intercepted the video coach bus at inter-state Bus Stand, Narwal, Jammu and the authorized officer of NCB Team, after disclosing his identity, conducted search and alleged to have recovered from the possession of Rayees Ahmed Bhat, (accused No. 1), who stated to be travelling in the said bus, 50 bottles (100 ml each) of Codeine Based Cough Syrup (CBCS) and 02 bottles Codeine (2,280 kg), 100 Tepentadol Tablet 100 mg each. It is further alleged that NCB, Jammu has also seized 267 bottles of Codeine Based Cough Syrup as Cocrex (33.980 kgs), 900 tablets of Alprazolam, 56 capsules of Tramadol, 210 tablets of Lorazepam, 570 tablets of Clobazam and Indian Currency amounting to Rs. 15,03,750/- from the house of the accused Mohd. Sabir (accused No. 2) as his involvement surfaced during investigation along with that of Mohd. Maqbool (accused No. 3), who said to have disclosed during investigation that the manufacturing drug supplied by M/s N.K Pharmaceutical and Garv Bhambri (petitioner herein) is the drug license holder of the said firm, however, it is further seen that initially, during the investigation, the petitioner herein despite being put to notices, did not join the investigation but only in pursuance of a warrant of arrest issued by the competent Court, the petitioner came to be arrested on 14.02.2025.

[4] During investigation, an unholy drug cartel allegedly being run by the Pharmaceutical companies, namely; N.K Pharmaceutical, Drug License issued in the name of Garv Bhambri (petitioner herein); Vidit Industries (M/s Vidit Healthcare) being run and operated by its owner namely, Neeraj Bhatia and also M/S S.S. Industries also surfaced. These firms/companies stated to have been dealing in the manufacturing, supply, marketing etc. of drugs, including CBCS.

[5] It is further seen that M/s N.K Pharmaceutical was run by accused, Niket Kansal having drug licence without any authorization issued in the name of petitioner herein, who is nowhere related to Kansal family, thus, as per the prosecution case, same allegedly indicates the nexus between the accused, who said to have established fake firms for illicit trafficking.

[6] During investigation, very minute details appear to have been collected which went onto unravel continued production and supply of Codeine Based Syrup by these companies which establishes the mens rea and habitual offending and criminal conspiracy for trafficking of CBCS through multi-state syndicate for large scale illicit gains.

[7] The financial transaction between all the accused including their bank details have been collected and also in this regard, digital data/chats recovered from phones and same went onto show as to how all the accused have created different pharmaceutical companies/firms so as to carry out illicit drug trafficking, which have been allegedly operating from Dubai to Bangkok, besides from various parts of the country.

[8] Supplementary complaint also includes the minute detail of CDR so as to establish the continued conversation inter alia between the petitioner-Garv Bhambri and rest of the accused namely, Niket, Neeraj, Sumesh, etc. who said to be running different pharmaceutical firms, including some shell firms and the accused have failed to account for the same.

[9] Now, coming to the earlier bail application, same came to be rejected by the trial Court vide order dated 31.07.2025 after taking into consideration the commercial quantity of the alleged seized drug and in view of the law governing the subject, particularly, the embargo of Section 37 of NDPS Act, inasmuch as the stage of further investigation qua the petitioner.

[10] The petitioner is seeking enlargement on bail on the ground that there is no direct evidence or role attributed to the petitioner in commission of alleged offence, however, it is only on the basis of disclosure made by the co-accused, he has been roped in. It is further vehemently argued that even in the seized bottles allegedly containing Codeine content, does not fall within the prescribed limit which brings it within the ambit of NDPS Act. The other limb of argument of learned counsel for the petitioner is that some of the co-accused have been admitted to bail, even some stood discharged.

[11] On the other hand, respondent has filed the objections and resisted the application on the ground that huge quantity of Codeine Based Cough Syrup bottles containing Codeine and other Psychotropic substance have been recovered, that falls within the definition of commercial quantity and also in view of the larger nexus between the Pharmaceutical companies, who have indulged in illicit trafficking, the petitioner does not deserve the concession of bail at this stage. It is also argued that supplementary complaint is pending disposal before the trial Court at the stage of charge/discharge, therefore, all these pleas are available to the petitioner while hearing on charge/discharge.

[12] According to Mr. Vishal Sharma, learned DSGI there exists reasonable ground showing involvement of accused in commission of offence and in this regard, the supplementary complaint, contains sufficient material which unerringly points towards the involvement of the petitioner in the commission of alleged crime. It is further submitted that the offence allegedly committed by the petitioner is heinous, which affects society at large, and particularly targets the younger generation. In the objections, it is also asserted that there is every likelihood of the petitioner misusing the liberty, if granted bail. Learned counsel for the respondent also submitted at bar

that the petitioner cannot seek parity with the co-accused who have been either bailed out or discharged as those orders have been passed by the trial Court in blatant violation of the statutory provisions and the law governing the subject as such, came to be assailed before the High Court. Hence, prayed for rejection of bail.

[13] Heard, perused the record and considered.

[14] It is to be noted that the petitioner, Garv Bhambri earlier filed application seeking bail before the trial Court, at that time, further investigation qua the petitioner and co-accused was in progress, however, as of now, admittedly, supplementary complaint is filed before the trial Court and matter is pending consideration at the stage of charge/discharge.

[15] Going by the allegations contained in the supplementary complaint, it appears that inter-alia, petitioner-Garv Bhambri came to be arrayed as accused on the ground that he was found holding drug licence in respect of M/s N.K Pharmaceuticals and as per the material collected during investigation, this was one of the firms which was found to have been supplying the manufactured drugs and other substance for illicit drug trafficking and this is not only simple drug trafficking of the manufacturing drug but there allegedly appears to be a cartel of pharmaceutical firms involved in this illegal transportation, sale and purchase of the manufactured drugs which is operating within the country as well as outside the country.

[16] For the purposes of the present petition, it is sufficient to note that the quantity of the Codeine Based Cough Syrup containing codeine a manufactured drug and other Psychotropic substance allegedly recovered falls within the ambit of commercial quantity, therefore, the embargo of Section 37 comes into play.

[17] The consistent stand of the petitioner is that given the contents of the codeine, same does not fall within the mischief of NDPS Act, however, the contents of the codeine can be relevant only when shown for what purpose, the same was being intended, However, prima-facie, keeping in view the bulk quantity of manufacturing drug alleged to have been seized and the nexus between different pharmaceutical companies including creation of shell companies, same prima-facie unravels nexus between the shell pharmaceutical firms, which in fact appears to have turned into Drug syndicate, involved in drug trafficking.

[18] As it has been observed hereinbefore that the supplementary complaint contains minute details regarding creation of shell companies, fake invoices, nexus between pharmaceutical companies, and their continued indulgence in illegal trafficking of manufactured drugs and psychotropic substances, therefore, it is important to note that there is sufficient material available on record in the form of financial transactions, CDR record, possession of drug licenses to run the pharmaceutical companies which shows a larger criminal conspiracy between the accused to get gains by way of illicit drug trafficking.

[19] When confronted with these allegations in the indictment, the Court is also conscious of the fact that in such like offences, no leniency is required to be shown to the accused as the person who are found indulging in such like activities are instrumental in causing death or inflicting death blow to number of young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society. In this regard, guidance can be drawn from the judgment of Hon'ble Supreme Court in case titled **Mohd. Zahid Vs. State through NCB**, 2022 12 SCC 426.

[20] Where it is alleged that recovered quantity of drug falls within the commercial quantity, in that event, unless the Court records the satisfaction on the twin requirement as envisaged under Section 37 of the NDPS Act, it is legally impermissible to grant concession of bail.

[21] I am fortified in my view by the recent judgment of the Hon'ble Supreme Court passed in Union of India Vs. Vigin K. Varghese, 2025 SCC OnLine SC 2440, whereby while setting aside the order of the High Court granting bail without properly considering the rigors of Section 37 held thus:-

"17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

22.The matters are remitted to the High Court of Judicature at Bombay for fresh consideration of the respondent's prayer for bail. The High Court shall, after affording an opportunity of hearing to both the sides and upon adverting to the statutory requirements of Section 37 and to the relevant material on record, pass a reasoned order keeping in mind the observations made hereinabove within four weeks from the date of receipt of this order....."

[22] As it has been observed that during investigation, sufficient material alleged to have been collected which prima facie points towards the larger conspiracy appears to be hatched by the pharmaceutical firms, who have virtually turned into Drug syndicate and also have created shell companies to perpetrate illegal trafficking oblivion of penal consequences under the provisions of NDPS Act.

[23] In view of the settled proposition of law, particularly in absence of any factual foundation by the petitioner that the twin conditions of Section 37 of NDPS Act are satisfied, the petitioner is not entitled to bail at this stage.

[24] Accordingly, the bail application is dismissed

2026(1)CNC41

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge: Arun Palli; Rajnesh Oswal)

L P A (Letters Patent Appeal); H C P (Habeas Corpus Petition) No 229 of 2025; 47 of 2025 dated 27/11/2025

Jugal Kishore @ Lucky, S/o Inder Dev Sharma

Versus

Union Territory of Jammu and Kashmir; Divisional Commissioner, Jammu; Senior Superintendent of Police; Superintendent Central Jail, Kot

PREVENTIVE DETENTION QUASHED

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 21, Sec. 29, Sec. 26, Sec. 8, Sec. 27A, Sec. 25 - Preventive Detention Quashed - Appellant challenged detention under PITNDPS Act alleging delay and non-consideration of representation - Court found last offence dated a year prior to detention and no activity thereafter - Delay of eleven months snapped live link between grounds and purpose of detention - Representation remained undecided for long without explanation violating constitutional safeguard - Writ Court had ignored both aspects - Court held detention order unsustainable due to unexplained delay and breach of procedural mandate - Order and judgment set aside - Appellant directed to be released forthwith if not required in other case - Detention quashed - Appeal Allowed

Law Point: Delay in issuing preventive detention order and failure to decide representation expeditiously vitiates detention for breach of constitutional guarantee.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 21, Sec. 29, Sec. 26, Sec. 8, Sec. 27A, Sec. 25

Counsel:

Jagpaul Singh, Monika Kohli

JUDGEMENT

Rajnesh Oswal, J.- [1] The appellant was detained in terms of Order No. PITNDPS 42 of 2024 dated 12.11.2024 (for short 'the order impugned?') issued by respondent No. 2 (for short 'the Detaining Authority?') under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the Act?') and being aggrieved of the detention, the appellant had assailed the order dated 12.11.2024 through the medium of HCP No. 47/2025, but the HCP preferred by the appellant was dismissed by the Writ Court vide judgment dated 25.09.2025.

[2] In this intra-court appeal filed by the appellant through his father, the appellant has assailed the judgment dated 25.09.2025 rendered by the learned Writ Court on various grounds, inter alia, that the learned Writ Court has not appreciated the failure on part of the Detaining Authority to consider the representation of the appellant in its right perspective and further that the respondent No.1 took more than two months in deciding the representation. It is further contended that the learned Writ Court has ignored the fact that the last illegal activity attributed to the appellant was in respect of FIR registered one year prior to the issuance of detention order, which snapped the live link between the grounds of detention and purpose of detention.

[3] Mr. Jagpaul Singh, learned counsel for the appellant has submitted that there was delay in passing the order of detention as the last illegal activity attributed to the appellant was in respect of FIR No. 295/2023 registered on 09.12.2023 with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 of NDPS Act, whereas the order of detention was passed on 12.11.2024. He has further submitted that the representation submitted by the appellant through his father against the order of detention was never decided by the Detaining Authority, and respondent No. 1 decided it only belatedly. He has vehemently argued that these grounds alone were sufficient for the learned Writ Court to quash the order of detention, but the learned Writ Court has not considered these vital aspects of the case.

[4] Per contra, Ms. Monika Kohli, learned Senior AAG appearing for the respondents has submitted that the appellant was found to be involved in similar, repeated offences, which is evident from the fact that he was involved in three such offences within a span of eighteen months, as such, order of detention was rightly passed against the appellant. She has further submitted that the appellant was provided all the documents relied upon by the Detaining Authority while passing the order of detention at the time of execution of detention order and that there is no illegality in the order of detention, that is why the learned Writ Court dismissed the HCP preferred by the appellant.

[5] Heard learned counsel for the parties and perused the detention record.

[6] The record depicts that through communication dated 02.11.2024 accompanied with the dossier, respondent No. 3 requested respondent No. 2 to detain the appellant under the Act. In the dossier, reference was made to the following four FIRs registered against the appellant:

i. **FIR No. 295/2023** registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act.

ii. **FIR No. 61/2022** registered with Police Station, Janipur for commission of offences under Sections 8/21/22/26/27-A/29 NDPS Act.

iii. **FIR No. 58/2022** registered with Police Station, Sunderbani for commission of offences under Sections 8-A/21/22/29 NDPS Act.

iv. **FIR No. 199/2017** registered with Police Station, Kathua for commission of offences under Sections 8/21/22 NDPS Act.

[7] Besides these FIRs, reference was also made to the complaint filed under Section 126/129/136 of BNSS of Police Station, Sunderbani.

[8] The respondent No. 2, considered the dossier along with accompanying material, framed the grounds of detention on 12.11.2024 and issued the order of detention dated 12.11.2024 in respect of detention of the appellant under the Act. In the grounds of detention, the last illegal activity attributed to the appellant is in respect of FIR No. 295/2023 registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act. The allegations against the appellant are that on 09.12.2023 during patrolling at about 20.13 hours, one vehicle bearing registration No. PB70D/0044 was found stationed near Devta Temple Park, Shanti Nagar, in which the appellant along with two other associates were sitting. On seeing the Police Party, they tried to flee from the spot, but the Police Party apprehended them. During personal search of the appellant, 7/8 grams of heroin-like substances was recovered. The appellant was granted bail by the court. Prior to this FIR, two FIRs i.e. one FIR No. 61/2022 was registered with Police Station, Janipur for commission of offences under Sections 8/21/22/26/27-A/29 NDPS Act on 02.06.2022 and another FIR No. 58/2022 was registered with Police Station, Sunderbani for commission of offences under Sections 8-A/21/22/29 NDPS Act was registered on 26.08.2022.

[9] The first contention raised by the appellant is that the order of detention has been issued on stale grounds, as the last illegal activity attributed to the appellant was in respect of FIR No. 295/2023 registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act on 09.12.2023. Record depicts that in FIR No. 295/2023 registered on 09.12.2023, the appellant was granted interim bail vide order dated 16.12.2023 by the court of learned Additional Sessions Judge, Jammu and thereafter till the issuance of order of detention, no illegal activity was attributed to the appellant. In the interregnum, it is only the complaint under Section 126/129/136 BNSS, that has been filed by the SHO, Police Station, Sunderbani before the Executive Magistrate, 1st Class, Sunderbani. The complaint cites only past incidents and FIRs, on the basis of which it was apprehended that the appellant might engage in illegal activity. Neither in the complaint filed under Section 126/129/136 of BNSS, nor anywhere in the grounds of detention, any illegal activity has been attributed to the appellant after December, 2023. This clearly demonstrates that there was delay of 11 months in issuing the order of detention and this delay of 11 months in issuing the detention order has snapped the live link between the grounds of detention and the purpose of order of detention. Reliance is placed upon the decision rendered by the Apex Court, in case titled as Arjun Satpal Kumbhar vs. Commission of Police, 2025 Supreme(Online) (SC) 10665, wherein it has been held that "substantial

delay in issuing the detention order without explanation warrants its quashing". In view of above, on this ground only, the order of detention was/is required to be quashed.

[10] The appellant's next contention relates to the failure of respondent No.2 to consider and decide the representation, and delay on part of the respondent No. 1 in deciding the representation. Record depicts that the appellant had filed a rejoinder before the learned Writ Court, wherein he had categorically pleaded that there is unreasonable and unjustifiable delay of almost two months in deciding the representation. It is evident that the representation dated 26.03.2025 was submitted to respondent No. 1 and in terms of communication dated 02.04.2025, Additional Secretary to Government sought comments on the said representation from the Additional Director General of Police, CID, J&K. Thereafter, the representation came to be rejected in terms of order dated 02.06.2025, as is evident from the communication dated 02.06.2025 addressed by respondent No. 1 to respondent No. 2. Moreso, we have not come across any document demonstrating that the appellant was intimated about the decision of representation. The delay caused in deciding the representation, has not been explained by the respondent No.1, as such, this Court is of the considered view that there is a breach of constitutional mandate in not considering and deciding the representation submitted by the appellant with utmost expedition and on this ground also, the order of detention deserves to be quashed.

[11] Reliance is placed upon the decision of Apex Court in case titled as **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others**, 2021 20 SCC 98, wherein representation was submitted by the detenu on 18.05.2021 but was not considered by the State Government until after the Advisory Board had submitted its report on 15.06.2021. The Government took another one month in arriving at a decision on the appellant's representation dated 18.05.2021 and no cause was furnished for such delay. The Hon'ble Supreme Court in para 47 has observed as under:

"47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention of the detenu " as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate Government are intended to ensure that the representation of the detenu is considered by the appropriate Government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing off the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides

for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution."

(emphasis added)

[12] We have examined the judgment rendered by the learned Writ Court and we are of the considered view that the learned Writ Court has not examined the issues in its right perspective, as discussed above by us, as such, the judgment dated 25.09.2025 passed by the Writ Court is not sustainable in the eyes of law and the same is required to be set aside.

[13] Accordingly, the instant appeal is allowed and the judgment dated 25.09.2025 passed by the learned Writ Court is set aside. Resultantly, the order of detention bearing No. PITNDPS 42 of 2024 dated 12.11.2024 is quashed. The appellant is directed to be released from custody forthwith, provided he is not required in any other case.

[14] Disposed of.

[15] Record be returned to Ms. Monika Kohli, learned Senior AAG appearing for the UT of J&K

2026(1)CNC45

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Md Shabbar Rashidi)

Cr M (N D P S) (Criminal Miscellaneous Case (N D P S)) No 450 of 2025
dated 25/11/2025

Chhamad Ali Alias Ali Chhamad

Versus

State of West Bengal

BAIL IN NDPS OFFENCE

Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483 - Bail in NDPS Offence - Accused sought bail in NDPS case involving commercial quantity of contraband - He was arrested solely on basis of co-accused's statement recorded in custody - No recovery made from him - Call records showed one telephonic conversation prior to seizure - Court observed that statement of co-accused in custody not admissible evidence and solitary call record insufficient to establish

nexus with contraband - Following Supreme Court decision, petitioner held entitled to bail having overcome bar of Sec. 37 NDPS Act - Bail Granted with conditions for weekly reporting and non-tampering of evidence - Bail Granted

Law Point: Arrest based only on co-accused's custodial statement without recovery or corroboration cannot justify continued detention under NDPS Act and such accused is entitled to bail after satisfying conditions of Sec. 37

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 439

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483

Counsel:

Sourav Ganguly, Gopal Roy, Rishita Chakraborty, Bibhash Kr Nandi, Aditi Shankar Chakraborty, Aniruddha Biswas, Namrata Das

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] This is an application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Sahebganj PS case no.454 of 2025 dated 05.08.2025 under Sections 21(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and the same is taken up for consideration.

[2] Report submitted on behalf of the State in compliance of the order dated November 17, 2025 is taken on record.

[3] It has been submitted by the learned advocate appearing on behalf of the petitioner that the petitioner was falsely implicated in this case merely on the basis of statement of the co-accused recorded while in custody. The petitioner is in custody for more than three months.

[4] Learned advocate for the petitioner further submits that in the nexus report submitted today by the State, even if the petitioner had telephonic conversation with the accused arrested with commercial quantity of narcotics, such call details record may be taken into consideration at the time of trial. In support of his submission, learned advocate for the petitioner relies upon a judgment passed by the Hon'ble Supreme Court in the case of **State (by NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr**, 2022 12 SCC 633 where the following was observed:-

"12. It has been held in clear terms in *Tofan Singh v. State of T. N.*, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis of for overturning the impugned orders

releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16-9-2019, 14-1-2020, 16-1-2020, 19-12-2019 and 20-1-2020 passed in SLP(Crl.) No. arising out of Diary No.22702 of 2020, SLP (Crl.) No. 1454 of 2021, SLP(Crl.) No. 1465 of 2021, SLPs (Crl.) Nos.1773-74 of 2021 and SLP (Crl.) No. 2080 of 2021 respectively. The impugned orders are, accordingly, upheld and the special leave petitions filed by the petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

[5] Learned advocate for the petitioner submits that the petitioner deserves to be enlarged on bail.

[6] Learned advocate appearing on behalf of the State relies upon the report submitted today as well as the materials contained in the case diary. He submits that it is true, the petitioner has been arrested on the basis of statement of the co-accused recorded while in custody. Nevertheless, the petitioner had telephonic conversation with the person who was arrested with commercial quantity of narcotics.

[7] Having heard the submissions made on behalf of the parties and on perusal of materials in the case diary, it appears that it is not in dispute that the petitioner had been arrested on the basis of statement of co-accused recorded while in custody. Nothing was recovered/seized from the possession of the petitioner. The report submitted on behalf of the State discloses that the accused arrested with commercial quantity of narcotics is alleged to have made a statement recorded while in custody that it was the petitioner from whom he used to procure contraband articles.

[8] It is admitted that the co-accused was arrested in possession of commercial quantity of narcotics on 5th August, 2025 whereas the petitioner was arrested on 29th August, 2025 on the basis of statement of the co-accused. The case diary contains the call details record which shows a single telephonic conversation between the coaccused and the petitioner in the month of July, 2025, much prior to when he was arrested with contraband narcotics.

[9] Considering the ratio laid down by the Hon'ble Supreme Court in the case of **State (by NCB) Bengaluru (supra)** as well as taking into consideration that there is a solitary telephonic conversation between the petitioner and the person arrested with the commercial quantity of narcotics and also taking into account that the petitioner was not arrested having been in possession of contraband narcotics, he was arrested apparently on the basis of the statement of the coaccused recorded while in custody, I am of the opinion that the petitioner has been able to overcome the restrictions contained in Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and, therefore, the petitioner may be enlarged on bail.

[10] Hence, the application for bail is **allowed**.

[11] Accordingly, I direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees Ten Thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Additional Sessions Judge, Special Court (NDPS), Cooch Behar subject to condition that the petitioner shall meet the Investigating Officer of this case once in a week until conclusion of the investigation and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

[12] In the event, the petitioner fails to comply with any of the conditions as enshrined hereinbefore, it shall be open to the Trial Court to cancel the bail without further reference to this Court.

[13] Accordingly, CRM (NDPS) 450 of 2025 is disposed of.

[14] Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all necessary formalities

2026(1)CNC48

GAUHATI HIGH COURT

[From KOHIMA BENCH]

(Hon'ble Judge: Yarenjungla Longkumer)

Cr Apl (Criminal Appeal) No 4 of 2020 **dated 25/11/2025**

Weshete Lohe S/o Veselie Lohe

Versus

State of Nagaland

POSSESSION OF GANJA

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 52A, Sec. 54, Sec. 35 - Possession of Ganja - Appellant convicted under Sec.20(b)(ii)(C) NDPS Act for recovery of 50 Kgs Ganja from abandoned vehicle - Prosecution based solely on statements of police and Assam Rifles personnel - No independent witness examined - No proof that accused was present or had control over seized vehicle - Chain of custody and certification under Sec.52A NDPS Act not followed - FSL samples varied in weight and procedure defective - Confessional statement under Sec.161 CrPC inadmissible - Trial Court relied on uncorroborated evidence and presumptions without establishing conscious possession - Conviction set aside - Appellant acquitted - Appeal Allowed

Law Point: Conviction under NDPS Act cannot sustain unless prosecution proves conscious possession and compliance with Sec.52A regarding inventory and sampling-Mere ownership of vehicle or confession under Sec.161 CrPC cannot establish guilt beyond reasonable doubt

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 52A, Sec. 54, Sec. 35

Counsel:

Khriekethonuo, Neise Liegise, Khriekethonuo, K Angami

JUDGEMENT**Yarenjungla Longkumer, J.**

[1] Heard learned counsel for the appellant Ms. Khriekethonuo. Also heard the learned Public Prosecutor for the State of Nagaland, Mr. K. Angami.

[2] The instant appeal is directed against the Judgment and Order dated 18.03.2020 passed by the learned Special Judge NDPS Phek, Nagaland in Sessions Special Case No. 08/19 in GR Case No. 29/19 arising out of Pfutsero P.S Case No. 08/19 whereby the appellant has been convicted under Section 20(b)(ii)(C) NDPS Act for a period of 10 years with fine of Rs. 1 Lakh and in default to undergo RI for one year.

[3] The prosecution case in brief is that on 25.06.2019, at around 0145 Hrs, a written FIR was received at the Pfutsero Police Station from Naik Subedar D.D. Joshi of 14th Assam Rifles stating that on 24.06.2019 at around 2100 Hrs while conducting surprise MVCP one suspected driver of Maruti Alto bearing Registration No. NL-01T-9577 fled from the scene to avert apprehension, leaving the vehicle behind. Upon search of the vehicle, 50 Kgs of suspected Marijuana (Ganja) in 5 sealed black poly bags were recovered. The vehicle and the seized contraband were produced at the Pfutsero Police Station and re-seized by the police under proper seizure memos. On receipt of the FIR, the case was taken up for investigation.

[4] During the investigation the owner of the seized vehicle was summoned and upon examination it was revealed that his friend, Weshete Lohe/accused had borrowed his vehicle on the pretext of visiting an ailing relative at Pfutsero Town. The accused/appellant surrendered before the police and admitted his crime. The complainant and one witness were examined along with the accused person. The seized articles were brought before the S.D.O.(C) Pfutsero, sealed and packed and samples of the contraband articles were drawn and sent for forensic examination. The FSL Report confirmed that the samples tested positive for Cannabis/Ganja. Having found a prima facie case against the appellant under Section 20(b) (ii) (C) of the NDPS Act the I.O submitted the Chargesheet. Charge was framed against the appellant/accused under Section 20(b)(ii)(C) NDPS Act on 20.11.2019. Charge was read over and explained to the accused/appellant and he pleaded not guilty and claimed to be tried. The matter, accordingly, went up for trial.

[5] In order to bring home the charge against the accused/appellant the prosecution side examined 5 witnesses and exhibited 7 documents. The defence did not adduce any evidence.

[6] Upon examining the evidence available on record, the learned Trial Court was of the view that the presumption of culpable mental state can be made against the accused and that the prosecution has succeeded in establishing the case against the appellant/accused and proved the charges brought against the appellant under Section 20(b)(ii)(C) NDPS Act beyond reasonable doubt and, accordingly, convicted and sentenced the appellant by the impugned Judgment and order dated 18.03.2020.

[7] Assailing the impugned Judgment and Sentence dated 18.03.2020, the learned counsel for the appellant has submitted that there is no independent witness to the seizure. All the prosecution witnesses are Police personnel and Assam Rifles personnel except for the owner of the seized vehicle. Nothing was seized from the possession of the accused/appellant and the possession was not proved by cogent and reliable evidence. There was no evidence that the accused/appellant was travelling in the seized vehicle or that he was the one who was carrying the seized contraband items in the seized vehicle, except for the deposition of PW/4 who deposed that the accused borrowed his vehicle on 24.06.2019. Beside this statement PW/4 did not know anything.

[8] The learned counsel submits that as per Section 2.3 of the Standing Order, i.e., S.O. No. 1/89 dated 13.06.1989 as well as Notification No. G.S.R. 899(E) dated 23.12.2022, the specified quantity to be drawn in each sample for Opium, Ganja and Charas is 24 gms. Failure to adhere to these guidelines renders the forensic analysis unreliable. In the instant case, as per the Letter dated 26.06.2019, written by the Investigating Officer of the case to the Superintendent of Police, Phek forwarding the samples to be tested the three samples were of 30 gms, 25 gms and 15 gms respectively. And again the FSL Report dated 29.07.2019 shows that the samples received weighed 27 gms, 26 gms and 18 gms respectively. Not only was the weight of samples contradictory to the standing instructions but there is also discrepancy in weight in the various communications regarding the samples. As such, the learned Trial Court could not have relied on the Forensic Report dated 25.02.2022.

[9] Learned counsel for the appellant further submits that the chain of custody in respect of the seized articles from the stage of seizure till the production before the Magistrate has not been proved and, further, there is no inventory list as mandated under Section 52A of the NDPS Act. It is mandatory on the part of the investigating authority to certify the correctness of the inventory by a Magistrate and to take photographs of such seized articles and to certify the photographs in the presence of such Magistrate and also to draw the representative samples of the seized articles in the presence of the Magistrate. The procedure under Section 52A of the NDPS Act has been given a total go by in the present case and on this ground alone the impugned Judgment and Order dated 18.03.2020 needs to be quashed and set aside.

[10] The learned counsel for the appellant further submits that the learned Trial Court has convicted the accused/appellant solely on the basis of the Sec 161 CRPC statement of the accused, the Section 313 CRPC statement of the accused and the deposition of PW-4/owner of the seized vehicle. No other evidence has been adduced to corroborate the same as the confessional statement under Section 161 CrPC is not admissible in evidence. Further, the PW-4 only stated that the accused/appellant had asked for his vehicle on 24.06.2019 to carry a sick person for treatment. He deposed that on the next day he came to know about the seizure of his vehicle by the Assam Rifles. Learned counsel for the appellant, therefore, submits that there is no witness who has seen the accused keeping the seized articles inside the vehicle or there is also no witness who saw the accused/appellant driving the vehicle or even being near the vehicle when it was seized. Learned counsel, therefore, submits that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt.

[11] In view of the submissions made hereinabove, the learned counsel for the appellant submits that the impugned Judgment and Sentence dated 18.03.2020 may be quashed and set aside and the accused/appellant may be acquitted and set at liberty.

[12] Learned Public Prosecutor, Mr. K. Angami submits that the prosecution has led sufficient evidence to establish the fact that the appellant had committed the offence under Section 20(b)(ii)(C) NDPS Act. He has submitted that the seizure of the contraband items has been proved by the PW-1 and 2 who are the Assam Rifles personnel who made the search and seizure from the seized vehicle. Learned Public Prosecutor also submits that the FSL Report dated 25.02.2022 has clearly proved that the seized items tested positive for cannabis/ganja. Learned Public prosecutor has, however, fairly submitted that there is no inventory list in the records. Learned Public Prosecutor, therefore, submits that all the procedural requirements have been carried out by the Investigating Agency and, therefore, the impugned Judgment and Sentence dated 18.03.2020 does not warrant the interference of this Court.

[13] This Court has considered the arguments advanced by the learned counsel for both sides and have examined the evidence available on record. As noted above, there are 5 prosecution witnesses. The defence has not adduced any evidence.

[14] Pw-1 is Naik Subedar D.D. Joshi of the 14th Assam Rifles. He deposed that on 24.06.2018, at around 8:15 PM he along with 10 other jawans was on MVCP duty near Pfutsero. They were checking the vehicles and at that time one Maruti Alto vehicle was parked along with two vehicles in the front. However, the particular Alto vehicle was left abandoned and upon checking they found ganja packets inside the vehicle. They took the vehicle and the contraband ganja and submitted the same at the Pfutsero Police Station. PW-1 deposed that he is the complainant and he submitted the FIR. Upon lodging the FIR the contraband ganja was weighed and it was a total of 50 kgs, each packet weighing 10 kgs. On being cross-examined, PW-1 stated that he did not see anyone fleeing from the scene to evade apprehension by leaving the vehicle behind. He also stated that he cannot identify the accused.

[15] Pw-2 is O.D. Singh of the 14th Assam Rifles. His deposition was the same as that of PW-1 and in his cross-examination he also deposed that there was no person inside the Alto vehicle which was abandoned near the MVCP area. PW-2 also could not identify the accused person in the Court. PW-2 stated that there was no public witness during the seizure of the consignment.

[16] Pw-3 is a police personnel posted at the Pfutsero Police Station. He deposed that the seized article was produced in the Police Station when he was on duty. He stated that the contraband ganja was weighed in his presence and there were 5 packets of 10 kgs each. On being crossexamined, PW-3 stated that he was not at the place of occurrence when the incident took place.

[17] Pw-4/Meyielo Losou is the owner of the seized vehicle. He deposed that the accused person had asked for his vehicle to carry a sick person for treatment on 24.06.2019. He gave the vehicle to the accused/appellant in good faith but later on he got information that his vehicle was seized by the Assam Rifles. In his cross-examination the PW-4 stated that he saw the contraband ganja only at the Police Station when he went to find out about his vehicle. He also stated that he was informed about the seizure of the vehicle by the accused person and not by the police.

[18] Pw-5 is the Investigating Officer of the case. He deposed that on 24.06.2019, an Alto vehicle was seized by the Assam Rifles at Razeba Junction. The vehicle was left abandoned and the Assam Rifles on searching the vehicle found 50 kgs of ganja in 5 packets. The vehicle along with the seized ganja was produced at the Police Station the following day. They searched for the owner of the seized vehicle and one Meyielo surrendered himself at the Police Station and stated that his friend, Weshete/accused took his vehicle on the pretext of carrying a sick person for treatment and that he did not know that his vehicle was used for illegal transaction. After some time the accused surrendered himself before the Police Station and stated that he had asked for his friend's vehicle and used it for carrying the contraband ganja but on seeing the Assam Rifles checking the vehicles at Razeba Junction he fled from the place leaving the vehicle behind. PW-5 also stated that the contraband ganja was in 5 packets of 10 kgs each and the ganja was produced before the Magistrate/S.D.O.(C) Pfutsero and it was packed and sealed in his presence. The Report of the FSL was received which stated that the samples tested positive for cannabis/ganja. Accordingly, he submitted the Charge-Sheet which he proved as Exhibit-P3. In his cross-examination, PW-5 admitted that there is no independent witness in the present case. He also stated that the seized ganja was sent to the FSL in 3 packets of 30 gms each.

[19] In the case of **Noor Aga Versus State of Punjab**, 2008 16 SCC 417, the Supreme Court has held that the initial burden to establish the foundational facts lies squarely on the prosecution. In **Mohan Lal vrs State of Punjab**, 2018 17 SCC 627, the Hon'ble Supreme Court held as follows: "Unlike the general principle of criminal jurisprudence that an accused is presumed innocent unless proved guilty, the NDPS Act carries a reverse burden of proof under Sections 35 and 54. But that cannot be

understood to mean that the moment an allegation is made and the FIR recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused, without the prosecution having to establish or prove anything more. The presumption is rebuttable. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities."

The presumption under Section 35 of the NDPS Act is an evidentiary inference and cannot be invoked in a vacuum. The prosecution has to first establish the basic facts, i.e, possession/seizure, identification of the substance, proper seizure procedure, etc. Only after such burden is discharged the onus shifts to the accused.

[20] This Court, upon going through the evidence in the present case is of the view that the prosecution has not been able to prove the foundational fact regarding the seizure and possession in respect of the appellant/accused and further the conscious possession of the seized article has not been proved. For the conviction of a person under NDPS Act it must be shown that the possession was conscious and not accidental or without knowledge. The accused must know that he/she is in possession of the contraband and have control over the same. In the present case, another important factor to be considered is that the Assam Rifles personnel from the rank of Sub-Inspector and above have been empowered under Section 42 and 67 of the NDPS Act only by a Notification No. S.O.5064 (E) dated 08.12.2021. Therefore, before 08.12.2021 the Assam Rifles personnel cannot be termed as empowered officers. The complainant/seizing officer D.D Joshi and PW-2/O.D. Singh were neither gazetted officers nor empowered officers. There were also no empowered police or Excise officers with them during the search. Because of this lack of statutory power the search and seizure by the Assam Rifles personnel has vitiated the seizure in this case. The hon'ble Supreme Court in **State of Punjab Versus Balbir Singh**, 1994 3 SCC 299 made the following observations, "In *Bhajan Singh Vrs State of Haryana*, it was observed that only officers empowered under the Act can take steps regarding entry, search, seizure and arrest and that the relevant provisions of the Act are mandatory. In *Umrao Vrs. State of Rajasthan*, it was held that the search made by a police constable without jurisdiction and investigation made by an officer not empowered, vitiates the trial. In *Shanti Lal vrs. State of Rajasthan*, it was similarly held that search and seizure made by SHO who was not authorized under the Act were illegal ..Therefore, if an arrest or search contemplated under Section 41 and 42 is made under a warrant issued by any other magistrate or is made by any officer not empowered or authorized, it would per se be illegal and would affect the prosecution case and consequently vitiate

the trial." Admittedly, there were no independent witnesses to the seizure and the seizure was made from an abandoned vehicle. Further, no evidence has been adduced by the prosecution to connect the seizure with the accused/appellant.

[21] The law is settled that only when the prosecution is able to prove the possession, the burden shifts to the accused to rebut the presumption of knowledge under Section 35 and 54 of the NDPS Act. It must be borne in mind that the more severe the punishment, the greater has to be the case taken to see that all the safeguards provided in a statute are scrupulously followed.

[22] Even assuming but not admitting that the foundational facts had been proved, there are glaring violations of statutory provisions of the NDPS Act in the prosecution case as far as the chain of custody in respect of the seized articles is concerned in as much as there is no inventory list nor any certification of photographs by the Magistrate nor production of any Malkhana register to show the safekeeping of the seized items. No evidence has been produced by the prosecution to prove the safe keeping of the contraband till they were placed before the Magistrate for being certified and sent to the FSL for being tested. If at all entries were made, the Malkhana register could have been very easily produced by the prosecution showing entry therein of the articles having been deposited there but this has not been done. The sample of the seal used for packing the samples has also neither been produced before Court nor was it sent to FSL for comparison. This creates a doubt as to whether the said articles were actually kept in safe condition or whether such kind of recovery has been made from the seized vehicle at all.

[23] There is also irregularity in the weight of the samples sent to the FSL as it was not done in accordance with the Standing Orders dated 13.06.1989 or 23.12.2022. As submitted by the learned counsel for the appellant the accused's statement under Section 161 CrPC is not admissible in evidence and the Section 313 CrPC statement can be used only for corroboration but it is not substantive evidence as it is not a statement under oath and without cogent and reliable evidence being adduced conviction cannot be made solely on the basis of such statements. More so in the present case where there is no evidence at all adduced by the prosecution to connect the accused/appellant with the seizure or the possession of the seized articles.

[24] As the foundational facts have not been established by the prosecution in the present case, this Court does not find it necessary to go into the other grounds put forward by the appellant. Since the foundational facts of (i) proper and lawful search and seizure and (ii) recovery of contraband from the conscious possession of the accused are not proved, the accused cannot be called upon to rebut any presumption and acquittal must follow. On this ground alone, the Judgment and Sentence dated 18.03.2020 is liable to be interfered with.

[25] In the result, the appeal is allowed. The impugned Judgment and Sentence dated 18.03.2020 in Sessions Special Case No. 08/19 in GR Case No. 29/19 arising out

of Pftusero P.S Case No. 08/19 is quashed and set aside. As the accused/appellant is stated to be on bail no order is passed for his release.

[26] Appeal stands disposed. The Registry is directed to send back the Trial Court Records

2026(1)CNC55

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Md Shabbar Rashidi)

Cr M (N D P S) (Criminal Miscellaneous Case (N D P S)) No 463 of 2025

dated 24/11/2025

Md Mustaf Ali

Versus

State of West Bengal

NDPS BAIL PLEA

Constitution of India Art. 22 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 37 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 36 - NDPS Bail Plea - Accused arrested for transporting narcotics challenged arrest citing violation of Article 22 and Section 36 BNSS - Claimed non-communication of grounds of arrest to family - State argued proper compliance with procedure and presence of arrest memo - Court examined memo and found signatures of witness and accused showing compliance - Noted that petitioner produced before Magistrate promptly and no such objection raised - Held arrest followed legal requirements - No violation of constitutional safeguards - Bail Denied - Application Dismissed

Law Point: Arrest memo duly signed by witness and accused constitutes sufficient compliance under Section 36 BNSS - Mere absence of communication to relatives without nomination does not invalidate arrest or create ground for bail under NDPS Act.

Acts Referred:

Constitution of India Art. 22

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 37

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 36

Counsel:

Anjana Medhi, Aditi Shankar Chakraborty, Biswarup Roy

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] Bail prayer of the petitioner is taken up for consideration.

[2] The petitioner was arrested in connection with Phansidewa Police Station Case No. 232 of 2025 dated May 30, 2025 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS' Act). The petitioner was arrested in connection with the said case on May 30, 2025 along with a car through which, it is alleged, contraband narcotic substances were being transported from Assam. Commercial quantity of narcotic in the nature of brown sugar was recovered, concealed under the car in which the petitioner was travelling.

[3] At the time of hearing, learned advocate for the petitioner did not make any submission on the merits of the case. It was submitted by the learned advocate that the petitioner, when arrested, was not informed of the grounds of his arrest which is in violation of the provisions of Bharatiya Nagarik Suraksha Sanhita (for short, 'BNSS'). It was further submitted that no family member or relatives/friends of the petitioner were informed about his arrest by the police. According to learned advocate for the petitioner such an action on the part of the arresting officer was in violation of the Fundamental Rights of the petitioner enshrined under Article 22 of the Constitution of India. Learned advocate of the petitioner submits that since arrest of the petitioner was made in violation of Article 22 of the Constitution of India as well as the provisions contained in BNSS, the petitioner is entitled to be released on bail.

[4] In support of such contention, learned advocate for the petitioner relied upon **GAHC010190362025 (Firoj Alom And Anr. vs. State of Assam)**, **GAHC010141092025 (National Investigation Agency vs. Thangminlen Mate @ Lenin Mate)** and **Vihaan Kumar vs. State of Haryana And Another, 2025 5 SCC 799**.

[5] Learned advocate representing the State opposes the prayer for bail of the petitioner. It was submitted on behalf of the learned advocate for the State that arrest of the petitioner was made in compliance of the provision of BNSS. There is no violation of the established laws governing arrest. The Fundamental Rights of the petitioner cannot be said to have been violated. The petitioner was arrested and was found in possession of commercial quantity of narcotic drugs.

[6] Heard the submissions made on behalf of the parties. I have gone through the materials on record including the materials contained in the case diary. The case diary contains the memo of arrest in respect of the petitioner in connection with the instant case. Such memo of arrest shows that the petitioner was produced before the learned Court on May 31, 2025 at 10:05 hours. The memo of arrest appears to have been signed by witness. It was countersigned by the petitioner on May 30, 2025 itself.

[7] Section 36 of the BNSS mandates the procedure of arrest by a police officer which is as follows:-

"36. Every police officer while making an arrest shall

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest."

[8] The memo of arrest, as is evident, was prepared by the arresting officer which contains sufficient identification of the petitioner. In accordance with the established law or the subject it was signed by a witness which includes a member of the family of the person arrested or a respectable member of the locality where the arrest was made. It was duly countersigned by the arrested person.

[9] Apparently, the memo of arrest, on the basis of which the petitioner was arrested, seems to be quite consonance with the provision of Section 36 of the BNSS.

[10] In **Firoj Alom** (supra), it was observed by the Gauhati High Court that noting the the observations made in the case of **Vihaan Kumar** (supra) to the effect that

"The Apex Court has observed in the case of "Vihaan Kumar Vs. the State of Haryana and Another" (supra) that the the requirement of communicating the grounds of arrest, in writing, is not only to the arrested persons, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution of India meaningful and effective failing which, such arrest may be rendered illegal."

[11] Similarly, in **Thangminlen Mate @ Lenin Mate** (supra), the Gauhati High Court noted as follows:-

"As can be seen from the records, bail had been granted by the Special Court, NIA, Assam to the accused respondent only on the ground of non-communication of the grounds of arrest in writing to the family members of the accused respondent and as such, bail was granted by the learned Special Court, NIA, Assam due to violation of Section 48 of the BNSS, 2023 and in view of the decision in Vihaan Kumar (supra)."

[12] In such case, the accused therein was released on bail by the Special Court, NIA on the ground that the grounds of arrest were not communicated to the father of the accused. Such grant of bail was upheld by the Gauhati High Court in **Thangminlen Mate @ Lenin Mate** (supra) when the National Investigation Agency moved before the High Court seeking cancellation of such bail.

[13] In the case at hand, the petitioner was on transit apparently in possession of commercial quantity of narcotic drugs which were being carried from the State of

Assam. The petitioner was apprehended in the State of West Bengal. The raiding officer arrested the petitioner complying all legal formalities. A memo of arrest was drawn up at the time of arrest. It bears the signature of the witness, presumably, a respectable person of the locality from where the arrest was made. The arrest memo was countersigned by the petitioner himself.

[14] The petitioner received a copy of memo of arrest. There is nothing in such memo of arrest that the petitioner nominated any members of his family or a friend for the purpose of communicating the grounds of his arrest.

[15] The materials annexed with the application for bail also demonstrates that the search and seizure was conduct by the raiding team on May 30, 2025. Contraband articles in the nature of brown sugar were recovered from joint possession of the petitioner. The vehicle, a four wheeler Tata Nexon was seized. The petitioner also signed on such seizure list and a copy of the same was received by him. The petitioner was produced before the learned Court on the day following his arrest, i.e., May 31, 2025. There is nothing on record to show that the petitioner raised such point that he was not intimated with the ground of his arrest by the arresting officer before the Court where he was produced. In such circumstances, the materials on record go to show that there was sufficient compliance of Section 36 of the BNSS.

[16] Moreover, in the case of Vihaan Kumar (supra), it was laid down by the Hon'ble Supreme Court that,

"23. In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-06- 2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police."

[17] The principle laid down by the Hon'ble Supreme Court to the effect that, 'when an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police'. I have noted hereinbefore that the memo of arrest was duly drawn up in accordance with the provision of Section 36 of the BNSS. Such memo of arrest does contain specific ground of detention to be noted as 'suspect to be carrying/possessing of NDPS articles'. The memo of arrest was countersigned by the petitioner and a copy thereof was duly received by him. Such an action on the part of the police, to my understanding,

discharges the onus upon the police with regard to communication of the grounds of arrest.

[18] So far as the intimation of grounds of arrest upon the relatives/friends of the arrested person is concerned, I find no averment to that effect in the pleadings put in by the petitioner. Besides, the application for bail appears to have been affirmed by the brother-in-law of the petitioner who has made a candid statement he is well-aware of the facts and circumstances of the case. In the teeth of such statement by a relative of the petitioner and also in absence of any pleading to that effect, I do not think, the petitioner is entitled to state that the grounds of detention has not been communicated to the family members/friends of the petitioner.

[19] Insofar as the facts and circumstances of the case is concerned, although, the petitioner has not pressed his application on merits. Nevertheless, the petitioner was found in possession of commercial quantity of narcotics and was detained for such possession of contraband articles. In that view of the matter, I am not in a position to return a finding that the petitioner has been able to overcome the restrictions under Section 37 of the NDPS Act. On this score also, I would not have been in a position to grant bail to the petitioner.

[20] Consequently, in the facts and circumstances of the case, I am of the opinion that the petitioner does not deserve to be enlarged on bail.

[21] Accordingly, bail prayer of the petitioner is rejected.

[22] C.R.M. (NDPS) 463 of 2025 is, thus, disposed of.

[23] Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities

2026(1)CNC59

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Md Shabbar Rashidi)

Cr M (N D P S) (Criminal Miscellaneous Case (N D P S)) No 464 of 2025
dated 24/11/2025

Md Shabir @ Sabir Khamn

Versus

State of West Bengal

ARREST COMPLIANCE

Constitution of India Art. 22 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 37 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 36 - Arrest Compliance - Bail sought alleging arrest illegal under BNSS and Article 22 - Petitioner

claimed family not informed - Arrest memo produced showing witness attestation and petitioner's countersignature - Court held compliance sufficient under law - No proof of violation or mala fide arrest - Found contraband recovered in commercial quantity - Observed that NDPS offences non-bailable and stringent conditions apply - Held that arrest legal and prayer for bail not maintainable - Petition Rejected - Bail Application Rejected

Law Point: Under NDPS Act, bail cannot be granted unless twin conditions of Section 37 satisfied - Proper arrest procedure under BNSS validated by signed memo and witness attestation negates plea of unlawful detention.

Acts Referred:

Constitution of India Art. 22

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 37

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 36

Counsel:

Anjana Medhi, Aditi Shankar Chakraborty, Chattu Roy, Subhasish Misra

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] Bail prayer of the petitioner is taken up for consideration.

[2] The petitioner was arrested in connection with Phansidewa Police Station Case No. 232 of 2025 dated May 30, 2025 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS' Act). The petitioner was arrested in connection with the said case on May 30, 2025 along with a car through which, it is alleged, contraband narcotic substances were being transported from Assam. Commercial quantity of narcotic in the nature of brown sugar was recovered, concealed under the car in which the petitioner was travelling.

[3] At the time of hearing, learned advocate for the petitioner did not make any submission on the merits of the case. It was submitted by the learned advocate that the petitioner, when arrested, was not informed of the grounds of his arrest which is in violation of the provisions of Bharatiya Nagarik Suraksha Sanhita (for short, 'BNSS'). It was further submitted that no family member or relatives/friends of the petitioner were informed about his arrest by the police. According to learned advocate for the petitioner such an action on the part of the arresting officer was in violation of the Fundamental Rights of the petitioner enshrined under Article 22 of the Constitution of India. Learned advocate of the petitioner submits that since arrest of the petitioner was made in violation of Article 22 of the Constitution of India as well as the provisions contained in BNSS, the petitioner is entitled to be released on bail.

[4] In support of such contention, learned advocate for the petitioner relied upon **GAHC010190362025 (Firoj Alom And Anr. vs. State of Assam)**, **GAHC010141092025 (National Investigation Agency vs. Thangminlen Mate @**

Lenin Mate) and Vihaan Kumar vs. State of Haryana And Another, 2025 5 SCC 799.

[5] Learned advocate representing the State opposes the prayer for bail of the petitioner. It was submitted on behalf of the learned advocate for the State that arrest of the petitioner was made in compliance of the provision of BNSS. There is no violation of the established laws governing arrest. The Fundamental Rights of the petitioner cannot be said to have been violated. The petitioner was arrested and was found in possession of commercial quantity of narcotic drugs.

[6] Heard the submissions made on behalf of the parties. I have gone through the materials on record including the materials contained in the case diary. The case diary contains the memo of arrest in respect of the petitioner in connection with the instant case. Such memo of arrest shows that the petitioner was produced before the learned Court on May 31, 2025 at 10:05 hours. The memo of arrest appears to have been signed by witness. It was countersigned by the petitioner on May 30, 2025 itself.

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(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest."

[8] The memo of arrest, as is evident, was prepared by the arresting officer which contains sufficient identification of the petitioner. In accordance with the established law or the subject it was signed by a witness which includes a member of the family of the person arrested or a respectable member of the locality where the arrest was made. It was duly countersigned by the arrested person.

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"The Apex Court has observed in the case of "Vihaan Kumar Vs. the State of Haryana and Another" (supra) that the the requirement of communicating the grounds of arrest, in writing, is not only to the arrested persons, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to

make the mandate of Article 22(1) of the Constitution of India meaningful and effective failing which, such arrest may be rendered illegal."

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"As can be seen from the records, bail had been granted by the Special Court, NIA, Assam to the accused respondent only on the ground of non-communication of the grounds of arrest in writing to the family members of the accused respondent and as such, bail was granted by the learned Special Court, NIA, Assam due to violation of Section 48 of the BNSS, 2023 and in view of the decision in Vihaan Kumar (supra)."

[12] In such case, the accused therein was released on bail by the Special Court, NIA on the ground that the grounds of arrest were not communicated to the father of the accused. Such grant of bail was upheld by the Gauhati High Court in **Thangminlen Mate @ Lenin Mate** (supra) when the National Investigation Agency moved before the High Court seeking cancellation of such bail.

[13] In the case at hand, the petitioner was on transit apparently in possession of commercial quantity of narcotic drugs which were being carried from the State of Assam. The petitioner was apprehended in the State of West Bengal. The raiding officer arrested the petitioner complying all legal formalities. A memo of arrest was drawn up at the time of arrest. It bears the signature of the witness, presumably, a respectable person of the locality from where the arrest was made. The arrest memo was countersigned by the petitioner himself.

[14] The petitioner received a copy of memo of arrest. There is nothing in such memo of arrest that the petitioner nominated any members of his family or a friend for the purpose of communicating the grounds of his arrest.

[15] The materials annexed with the application for bail also demonstrates that the search and seizure was conducted by the raiding team on May 30, 2025. Contraband articles in the nature of brown sugar were recovered from joint possession of the petitioner. The vehicle, a four wheeler Tata Nexon was seized. The petitioner also signed on such seizure list and a copy of the same was received by him. The petitioner was produced before the learned Court on the day following his arrest, i.e., May 31, 2025. There is nothing on record to show that the petitioner raised such point that he was not intimated with the ground of his arrest by the arresting officer before the Court where he was produced. In such circumstances, the materials on record go to show that there was sufficient compliance of Section 36 of the BNSS.

[16] Moreover, in the case of Vihaan Kumar (supra), it was laid down by the Hon'ble Supreme Court that,

"23. In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-06- 2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police

want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police."

[17] The principle laid down by the Hon'ble Supreme Court to the effect that, 'when an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police'. I have noted hereinbefore that the memo of arrest was duly drawn up in accordance with the provision of Section 36 of the BNSS. Such memo of arrest does contain specific ground of detention to be noted as 'suspect to be carrying/possessing of NDPS articles'. The memo of arrest was countersigned by the petitioner and a copy thereof was duly received by him. Such an action on the part of the police, to my understanding, discharges the onus upon the police with regard to communication of the grounds of arrest.

[18] So far as the intimation of grounds of arrest upon the relatives/friends of the arrested person is concerned, I find no averment to that effect in the pleadings put in by the petitioner. Besides, the application for bail appears to have been affirmed by the brother-in-law of the petitioner who has made a candid statement he is well-aware of the facts and circumstances of the case. In the teeth of such statement by a relative of the petitioner and also in absence of any pleading to that effect, I do not think, the petitioner is entitled to state that the grounds of detention has not been communicated to the family members/friends of the petitioner.

[19] Insofar as the facts and circumstances of the case is concerned, although, the petitioner has not pressed his application on merits. Nevertheless, the petitioner was found in possession of commercial quantity of narcotics and was detained for such possession of contraband articles. In that view of the matter, I am not in a position to return a finding that the petitioner has been able to overcome the restrictions under Section 37 of the NDPS Act. On this score also, I would not have been in a position to grant bail to the petitioner.

[20] Consequently, in the facts and circumstances of the case, I am of the opinion that the petitioner does not deserve to be enlarged on bail.

[21] Accordingly, bail prayer of the petitioner is rejected.

[22] **C.R.M. (NDPS) 464 of 2025** is, thus, disposed of.

[23] Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities

2026(1)CNC64

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: Johnson John)

Crl A (Criminal Appeal) No 307 of 2008 **dated 24/11/2025***Biju S/o Ramankutty; Jomon Thomas S/o Thomas***Versus***State***GANJA CULTIVATION**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 44, Sec. 41, Sec. 53, Sec. 43, Sec. 20, Sec. 42, Sec. 57 - Ganja Cultivation - Appeal filed against conviction under Section 20(a)(i) of NDPS Act for cultivating ganja - Excise officers detected cultivation and arrested accused from forest area - Defence contended absence of authorization under Section 53 empowering investigating officer and non compliance of Sections 42 and 57 - Court noted delay in production of sample and lack of proof of safe custody - Observed that investigating officer had no notified power as officer in charge for investigation - Evidence of seizure and sampling doubtful and not corroborated by independent witnesses - Found material contradictions in prosecution version and failure to establish chain of custody - Held conviction unsustainable as prosecution failed to prove case beyond reasonable doubt - Appellants acquitted accordingly - Appeal Allowed

Law Point: In NDPS cases, absence of valid authorization under Section 53 and failure to establish compliance with procedural safeguards render conviction unsustainable when prosecution unable to prove recovery and custody of contraband beyond reasonable doubt

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 44, Sec. 41, Sec. 53, Sec. 43, Sec. 20, Sec. 42, Sec. 57

Counsel:

B Raman Pillai (Senior Advocate), Anil K Muhamed, R Anil, Delvin Jacob Mathews, Sujesh Menon V B, Alex M Thombra

JUDGEMENT

Johnson John, J.- [1] The appellants are accused Nos. 1 and 2 in S.C. (NDPS) No. 4 of 2007 on the file of the Special Judge for NDPS Act Cases, Thodupuzha and they are challenging the conviction and sentence imposed on them for the offence under Section 20(a)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).

[2] The prosecution case is that on 23.02.1998, while the Excise Circle Inspector of Narcotic Enforcement Squad, Adimaly was checking the vehicles at Top Station Kovilloor road, he got information about ganja cultivation in the Government forest area near Vadavari and accordingly, after recording the information and forwarding the same to the higher officials, he proceeded to the forest area along with the excise party by walking and when they reached the place of occurrence, they saw two persons engaged in nursing the ganja cultivation. They saw a shed covered by plastic sheet at a distance of 100 metres from the ganja cultivation.

[3] The Circle Inspector arrested the accused persons and out of the ganja plants numbering 2280, three plants were taken as sample and the remaining ganja plants were destroyed. Thereafter, the shed was searched in the presence of the accused persons and implements for cultivation, utensils for manufacturing food etc. were recovered. It is stated that they also recovered a country-made gun and 4 bullets from the shed. The Excise Circle Inspector of the Narcotic Enforcement Squad, Adimaly conducted the investigation and filed final report against the accused persons for the offence under Section 20(a)(i) of the NDPS Act.

[4] When the accused persons appeared before the trial court, after hearing both sides, charge was framed under Section 20(a)(i) of the NDPS Act and when the accused persons pleaded not guilty, PWs 1 to 7 were examined and Exhibits P1 to P13 and MOs 1 to 4 series were marked from the side of the prosecution. From the side of the accused, Exhibits D1 and D2 were marked.

[5] After hearing both sides and considering the oral and documentary evidence on record, the learned Special Judge, as per the impugned judgment dated 07.02.2008, convicted and sentenced the accused persons to undergo rigorous imprisonment for four years and to pay a fine of Rs.50,000/- each and in default of payment of fine, to undergo simple imprisonment for six months each for the offence under Section 20(a)(i) of the NDPS Act.

[6] Heard Sri. George Vinci Jose, the learned counsel representing the learned counsel for the appellant on record and Sri. Alex M. Thombra, the learned Senior Public Prosecutor for the State and perused the records.

[7] The point that arise for consideration is whether the conviction and sentence passed against the accused are legally sustainable.

[8] The main contentions raised on behalf of the appellants are the following:

I. The prosecution has not produced any notification under Section 53 of the NDPS Act empowering the Circle Inspector of the Narcotic Special Squad, Adimaly with the powers of an officer in charge of a Police Station for the investigation of the offences under the Act.

II. The prosecution has not explained the delay in producing the sample before the court.

III. The prosecution has not explained the inordinate delay in producing the sample in the Chemical Examiner's Laboratory.

IV. There is non compliance of Sections 42 and 57 of the NDPS Act and the same caused prejudice to the accused and resulted in failure of justice.

V. No satisfactory evidence is adduced to prove the manner of sampling as well as its safe custody in tamper free condition.

VI. There is no satisfactory explanation as to why the Excise Circle Inspector has not reported the seizure of the country-made gun and cartridges to the police for registering a crime under the relevant provisions of the Indian Arms Act.

[9] Pw1 was the Circle Inspector of Narcotic Special Squad, Adimaly who detected this case and conducted investigation. The evidence of PW1 and Exhibit P3 mahazar dated 23.02.1998 shows that on getting information about the cultivation of ganja plants in the forest area, in order to avoid leak of information regarding the raid, he proceeded to the place of occurrence along with excise party without informing the forest officials.

[10] The evidence of PW1 shows that at the time of search, he was not accompanied by any independent witness from the locality. According to PW1, he forwarded a report under Section 42(2) of the NDPS Act to the Assistant Excise Commissioner; but, it is not seen produced before the court. PW1 deposed that out of the total 2280 ganja plants, he took three plants as sample and after packing and affixing seal, he also affixed a label marked 'A' in the sample with his signature and the signature of the accused persons.

[11] In cross examination, PW1 stated that the accused were spreading fertilizer in the ganja plantation. PW1 would say that they were in uniform; but, there was no attempt on the part of the accused to run away on seeing the excise party. PW1 admitted that on the same day, he detected another case of ganja plantation; but, he cannot remember the number of the said case or whether the accused were acquitted in that case.

[12] Pw2 is the Excise Preventive Officer who accompanied PW1 and he also admitted that they have not informed the forest officials about the raid and they have not reported the seizure of the countrymade gun and cartridges to the police.

[13] Pw3 is the Assistant Excise Commissioner who obtained plan and certificate from the Village Officer. The evidence of PW6, Village Officer, and Exhibit P12, possession certificate, and Exhibit P13, site plan, would show that the place of occurrence is a Government waste land comprised in survey No. 183 of Block No. 62 in Vattavada Village in the possession of the Forest Department. From Exhibit P12, certificate, and Exhibit P13, site plan, it is clear that the place of occurrence is not forest as deposed by PWs 1 and 2.

[14] Pw5 was the Assistant Excise Commissioner of Thodupuzha on 23.2.1998 and he deposed that Exhibits P10 and P11 are the copies of the information and

grounds of information received from PW1 and that Exhibit P7 is the report received by him regarding the registration of the crime. In cross examination, PW5 admitted that he has not produced the original of Exhibits P10 and P11 in the court and there is also no endorsement in Exhibits P10 and P11 to indicate that he received the original of the same. In cross examination, PW5 categorically admitted that at the time of receiving the original, he used to endorse in the copy regarding the receipt of the original and there is no such endorsement in Exhibits P10 and P11.

[15] Pw7 deposed that he was working as Circle Inspector in the Narcotic Enforcement Squad, Adimaly from August, 2001 to July, 2002 and during that period, he recorded the statement of the Detecting Officer and the Range Officer. But, he would say that further investigation was conducted by his successor in office. In cross examination, when a specific question was put to PW7, as to whether any offence under the Arms Act was detected in this case, the witness stated that he has not conducted any investigation regarding the same.

[16] In **Varinder Kumar v. State of H.P.**, 2020 3 SCC 321, a three Judge Bench of the Honourable Supreme Court held that all pending criminal prosecution, trials and appeals prior to the law laid down in **Mohan Lal v. State of Punjab**, 2018 17 SCC 627 shall continue to be governed by the individual facts of the case. It is not in dispute that in this case, the alleged occurrence was on 23.02.1998 and therefore, the law laid down in **Mohan Lal's** case (supra) is not applicable.

[17] The decision of the Honourable Supreme Court in **Mukesh Singh v. State (NCT of Delhi)**, 2020 10 SCC 120 shows that in a case where the informant himself is the investigator, by that itself, it cannot be said that the investigation is vitiated on the ground of bias or prejudice and that the question of bias or prejudice would depend upon the facts and circumstances of each case. In **Mukesh Singh** (supra), it was further held that the contrary view in **Mohan Lal** (supra) that the informant cannot be the investigator and in such a case, the accused is entitled to acquittal is not good law and the same is over ruled.

[18] The learned counsel for the appellant pointed out that the prosecution has not produced any notification under Section 53 of the NDPS Act empowering PW1 or any other Inspector of the Narcotic Enforcement Squad, Adimaly investing with powers of an officer-in-charge of a Police Station. Section 53 of the NDPS Act reads thus:

"53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station. (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence [or any other department of the Central Government including para-military forces or armed forces] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise [or any other department] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act."

[19] In this case, PW1, Circle Inspector of Narcotic Enforcement Squad, Adimaly, has not handed over the accused and properties to the Excise Range Office, Adimaly and the evidence of PW1 shows that he registered the crime and conducted the investigation. It is true that Section 53 of the NDPS Act does not say that all those officers to be authorized to exercise the powers of an officer in charge of Police Station for the investigation of the offences under the NDPS Act, shall be other than those officers authorised under Sections 41 to 44 of the NDPS Act. But, in the absence of a notification under Section 53 of the NDPS Act, it cannot be held that PW1 was having the powers of an officer-in-charge of a Police Station for the investigation of the offences under the NDPS Act as on 23.02.1998, the alleged date of occurrence in this case.

[20] The decision of the Honourable Supreme Court in **Mukesh Singh** (supra) would show that in a case where the informant himself is the investigator, by that itself it cannot be said that the investigation is vitiated on the ground of bias or prejudice and that the matter has to be decided on a case-to-case basis.

[21] Exhibit D1, certified copy of the judgment in CC No. 6 of 2003 of the Special Judge for NDPS Act cases, Thodupuzha and Exhibit D2, copy of the deposition of PW1 in that case, would show that the allegation in the said case is that on 23.02.1998, the Excise Circle Inspector attached to Narcotic Enforcement Squad, Adimaly detected ganja cultivation in the forest area near Top Station, Kovilloor road and arrested two accused persons from the spot. The learned counsel for the appellant pointed out that Exhibit D1 judgment would show that the allegations in the said case are similar to the allegations in this case and the very same Circle Inspector of Narcotic Enforcement Squad, Adimaly detected both these cases on the same day and the allegations against the accused in both the cases are almost similar.

[22] Exhibit P3 mahazar, Exhibit P5 property list and Exhibit P4 search list in this case reached the court only on 26.02.1998 and there is no explanation from the side of the prosecution regarding the delay in producing the said documents and properties before the court.

[23] Exhibit P9, certificate of chemical analysis dated 27.11.1998, shows that the sample forwarded from the Sessions Judge, Thodupuzha, as per letter dated 26.02.1998 through the excise guard, Baby Thomas, was produced in the Chemical Examiner's Laboratory only on 19.03.1998. In this case, the prosecution has not examined the property clerk of the court or the excise guard with whom the sample was entrusted for producing in the laboratory to explain the reason for the delay in producing the sample in the Chemical Examiner's Laboratory. In this connection the learned counsel for the appellant also pointed out that the evidence of PW1 and

Exhibit P3, mahazar, would show that PW1 affixed a label marked 'A' in the sample with his signature and the signature of the accused persons and there is nothing in Exhibit P9, chemical analysis report, to show that the sample packet contained any label marked 'A' with the signature of the Detecting Officer and the accused persons.

[24] The evidence of PW5 in cross examination would clearly show that he is not sure, whether he received the original of Exhibits P10 and P11 and there is also no satisfactory explanation as to why the seizure of the country-made gun and cartridges were not reported to the police for registering the crime under the relevant provisions of the Indian Arms Act and therefore, I find merit in the argument of the learned counsel for the appellants that there are significant procedural violations.

[25] In the absence of satisfactory evidence to show as to how and in what condition the articles were preserved by PW1 before the same was produced in the court along with Exhibit P5, property list, on 26.02.1998 and as to how safely the sample was taken by the excise guard, Baby Thomas, from the court to the Chemical Examiner's Laboratory, I find merit in the argument of the learned counsel for the appellant that there is a strong circumstance to doubt the genuineness of the sample and the credibility of the prosecution case.

[26] The decision of the Honourable Supreme Court in **State of U.P. v. Hansraj**, 2018 18 SCC 355 and the decisions of this Court in **Faijas v. State of Kerala**, 2020 CrLJ 4758 and **Renjith v. State of Kerala**, 2024 KER 760322024 KHCOOnline 7030 =] would show that unexplained delay in producing the contraband before the court and the sample before the Chemical Examiner's Laboratory are strong circumstances affecting the credibility of the prosecution case. It is also pertinent to note that PW1 has not affixed the specimen impression of the seal on Exhibit P3 seizure mahazar and therefore, considering the entire facts and circumstances of the case, this court finds that the accused are entitled for the benefit of reasonable doubt and the impugned judgment is liable to be set aside.

In the result, the appeal is allowed and the impugned judgment is set aside and the accused/appellants are acquitted of the offence under 20(a)(i) of the NDPS Act. The bail bond executed by the appellants/accused shall stand cancelled and they are set at liberty forthwith

2026(1)CNC69

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Bail Application No 429 of 2025 **dated 21/11/2025**

Arbaz Aslam Shaikh

Versus

State of Maharashtra

BAIL UNDER NDPS

Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 43, Sec. 37, Sec. 22, Sec. 42, Sec. 57 - Bail under NDPS - Applicant arrested for possession of 100 grams of Mephedrone and alleged involvement in drug trafficking - Contended non-compliance of Sec.42 and 50 NDPS Act, delay in FIR and long custody - Prosecution argued search under Sec.43 valid as recovery during patrolling, and compliance made - Court examined Section 37 restrictions and found commercial quantity involved - Observed applicant failed to show reasonable grounds for believing he not guilty and that continued custody justified under statutory bar - Long incarceration alone insufficient to override limitations of Sec.37 - Bail refused considering gravity of offence and recovery circumstance - Bail Rejected

Law Point: For offences involving commercial quantity under NDPS Act, bail can be granted only if court satisfied that accused not guilty and unlikely to reoffend; mere long custody not sufficient to relax Sec.37 rigour

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 439

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 43, Sec. 37, Sec. 22, Sec. 42, Sec. 57

Counsel:

Khan Sherali Shakhigul, Tabish Shaikh, Megha S Bajoria, N B Chavan

JUDGEMENT

Dr. Neela Gokhale, J.- [1] The Applicant seeks his release on bail in connection with C.R. No.92 of 2023 dated 3rd November, 2023, registered with the ANC, Azad Maidan Unit, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

[2] The facts of the case, in brief are that, on 2nd November, 2023, when the officials of the ANC, Azad Maidan Unit, were out for patrolling, at about 10:30 p.m., they found one person lurking in suspicious circumstances near the Jogeshwari Police station bus stop next to an electric pole on the service road, Western Express Highway, Southwards, Jogeshwari (E). The Police made enquiries with him and asked him for his identity. The said person started running away on his two-wheeler, the Police stopped him. They identified themselves as Police Officers and started questioning him. Since he gave evasive answers, the Police detained him and proceeded to comply with the statutory provisions of the NDPS Act, including getting Panchas and other material, etc. On his personal search, 100 grams of Mephedrone (MD) was recovered from him. The said contraband was placed in a plastic pouch and stapled. The plastic pouch was in turn kept in an envelope, which was sealed and marked as Exhibit 'A'.

The said person was identified as Hardik Chandubhai Solanki, namely, the Accused No.1.

[3] Said Solanki told the Police that he was using the two-wheeler to distribute the contraband. He also told the Police that one Adam Hussain was his supplier and offered to take them to Adam. The Police proceeded with the patrolling to nab said Adam since, they had an apprehension that he will abscond once he learnt about the arrest of Solanki. Thus, they proceeded to look for Adam, as per Solanki's directions.

[4] Solanki took the Police to the shop of one Raza, a keymaker, from which place, Adam operated. Thus, the Police set a trap for Adam. One person came and appeared to be waiting for someone. Solanki identified the said person as Adam. The Police apprehended Adam. After complying with the statutory provisions of the NDPS Act, the Police searched him. When the Police questioned him as to his supplier, he revealed that he had purchased it from the Applicant, who resided in Kalina, Santacruz. Thus, the Police continued their patrolling, keeping a lookout for the persons involved in the crime.

[5] The Police went to the location revealed by Adam. On seeing the police, the Applicant attempted to run away. However, the Police caught up with him and apprehended him. After following the due process of law, the Police searched the Applicant and recovered 100 grams of Mephedrone in a plastic pouch from the left pocket of his kurta. In this manner, the Applicant came to be arrested on 3rd November 2023.

[6] The Applicant made an application seeking bail before the Special Court, NDPS Act, Greater Bombay. However, by order dated 19th September 2024, the said bail application was rejected. Hence, the Applicant has filed the present Bail Application for the relief as prayed.

[7] Both the counsels sought time to place on record their written submissions. The same are filed by both the counsels on 17th and 18th November 2025 respectively. The same are taken on record.

[8] Mr. Sherali Khan, learned counsel, represented the Applicant and Ms. Megha Bajoria, learned APP, represented the State.

[9] Mr. Khan's arguments are as under:

i) Compliance under Section 42 of the NDPS Act is not made as once the Accused No.2 - Adam shared information regarding the present Applicant, the same ought to have been reproduced in writing and sent to the superior officer, which according to Mr. Khan, was not done.

ii) In case the information was received by the Police on patrolling and the Police apprehended delay in the time spent in reducing the information in writing, it was binding on the Police, to thereafter and as soon as practical, record the information in writing and convey the same to the superior officer.

iii) There was a delay of three hours in lodging the FIR.

iv) The Panchanama was recorded on 3rd November 2023, but the Inventory Panchanama was recorded only on 8th November, 2023.

v) The certification under Section 52A does not certify the correctness of the samples drawn.

vi) There is non-compliance of Section 50 of the NDPS Act.

vii) The Applicant is in custody from 3rd November 2023 and the charges are not framed as yet. The Applicant thus, deserves to be released on bail on the ground of long incarceration.

[10] Per contra, Ms. Bajoria, learned APP representing the State in the matter, submitted as under:

i) Since the entire operation commenced upon a chance recovery during patrolling, strict compliance of Section 42 is not mandatory. It is settled law that searches and seizure during patrolling fall within the scope of Section 43 and not Section 42. The information regarding Applicant is not based on intelligence received by the Police but during patrolling.

ii) The Applicant was apprehended based on real time information by the co-accused during the course of a continued operation, which does not come strictly under the category of prior information.

iii) Compliance of all the statutory provisions is made. The Applicant was served with a written notice as required under Section 50 and the notice bears his endorsement.

iv) The delay in registering the FIR has no fatal consequences and no prejudice is shown to be caused by the same.

v) The samples were duly drawn, sealed and deposited as per the requirements of the NDPS Act. The Applicant has not demonstrated any tampering.

vi) A detailed action taken report was furnished to the immediate superior officer.

vii) 100 grams of Mephedrone i.e. of commercial quantity was found on the person of the Applicant. Additionally, Rs.15 lakhs cash and 100 zip lock bags were also found in his house indicating his involvement in drug trafficking.

viii) Rigors of Section 37 are not fulfilled, and long incarceration alone is not sufficient to override the mandate of Section 37.

Ms. Bajoria hence, resisted the Bail Application.

[11] I have carefully considered the arguments advanced by the learned counsels for the respective parties and perused the record of the case.

[12] The provisions of Section 37 of the NDPS Act read thus:-

"37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unlessPage 8 of 20

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause

(b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

[13] It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

[14] The expression "reasonable ground" came up for discussion in **State of Kerala and others Vs. Rajesh and others**, 2020 12 SCC 122 and the Supreme Court has observed in paragraph 20 as below:

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."

"the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

[15] To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any

such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

[16] In a recent decision of the Supreme Court in the matter of **NCB v. Mohit Agrawal**, 2022 18 SCC 374 observed as under:-

"15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with, and he is unlikely to commit an offence under the Act while on bail."

[17] Returning to the facts of the present case, admittedly, the offending substance was recovered from the pocket of the Applicant. Additionally, material to indicate the Applicant's involvement in a drug supply operation, was also recovered from his house. The actual contraband recovered is from his person, which did not require the officers to enter into, search any building, conveyance or place.

[18] Mr. Khan has placed reliance on the decision of the Supreme Court in **Karnail Singh v. State of Haryana**, 2009 8 SCC 539. The Supreme Court in its penultimate paragraph, held as under:-

"35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the Police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of subsections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the Police officer was in the Police station with sufficient time to take action, and if the Police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the Police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

[19] I have gone through the said decision carefully. In the facts of the present case, sub clause (b) of paragraph No.35 of the aforesaid decision is attracted, since the Police officers were not in the Police station but on patrolling duty. Thus, while on the move, they received real time information from co-accused regarding movement and involvement of the present Applicant. What they were required to do in these circumstances in compliance of clause (a) to (d) of Section 42 was, thereafter, as soon as practical to record the information in writing and forthwith inform the same to the superior officer.

[20] Admittedly, Mephedrone of commercial quantity was recovered from the person of the Applicant and there was no requirement for the officers to enter the place. Section 43 of the NDPS Act, dealing with the power of seizure and arrest of the suspect in a public place is attracted.

[21] Ms. Bajoria has drawn my attention to a letter dated 3rd November 2023, addressed by the Police officials to their superior officer. No doubt, that the title of the said letter indicates this as a 'special report' as per Section 57 of the NDPS Act. I have gone through the contents of the said report. It is a detailed narration of the events that transpired leading to the arrest of the accused including the Applicant and the circumstances in which the information was received by the Officers, from Adam. Considering that the Applicant was apprehended on account of real time information

provided by co-accused and the entire patrolling activity was in a continued sequence, at the very first opportunity, on the date of the Applicant's arrest itself, information was reduced into writing and conveyed to the superior officer. Notwithstanding that the information reduced into writing and forwarded to the superior officer bears the words 'special report', the object of Section 42 that the information received is to be reduced into writing and forwarded to a superior officer is fulfilled. The fact that the said letter bears the words 'special report' does not take away the significance of the contents of the letter that the information regarding the Applicant is reduced into writing and conveyed to the superior officer, as soon as practical. Generally, compliance under Section 42 of the NDPS Act should precede the entry, search and seizure by the officer but in special circumstances involving emergent situations, the recording of information may get postponed by a reasonable period, which is permissible under the law. The question is thus, one of urgency and expediency. In the facts and circumstances of the present matter, I am satisfied that there is no significance non-compliance of Section 42 of the NDPS Act.

[22] In so far as the allegation of Mr. Khan relating to noncompliance of Section 50 requirement is concerned, I have seen the letter dated 3rd November 2023 written by the Police Officer concerned. The letter indicates that the Applicant was apprised of his rights under Section 50 and he has endorsed his understanding of the same in writing on the said letter. Two panchas have signed the said letter. I am satisfied that requirements of Section 50 of the NDPS Act were complied with.

[23] In the facts of the present case, 100 gms. of MD was recovered from the person of the Applicant. The Applicant is in custody for about two years whereas the maximum punishment for the alleged offence is up to twenty years. The incarceration of the Applicant cannot be considered to be long incarceration, having regard to the maximum punishment for the offence. The Supreme Court in its recent judgment in the matter of **Union of India v. Vigin Varghese**, 2025 INSC 1316 has observed that finding of prolonged incarceration as justification for bail is not a causal observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. The Apex Court further observed that a conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon, appreciation of evidence, which would be in the domain of Trial Court at the first instance.

[24] Reasonable grounds are not available for believing that the accused is not guilty of the offences that he has been charged with. Thus, the narrow parameters of the bail available under Section 37 of the Act, have not been satisfied in the instant case. In view of the aforesaid discussion, I am not inclined to enlarge the Applicant on bail.

[25] The Application is dismissed

2026(1)CNC77

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: C S Dias)

Crl M C (Criminal Miscellaneous Case) No 9946 of 2025 **dated 21/11/2025**

Muhammed Nashif U

Versus

State of Kerala; Station House Officer, kozhinjampara Police Station

ILLEGAL REARREST

Constitution of India Art. 22, Art. 21 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 37, Sec. 22 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528, Sec. 483 - Illegal Rearrest - Petitioner arraigned as second accused in a crime registered under NDPS Act alleged violation of Article 22(2) as he was produced before Magistrate beyond twenty-four hours of arrest - Learned Sessions Judge found delay in production but ordered only release from jail instead of granting bail - Immediately after release, police rearrested petitioner and remanded him to custody - It was contended that such rearrest nullified protection guaranteed under Article 22 and rendered arrest illegal - Prosecution argued power under Section 483(3) of BNSS authorized rearrest - Found that fundamental right to be produced within twenty-four hours is sacrosanct and breach vitiated arrest - Delay violated personal liberty under Article 21 - Sessions Judge erred in not enlarging petitioner on bail which permitted police to subvert constitutional safeguard - Constitutional guarantee under Article 22 reaffirmed - Custody beyond twenty-four hours without judicial sanction held impermissible - Petition Allowed

Law Point: Detention beyond twenty-four hours without judicial authority violates Article 22(2) and renders arrest void irrespective of statutory powers for re-arrest; personal liberty protected under Article 21 cannot be curtailed except by strict compliance with constitutional mandate.

Acts Referred:

Constitution of India Art. 22, Art. 21

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 37, Sec. 22

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528, Sec. 483

Counsel:

P Mohamed Sabah, Libin Stanley, Saipooja, Sadik Ismayil, R Gayathri, M Mahin Hamza, Alwin Joseph, Benson Ambrose, M P Prasanth

JUDGEMENT

C.S. Dias, J.- [1] The petitioner is arraigned as the 2nd accused in Crime No. 525/2025 registered by the Kozhinjampara Police Station, Palakkad, for allegedly committing the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

[2] The petitioner's grievance is that:

At around 12:45 hours, on 20.07.2025, the petitioner and the 1st accused were arrested at the spot for allegedly being found in conscious possession of 338.16 grams of MDMA. Notwithstanding his arrest at 12.55 hours, the petitioner was produced before the Magistrate only at 14.10 hours on 21.07.2025, well beyond the mandated period of twenty-four hours under Article 22(2) of the Constitution of India. Although the petitioner filed an application for bail before the Court of Session, Palakkad, by Annexure 2 order, the learned Sessions Judge, after finding that the petitioner was not produced before the jurisdictional Magistrate within 24 hours, only ordered the Superintendent, District Jail, Palakkad, to release the petitioner without enlarging him on bail. However, immediately after his release, the 2nd respondent rearrested the petitioner on the precincts of the prison, produced him before the Court, and he was remanded to judicial custody. The petitioner's rearrest is patently illegal and unjustifiable. The learned Sessions Judge's ought to have enlarged the petitioner on bail, rather than merely ordering his release. Unfortunately, the learned Sessions Judge ratified the illegal arrest by remanding the petitioner to judicial custody.

[3] I have heard Sri. Sadik Ismayil, the learned Counsel for the petitioner and Sri. M.P. Prasanth, the learned Public Prosecutor.

[4] Sri. Sadik Ismail, placing reliance on the decision of the Hon'ble Supreme Court in Directorate of Enforcement v. Subhash Sharma, 2025 2 KHC 45, contends that, once the learned Sessions Judge entered a finding that the petitioner was produced before the Magistrate after twenty-four hours, the arrest itself stood vitiated. It was then imperative for the learned Sessions Judge to enlarge the petitioner on bail. The mere direction to release the petitioner from jail, without granting him bail, has emboldened the Police to re-arrest the petitioner and made a mockery of Annexure 2 order, and circumvented the constitutional safeguard. Hence, Annexure 3 remand report deserves to be set aside, and the petitioner may be ordered to be enlarged on bail.

[5] Conversely, Sri. M.P. Prasanth vehemently opposes the Criminal Miscellaneous Case (for short, 'CrI.M.C'). He contends that Section 483 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'BNSS'), empowers the Police to re-arrest the petitioner. It is invoking the said power and considering the rigour under Section 37 of the NDPS Act that the petitioner was rearrested and remanded to judicial custody. Now the petitioner can be enlarged on bail, only if he satisfies the twin conditions under Section 37 of the NDPS Act. Therefore, this Court may not

interfere with Annexure 3 remand report, especially since the petitioner has not challenged Annexure 2 order. The CrI. M.C. is meritless and hence may be dismissed.

[6] The learned Sessions Judge, by Annexure 2 order, has unequivocally found that the petitioner was not produced before the Magistrate within twenty-four hours of his arrest as per the mandate under Article 22(2) of the Constitution of India. Undisputedly, the State has not challenged the finding in Annexure 2 order.

[7] Article 22 (1) and (2) of the Constitution reads as under:

"Article 22. Protection against arrest and detention in certain cases: (1)

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate".

[8] Article 22 (2) expressly guarantees that no arrested person shall be detained beyond twenty-four hours without being produced before the nearest magistrate and that such person shall not be detained in custody beyond such period without the authority of a magistrate. The above protection is not merely a procedural safeguard but a fundamental bulwark against police excess, to ensure that the personal liberty guaranteed under Article 21 has not rendered a mirage.

[9] In **Khatri and others (11) v. State of Bihar and others**, 1981 1 SCC 627, the Hon'ble Supreme Court, speaking through Justice P.N. Bhagwati (as he then was), raised the questions whether the court can injunct the State from depriving a person of his life or personal liberty; that the court was helpless to grant relief to the person who has suffered such deprivation; and that why the courts shouldn't be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty? The Court answered the above questions by explicitly directing the State and its police authorities to scrupulously observe the constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within twenty-four hours of the arrest.

[10] In **Directorate of Enforcement v. Subhash Sharma** (supra), the Hon'ble Supreme Court, while considering a matter under the Prevention of Money Laundering Act, 2002, has held thus:

"6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant - Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4 th March 2022 on behalf of the Appellant. The finding of fact recorded in

paragraph 10 is that, undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5 th March, 2022. Thereafter, at 1.15 hours on 6 th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6 th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5 th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C). There is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA.

8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA".

[11] From the admitted facts, the petitioner was produced before the Magistrate beyond the twenty-four-hour deadline, which is peremptory and sacrosanct. Although the learned Sessions Judge found this breach, he erred by not enlarging the petitioner on bail. This enabled the Police to subvert the constitutional safeguard by arresting the petitioner from the precincts of the prison, rendering Annexure 2 order nugatory. The above action warrants interference to undo the consequences of an arrest that stands vitiated.

In light of the constitutional violation of Article 22(2) and the findings rendered above, this is a fit case to exercise the inherent powers of this Court under Section 528 of the BNSS and set aside Annexure 3 remand order, and order the petitioner to be enlarged on bail. Accordingly, I allow the Crl. M.C in the following manner:

- (i) Annexure 3 remand order is set aside.
- (ii) Annexure A 2 order is modified, and the petitioner is enlarged on bail, subject to the following conditions:
 - (a) The petitioner is ordered to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the jurisdictional Court, which shall be subject to the following conditions:
 - (b) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m. till the complaint is filed. He shall also appear before the Investigating Officer as and when required;
 - (c) The petitioner shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;
 - (d) The petitioner shall not commit any similar offence while he is on bail;
 - (e) The petitioner shall not leave the territorial jurisdiction of the jurisdictional court without its permission;
 - (f) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law;
 - (g) Applications for deletion/modification of the bail conditions shall be moved and entertained by the jurisdictional court.

APPENDIX OF CRL.MC 9946/2025	
PETITIONER ANNEXURES	
Annexure 1	TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.525/25 OF KOZHINJAMPARA POLICE STATION
Annexure 2	TRUE COPY OF THE ORDER DATED 19.09.2025 IN CRL. MC NO. 4469/2025 PASSED BY THIS HON'BLE SESSIONS COURT PALAKKAD
Annexure 3	TRUE COPY OF THE REMAND REPORT DATED 20.09.2025 PREPARED BY RESPONDENT NO. 2 IN CRIME NO.525/25, WHICH CONTAINS THE REMAND ORDER

PASSED BY THE HON'BLE SESSIONS COURT, PALAKKAD, AND ITS TYPED COPY

2026(1)CNC82

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge: Suvir Sehgal)

C W P (Civil Writ Petition) No 28054 of 2025 **dated 21/11/2025**

Pala Ram

Versus

State of Haryana and Others

PREVENTIVE DETENTION ORDER

Narcotic Drugs and Psychotropic Substances Act, 1985 - Preventive Detention Order - Petition filed challenging detention under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act - Petitioner detained for six months based on old FIRs and a complaint allegedly signed by deceased person - No recent recovery proved - Complaint and source report found vague and unverified - Detention based on stale material - Authorities failed to justify preventive detention - Subjective satisfaction not based on fresh grounds - Detention orders set aside as unsustainable - Liberty protected against arbitrary exercise of preventive powers - Detaining authority acted mechanically without proper verification - Petition Allowed

Law Point: Preventive detention cannot be sustained on stale or unverified materials and absence of credible evidence indicating likelihood of future involvement invalidates subjective satisfaction of detaining authority.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985

Counsel:

Arun Gupta, Deepak Vashisht

JUDGEMENT

Suvir Sehgal, J.- [1] Present petition has been filed, inter alia, for issuance of a writ, in the nature of certiorari for quashing orders dated 28.05.2025 and 08.09.2025, Annexures P-1 and P-8, respectively, passed by Secretary to Government, Home Department-respondent No.1, whereby petitioner has been detained for a period of six months under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "the PITNDPS Act"). Petitioner has also assailed order dated 28.07.2025, Annexure P-6, whereby a representation given by his spouse has been rejected.

[2] Counsel for the petitioner submits that the petitioner has been named as an accused in seven different FIRs registered for offences under the Narcotics and Drugs Psychotropic Substances Act, 1985 (for short "the NDPS Act"). He submits that the petitioner has been accused of trading in charas and ganja and in some cases small or intermediate quantity of banned substance has been allegedly recovered from him. Counsel emphasizes that out of the seven criminal cases, petitioner has been convicted in three of them which are more than seven years old and he has been acquitted in two cases. Insofar as the remaining two cases are concerned, counsel asserts that no recovery has been effected from petitioner and both the cases are under trial. Counsel points out that petitioner is on bail and he has not misused the concession granted by the Court nor has he flouted any of the bail conditions. Reference has also been made to the medical record, Annexure P-4, to point out that the petitioner underwent coronary angiography and remained hospitalized from 02.06.2024 to 04.06.2024. Counsel contends that detention order has primarily been passed on the basis of a complaint dated 06.02.2025, Annexure P-3, given by the residents of his village and allegedly bears thumb impression of one Ram Singh who had expired on 08.11.2024. It is the argument of the counsel that the respondent-authorities do not possess any material to form an opinion that the petitioner is likely to indulge in the trade of banned substance and impugned detention orders are liable to be quashed.

[3] While opposing the petition, State counsel has made a reference to the reply filed on behalf of the respondents and urges that the petitioner is a habitual drug trafficker and he has been repeatedly apprehended while dealing with banned substance. It is his assertion that in case petitioner is not detained, there is a possibility that he may abscond to avoid the ongoing criminal trial. A reference has also been made by him to a report received from the Security Branch of District Police Office, Kurukshetra to submit that the petitioner is actively involved in illicit trafficking and in order to curb him from indulging in the activity, his detention is necessary. Referring to the record, State counsel submit that a proposal to detain petitioner was prepared on 22.03.2025, Annexure R-1, which was examined by a Screening Committee and was forwarded to respondent No.1, who passed the impugned order, Annexure P-1. He states that after hearing the petitioner as well as examining his representation, order, Annexure P-1 was confirmed vide impugned order, Annexure P-8. State counsel has highlighted that there is one criminal case registered against petitioner's father and his mother is also involved in two cases for offences under the NDPS Act. It is his argument that petitioner's entire family is involved in nefarious activities and impugned orders do not deserve any interference.

[4] I have heard counsel for the parties and examined their submissions. The original record produced by the State counsel in compliance with the previous order has also been analyzed.

[5] Petitioner has been found to be involved in seven FIRs registered for offences under the NDPS Act. The details of the cases are as under:-

Sr. No.	FIR No., date, u/s and Police Station	Narcotic substance	Date of Arrest	Bail/ Custody	Present stage of Case
1.	FIR No.348 dated 08.07.2007 u/s 20/21 NDPS Act, PS City Thanesar, Kurukshetra, Haryana.	400 gms charas and 1 kg ganja	08.07.2007	---	Convicted and sentenced for the period already undergone from 09.07.2007 to 18.08.2007 with fine of Rs.10,000/-.
2.	FIR No.606 dated 31.08.2014 u/s 20 NDPS Act, PS City Thanesar, Kurukshetra, Haryana.	900 gm Ganja	31.08.2014	---	Convicted and sentenced for 3 months with fine of Rs.3000/-.
3.	FIR No.171 dated 06.04.2016 u/s 20 NDPS Act, PS Shahabad, Kurukshetra, Haryana.	10 kg Ganja from the car	06.04.2016	---	Acquitted by giving benefit of doubt.
4.	FIR No.04 dated 01.01.2018 u/s 20 NDPS Act, PS City Thanesar, Kurukshetra, Haryana.	2 kg 500 gm Ganja	01.01.2018	---	Convicted and sentenced for 2 years with fine Rs.10,000/-.
5.	FIR No.241 dated 14.06.2020 u/s 20/29 NDPS	1 kg 60 gm Ganja from co-accused	16.06.2020	---	Acquitted by giving benefit of doubt.

	Act, PS City Kaithal, District Kaithal.				
6.	FIR No.366 dated 19.06.2021 u/s 20/29 NDPS Act, PS Krishna Gate, Kurukshetra, Haryana.	2 kg 400 gms Ganja from co-accused	22.02.2022	---	Under trial
7.	FIR No.605 dated 08.11.2024 u/s 20/29 NDPS Act, PS Sadar Thanesar, Kurukshetra, Haryana.	1 kg 14 gms Ganja from co-accused	09.11.2024	Bail granted on 17.12.2024	Under Trial

[6] Besides the above reproduced criminal antecedents, detaining authority has considered a complaint dated 06.02.2025, Annexure P-3, received from residents of Sorgir Basti, Kurukshetra. This complaint is thumbmarked/signed by five residents of the colony out of which one of them is Ram Singh, who had expired and was cremated on 08.11.2024 as is evident from the certificate, Annexure P-2. This fact has not been denied by the respondents in the written statement. Without examining the allegations levelled in the complaint, Annexure P-3, respondents have acted thereon and passed the detention orders. Reliance has also been placed by the detaining authority upon a source report. The original document has been produced. The so-called source report does not mention any detail on the basis of which it has been prepared. In fact it is a five line report, which probably has been prepared without any material. In case, the respondents had any credible input that petitioner is likely to indulge in trafficking, the course open to them was to file an application for cancellation of bail in the two pending cases, however, for reasons best known to them they have not resorted to this recourse. State counsel has asserted that petitioner's parents are named as accused in criminal cases but this material was not a part of the record before the detaining authority. Respondents therefore cannot place reliance upon it to support the detention order.

[7] A minute examination of the criminal antecedents of the petitioner relied upon by the detaining authority show that the petitioner was convicted in three FIRs which pertain to the years 2007, 2014 and 2018. In all the three cases, allegations levelled

against the petitioner is that small or intermediate quantity of banned substance has been recovered from his person. After trial, petitioner was found guilty and sentenced to period ranging from a few months up to two years. Insofar as the two cases pending against the petitioner are concerned, no recovery has been effected from him and he has been arraigned on the basis of disclosure statements of co-accused, the legality and veracity of which would remain a subject matter of trial. The complaint, Annexure P-3, submitted by the residents of the colony, where the petitioner resides seems to be fabricated and has never been inquired into before acting thereon. The source report also does not mention any source of information. Petitioner's detention is based on FIRs which are more than seven years old and being stale material, they could not be taken into consideration by the detaining authority as has been held by the Supreme Court in **Ameena Begum Versus State of Telangana**, 2023 9 SCC 587. Mere pendency of two criminal cases against the petitioner would not constitute to be ample material for the detaining authority to form a subjective opinion that the petitioner is likely to indulge in the trade of narcotic substance and cannot be a ground to detain him. Reliance in this regard is placed upon a Division Bench judgment of this Court in **Lakhwinder Singh alias Bhindi, Versus State of Haryana and others**, (LPA2654-2025, decided on 09.09.2025).

[8] Respondents have not been able to establish a live or proximate link between the past conduct of the petitioner and the imperative need to detain him. Preventive detention being an extraordinary power which curtails personal liberty must be strictly construed and applied only when there is sufficient satisfactory material to establish that the detainee is likely to indulge in activities which threaten public order or safety. Detention orders cannot be issued merely on the basis of suspicion or past allegation or reputation and must be based on credible evidence establishing the necessity of detention, which is lacking in the present case and the impugned orders cannot be sustained.

[9] As a corollary of above discussion, writ petition is allowed. Impugned order dated 28.05.2025, Annexure P-1, rejection order dated 28.07.2025, Annexure P-6 and confirmation order dated 08.09.2025, Annexure P-8 passed by respondent No.1 are set aside.

[10] Petitioner is directed to be released from detention forthwith, unless his custody is required in any other case

2026(1)CNC86

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge: Suvir Sehgal)

C W P (Civil Writ Petition) No 19894 of 2025 **dated 18/11/2025**

Babli

Versus

State of Haryana and Others

PREVENTIVE DETENTION

Narcotic Drugs and Psychotropic Substances Act, 1985 - Preventive Detention under PITNDPS Act - Petitioner challenged detention under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act for six months - Detaining authority based order on petitioner's involvement in three NDPS cases for small quantity of heroin - Petitioner contended adherence to bail conditions and absence of fresh material showing likelihood of engaging in illicit trade - State relied upon dossier and alleged habitual trafficking - Court noted that detention based only on earlier FIRs without new evidence of imminent activity cannot be sustained - No material produced to show live link between earlier offences and preventive detention - Held that preventive detention cannot substitute punitive action and must rest on real apprehension based on cogent material - Detention order quashed - Petition Allowed

Law Point: Preventive detention under PITNDPS Act cannot be justified solely on previous NDPS cases unless supported by credible fresh material showing imminent likelihood of reoffending; preventive power cannot replace normal criminal prosecution.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985

Counsel:

Mohit, Pavitra, Svaneel Jaswal

JUDGEMENT

Suvir Sehgal, J.- [1] This petition has been filed, inter alia, for issuance of a writ, in the nature of certiorari, for quashing orders dated 30.05.2025 and 01.08.2025, Annexures P-1 and P-6, respectively, passed by Secretary to Government, Haryana, Home Department, whereby petitioner has been detained for a period of six months under the provisions of Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "the PITNDPS Act"). Petitioner has also sought quashing of order dated 30.06.2026, Annexure P-4, whereby a representation given by petitioner's daughter has been rejected.

[2] Counsel for the petitioner states that petitioner has been named as an accused in three different FIRs registered for offences under the NDPS Act. He asserts that small or intermediate quantity of heroin was allegedly recovered from the petitioner and although she has been convicted in one case, other two trials are pending, wherein she is on bail. It is his categorical assertion that petitioner is adhering to the conditions of bail imposed by the Trial Court and besides three criminal cases, there is no incriminating material with the detaining authority to form an opinion that the petitioner is likely to indulge in the trade of narcotic drugs. A strong reliance has been placed by him upon a judgment of a Division Bench of this Court in **Lakhwinder Singh alias Bhindi, Versus State of Haryana and others, (LPA-2654-2025, decided**

on 09.09.2025) to emphasize that mere involvement in three cases under the NDPS Act is not sufficient to keep the petitioner in confinement.

[3] Per contra, while opposing the petition, State counsel has made a detailed reference to the written statement filed to the amended writ petition. She asserts that in the year 2025, a total of 121 cases have been registered under the NDPS Act in District Hisar and of the 235 accused, petitioner is one of them. She states that 562 drug accused have been identified. She asserts that a proposal for detaining the petitioner was prepared on 22.03.2025 and was forwarded to the Director General of Police, Madhuban along with a dossier and complete record, which after consideration, was duly forwarded to the Secretary, Home Department, who has passed the impugned orders after considering and examining the incriminating material. It is her stand that the procedure prescribed under the PITNDPS Act has been adhered to before passing the detention orders and as there is material to show that petitioner, who is a habitual drug trafficker, is likely to indulge in nefarious activities. She has highlighted that petitioner's family members are also involved in the trade and there are three FIRs registered against petitioner's son, Arman, who is also accused of peddling heroin.

[4] This Court has heard counsel for the parties and given a thoughtful consideration to the arguments addressed by them. The documents and other material referred to by the counsel has also been analyzed.

[5] Petitioner has been found to be involved in three criminal cases, the details of which are as under:-

Sr. No.	FIR No., date, u/s and Police Station	Narcotic Substance	Date of Arrest	Bail / Custody	Present Stage of Case
1	FIR No.344 dated 25.04.2020 u/s 21(b) NDPS Act and 188 IPC, PS HTM, Hisar, Haryana	9 gm heroin	06.05.2020	Bail granted on 11.06.2020	Convicted and sentenced to undergo rigorous imprisonment for 03 years with fine of Rs.5000/-
2	FIR No.739 dated 25.10.2024	2.53 gm heroin	25.10.2024	Bail granted on 26.10.2024	Under Trial

	u/s 21(b) NDPS Act, PS HTM, Hisar, Haryana				
3	FIR No.834 dated 03.12.2024 u/s 21(b) NDPS Act, PS HTM, Hisar, Haryana	2.06 gm heroin recovered from Babli & 3.40 gm heroin from co-accused Geeta	03.12.2024	Bail granted on 04.12.2024	Under Trial

[6] It is clear from the above details that while in the first case that petitioner was convicted after trial and sentenced to undergo rigorous imprisonment for three years. In second and third case, she has been released on bail, though in the third case, matter is still under investigation. On the basis of this material, detaining authority has come to the conclusion that petitioner is involved in illegal trade of narcotic substance for the last five years. It has been further recorded in the detention order, Annexure P-1, that as per source report of Incharge, Security Branch, office of Superintendent of Police, she is actively engaged in trafficking of narcotic substance. However, such a report has neither been placed on the record by the respondents nor could be referred to by the State counsel during the course of arguments. Undoubtedly, an application for cancellation of bail in the second FIR, mentioned above, has been filed by the prosecution, but as has been admitted in the response filed by the respondents, application is being adjourned and notice has not been issued to the petitioner. It seems that the prosecution has not so far insisted upon the application before the Trial Court.

[7] Respondents have alleged that petitioner's son is involved in two criminal cases and details of the FIRs registered against him have been reproduced in the response filed to the amended writ petition. The criminal antecedents of petitioner's son were never a part of the record before the detaining authority. Respondents, therefore, cannot place reliance upon them to support the detention order. First FIR was registered against the petitioner in the year 2020 and an appeal against the order of conviction is pending. This criminal case qualifies as stale material and could not have been taken into consideration by the detaining authority as held by Hon'ble Supreme Court in **Ameena Begum Versus State of Telangana**, 2023 9 SCC 587.

[8] Besides the criminal antecedents, respondents could not bring any other incriminating material to the notice of this Court to enable it to come to the conclusion that petitioner has been indulging in criminal activities after being released on bail.

Mere involvement of the petitioner in three FIRs, even though she has been convicted in one of them, cannot be a ground to detain her as has been held by a Division Bench of this Court in **Lakhwinder Singh alias Bhindi's case** (supra). Respondents have not been able to establish a live as well as proximate link between the past conduct of the petitioner and unavoidable need to detain her. Preventive detention is an extra ordinary power and has to be exercised sparingly, based on credible and proximate evidence of future criminal activities and not solely on the basis of the past conduct or vague apprehension. The material placed upon by the detaining authority is not germane to arriving at a subjective satisfaction for passing the impugned detention orders, which cannot be sustained.

[9] For the reasons mentioned above, writ petition is allowed. Impugned order dated 30.05.2025, Annexures P-1, order dated 30.06.2025, Annexure P-4, and confirmation order dated 01.08.2025, Annexure P-6, passed by the respondent-authorities are set aside.

[10] Petitioner is directed to be released from detention forthwith, unless her custody is required in any other criminal case

2026(1)CNC90

TRIPURA HIGH COURT

(Hon'ble Judge: Dr T Amarnath Goud; Biswajit Palit)

CrI A (Criminal Appeal) No 25 of 2025 **dated 18/11/2025**

State of Tripura

Versus

Atikul Islam S/o Tajul Islam

ACQUITTAL SET-ASIDE

Code of Criminal Procedure Sec. 378 - Narcotic Drugs and Psychotropic Substances Act Sec. 20 Sec. 25 - Acquittal Set-Aside - Appeal filed against acquittal under provisions relating to contraband recovery alleging failure by prosecution to prove compliance of search procedure - Record showed information entered in G.D. and report sent to higher authority but documents not produced for marking - Several witnesses stated recovery of contraband from dwelling hut though independent witnesses did not support seizure - Finding made that evidence of official witnesses cannot be disbelieved only due to lack of independent corroboration - Observation made that trial forum failed to appreciate evidence properly and reached erroneous view regarding non-compliance of procedure - Matter held fit for remand for retrial with liberty to prosecution to adduce fresh oral or documentary evidence and for accused to cross-examine witnesses afresh - Earlier evidence also allowed to be relied upon during retrial - Appeal Allowed

Law Point: When official evidence supports recovery in contraband matters non-support by independent witness does not defeat prosecution and improper appreciation of material by trial forum can justify remand for retrial to secure proper evaluation of evidence

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 378

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 25

Counsel:

Raju Datta, Rajib Saha, Koomar Chakraborty

JUDGEMENT

Dr. T. Amarnath Goud, J.- [1] Leave granted.

[2] This appeal is preferred under Section 378(1)(b) of Cr.P.C. challenging the judgment and order of acquittal dated 30.03.2024 delivered by Learned Special Judge(NDPS), Sepahijala in connection with case No.Special (NDPS) 41 of 2019 under Sections 20(b)(ii)(C)/25 of NDPS Act, 1985.

[3] Heard Learned P.P., Mr. Raju Datta appearing on behalf of the appellant and also heard Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the respondentaccused.

[4] At the time of hearing, Learned P.P. drawn the attention of the Court referring the contents of the FIR laid by one Srikanta Chakraborty of Sonamura P.S. to O/C, Jatrapur Police Station alleging inter alia that on 20.06.2018 informant along with Uttam Banik, Dy. S.P. Alok Bhattacharjee, Dy. S.P. (DIB), SPJ, Abhijit Das, AC, DAR Sepahijala along with staff appeared at Jatrapur P.S. with one arrestee Nitish Kumar, S/OMadan Gopal Singh Yadav of Bidhupur, P.S.- Bidhupur Bazar, District-Baishali, Bihar who was arrested in connection with East Agartala P.S. case No.-2018EAG106 under Section 120(B)/326/307 of IPC & 27 of Arms Act and as per his confession that one Atikul Islam, S/O- Tajul Islam of Rangamura Ward No.-02 under Jatrapur concealed ganja in his dwelling house located at Rangamura. Accordingly, the matter was entered in P.S. G.D.E. No.-03, dated 20.06.2018 and the information was conveyed to the higher authority and thereafter, the informant along with staff of Jatrapur P.S. and also the said accused, Nitish left towards the residence of Atikul Islam and conducted raid and incourse of raid 35 kg of dry ganja was seized from the possession of Atikul Islam and thereafter, the same was seized in-accordance-with law and accordingly, the case was registered by O/C, Jatrapur P.S. On conclusion of investigation, charge-sheet was submitted and before the Learned Trial Court in total 12 nos. of witnesses were adduced by the prosecution and certain documents were marked as exhibits by the prosecution but the Learned Trial Court came to the observation that Section 42(2) was not complied with by the prosecution in this case and furthermore, Learned Court came to the observation that no pre-search memo

could be proved by the prosecution and the seizure list witnesses did not support the case of the prosecution and it was also observed by the Learned Trial Court that the prosecution failed to exhibit any malkhana registrar and also failed to examine the malkhana in-charge and ultimately acquitted the accused. But Learned P.P. further submitted that before the Learned Trial Court the extract of G.D. along with the communication made to the higher authority was very much available with record but before the Learned Trial Court prosecution failed to prove those documents as exhibits. Even from the side of the Learned Trial Court also no such step was taken to find out the truth, thus, Learned Trial Court came to the observation that Section 42(2) was not complied with, presearch memo was not exhibited and also the Learned Trial Court came to an erroneous observation that the independent seizure list witness did not support the prosecution case and acquitted the accused from the charge of this case, for which the interference of the Court is required and urged before the Court to set aside the judgment and order of acquittal passed by the Learned Trial Court and urged for remanding back the matter for de novo trial of the accused.

In this regard, Learned P.P. drawn the attention of the Court referring one citation of the Hon'ble Supreme Court in **Rizwan Khan vs. State of Chhattishgarh**, 2020 9 SCC 627, wherein in para No.12 Hon'ble the Apex Court observed as under:

"12. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of noncorroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case [State of H.P. v. Pardeep Kumar, 2018 13 SCC 808]"

Relying upon the same, Learned P.P. submitted that based upon the evidence of police personnel in this case, conviction could be convicted but the Learned Trial Court did not rely upon the evidence of police personnel rather based upon the evidence of private witness came to this observation **that evidence was not proved.**

[5] On the other hand, Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the respondent-accused countered the submission made by Learned P.P. appearing on behalf of the State-appellant and submitted that before the Learned Trial Court there was total non-compliance of the provision of Section 42(2) of NDPS Act. No independent seizure list witness supported the case of the prosecution even the malkhana registrar was not proved for marking as exhibit, even the in-charge of malkhana was not produced before the Learned Trial Court to support and substantiate the prosecution case and as such according to Learned Counsel, the prosecution case suffers from infirmities and there was no infirmity in the judgment and order of acquittal delivered by Learned Trial Court and asked for dismissal of this appeal.

Learned Counsel, **Mr. Chakraborty**, 2013 2 SCC 212 in support of his contention relied upon one citation of the Hon'ble Supreme Court of India wherein in para No.24 Hon'ble the Apex Court observed as under:

"24. As per the statement of PW 1, no effort was made by him to reduce the information into writing and inform his higher authorities instantaneously or even after a reasonable delay which has to be explained with reasons in writing. On the contrary, in the present case, the investigating officer, PW 1 had more than sufficient time at his disposal to comply with the provisions of Section 42. Admittedly, he had received the secret information at 11.30 a.m., but he reached the house of the accused at 2 p.m. even when the distance was only 6 km away and he was in a jeep. There is not an iota of evidence, either in the statement of PW 1 or in any other documentary form, to show what the investigating officer was doing for these two hours and what prevented him from complying with the provisions of Section 42 of the NDPS Act."

Referring the same, he submitted that from the aforesaid observation of the Hon'ble Supreme Court, it appears that in the present case at hand, there was total noncompliance of the provision of Section 42(2) of the NDPS Act.

[6] We have heard detailed argument of both the sides at length and perused the record of the Learned Trial Court very carefully. In this case charge was framed against the respondent-accused under Section 20(b)(ii)(C)/25 of NDPS Act. To substantiate the charge prosecution in total adduced 12 nos. of witnesses before the Learned Trial Court. PW-4, S.I. Srikanta Chakraborty was the informant of this case. He deposed that on 20.0.2018 he was working as S.I. of police at Sonamura P.S. On that day, during interrogation of one Nitish Kumar at Jatrapur P.S. in connection with East Agartala P.S. No.106 of 2018 it was revealed that some contraband articles were kept in the house of one Atikul Islam at Rangamura. Accordingly, search was raid and conducted in the house of Atikul Islam and during raid and search they recovered 35 kg of dry ganja in a blue colour drum from the dwelling hut of accused. He identified the pre-search memo, seizure list etc. and also identified the complaint led by him which was marked as Exhibit-4 and Exhibit-4/1. On perusal of said Exhibit-4, it appears that at Jatrapur P.S. the fact was entered in P.S. G.D. and the matter was reported to the higher authority. But surprisingly, those documents were not produced for marking as exhibits by the prosecution even the said fact was not taken into consideration by Learned Trial Court at the time of delivery of judgment.

PW-1, S.I. Bikash Debbarma, PW-3 Alok Bhattacharjee, PWs-5, 6, PW-8, Bulti Das, Women Constable, PW-12 very categorically stated that the contraband items were seized from the residence of accused but PW-5, Tashlima Akter, PW-2, Uday Bashi Tripura stated that the accused was arrested in connection with this case. Similarly, PW-8, PW-9, Tajul Islam also deposed in the same manner. However, said PW-2 and PW-5 could not say as to why the accused was arrested but PW-9 Tajul Islam although stated that he was not present to the house of the accused at the time of incident. But later on, he could know that the accused was arrested on a NDPS case based upon those evidence, Learned Trial Court came to the observation that the

independent witness did not support the case of seizure laid by the prosecution and also the Learned Trial Court came to the observation that malkhana register was not proved and in-charge of the malkhana was not produced for examination by the prosecution.

From the judgment of the Hon'ble Supreme Court relied upon by the prosecution, it appears to us that in absence the evidence of private witnesses also there is scope for conviction of an accused person and the testimony of official witnesses cannot be rejected on the ground of noncorroboration by independent witnesses. Thus, after hearing both the sides and also after going through the record of the Learned Trial Court, it appears to us that Learned Trial Court has failed to appreciate the evidence on record at the time of delivery of judgment properly and passed an order of acquittal for which the interference of the Court is required and as such in the considered opinion of this Court, the matter needs to be remanded back to the Learned Trial Court for retrial of the accused with a liberty to the prosecution to produce both oral/documentary evidence on record afresh.

[7] In the result, the appeal filed by the State is hereby allowed. The judgment and order of acquittal delivered by Learned Trial Court is set aside. The matter is remanded back to the Learned Trial Court with a direction to retrial of the accused with further direction to call upon all the witnesses of the prosecution and to allow the prosecution to adduce oral/documentary evidence on record in support of the prosecution case affording scope to the respondent-accused to cross-examine the witnesses and thereupon to deliver a fresh judgment in-accordance-with law. However, liberty is given to the prosecution and to the accused to rely upon the evidence on record recorded earlier. The accused is on bail. However, he is asked to appear before the Learned Trial Court on . Learned Trial Court shall be at liberty to consider bail application of the accused and to allow him to go on fresh bail till conclusion of trial.

With this observation, this appeal is stands disposed of on contest.

Send down the LCR along with the copy of this judgment and also a copy of this judgment/order be furnished to Learned Counsel for the appellant for compliance

Pending application(s), if any, also stands disposed of

2026(1)CNC94

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge: Anoop Chitkara)

CrM M (Criminal Main) No 54246 of 2025, 52685 of 2025 **dated 14/11/2025**

Sukhchain Masih @ Lalla; Amit Sharma Alias Veeru

Versus

State of Punjab

BAIL UNDER NDPS ACT

Constitution of India Art. 21 - Income Tax Act, 1961 Sec. 269SS - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 68I, Sec. 68F, Sec. 68A, Sec. 68D, Sec. 68E, Sec. 68B, Sec. 54, Sec. 37, Sec. 35, Sec. 68C, Sec. 68J, Sec. 68G, Sec. 68O, Sec. 68K, Sec. 27A, Sec. 68H, Sec. 68U, Sec. 68Z, Sec. 68R, Sec. 68N, Sec. 68L, Sec. 68M, Sec. 68P, Sec. 68Y, Sec. 68T, Sec. 68Q, Sec. 68S, Sec. 68V, Sec. 68W, Sec. 68X - Sale of Goods Act, 1930 Sec. 2 - Reserve Bank of India Act, 1934 Sec. 26 - Prize Chits and Money Circulation Schemes (Banning) Act, 1978 Sec. 2 - Prevention of Money-Laundering Act, 2002 Sec. 2, Sec. 3 - Central Goods and Services Tax Act, 2017 Sec. 2 - Bharatiya Sakshya Adhinyam, 2023 Sec. 23 - Bail under NDPS Act - Bail petitions filed for offences under NDPS Act relating to small recoveries of heroin and alleged drug money - Investigating agency invoked Sec. 27A NDPS Act terming currency found with contraband as drug money - Petitioners claimed misuse of Sec. 27A to obstruct bail - Court analyzed legislative intent of Sec. 27A and Sec. 37 NDPS Act and held that mere possession of small cash with contraband cannot constitute financing illicit traffic - Observed that financing illicit traffic requires evidence of organized activity or investment in drug trade - Held that invoking Sec. 27A mechanically to attract rigors of Sec. 37 is illegal - Directed that cash recovered with contraband can only be considered under forfeiture provisions of Sec. 68C NDPS Act or Prevention of Money Laundering Act - Found no basis for treating small cash as drug financing - Both petitioners entitled to bail on merits - Investigation authorities cautioned against misuse of Sec. 27A - Ensured constitutional liberty under Art. 21 safeguarded - Bail Allowed

Law Point: Mere possession of small cash along with narcotic substance cannot justify invoking Sec. 27A NDPS Act; financing illicit traffic requires nexus with organized trade or investment - rigors of Sec. 37 NDPS Act apply only where such evidence exists.

Acts Referred:

Constitution of India Art. 21

Income Tax Act, 1961 Sec. 269SS

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 68I, Sec. 68F, Sec. 68A, Sec. 68D, Sec. 68E, Sec. 68B, Sec. 54, Sec. 37, Sec. 35, Sec. 68C, Sec. 68J, Sec. 68G, Sec. 68O, Sec. 68K, Sec. 27A, Sec. 68H, Sec. 68U, Sec. 68Z, Sec. 68R, Sec. 68N, Sec. 68L, Sec. 68M, Sec. 68P, Sec. 68Y, Sec. 68T, Sec. 68Q, Sec. 68S, Sec. 68V, Sec. 68W, Sec. 68X

Sale of Goods Act, 1930 Sec. 2

Reserve Bank of India Act, 1934 Sec. 26

Prize Chits and Money Circulation Schemes (Banning) Act, 1978 Sec. 2

Prevention of Money-Laundering Act, 2002 Sec. 2, Sec. 3

Central Goods and Services Tax Act, 2017 Sec. 2

Bharatiya Sakshya Adhiniyam, 2023 Sec. 23

Counsel:

Amarjeet Singh Prajapati, Akshay Kumar, Shaveta Sanghi, Atul Gaur, Birender Bikram Attray, Manish Bansal, Arav Gupta, Ashmeet Kaur Shah, Harpal Singh Sidhu, Jasdev Singh Thind

JUDGEMENT

Anoop Chitkara, J.-

[1]

CRM-M-54246-2025 Sukhchain Masih @ Lalla

FIR No.	Dated	Police Station	Sections
37	30.7.2025	Shri Kartarpur Sahib Corridor Police, District Batala, Punjab	21/27A NDPS Act (Section 29 NDPS Act added later on)

CRM-M-52685-2025 Amit Sharma alias Veeru

FIR No.	Dated	Police Station	Sections
99	23.7.2025	Ranjit Avenue, Amritsar, Punjab	21B/27A NDPS Act and Section 29 NDPS Act (added later on)

1. Both of the above captioned bail petitions raise a significant common question of law and as such, are being decided together, even though the petition filed by the accused, Sukhchain, is for anticipatory bail, for which this Court had granted him an interim anticipatory bail; and the petition filed by Amit Sharma, is for regular bail, and this Court had earlier released him on interim bail.

[2] On merits, the evidence against Sukhchain [FIR No. 37, dated 30.7.2025, Shri Kartarpur Sahib Corridor Police, District Batala, Punjab] is that on July 30, 2025, the Police arrested the co-accused, Gagandeep Singh, for possessing 5 grams of heroin and INR 1000/-, which the Police has termed as drug money, and during his custodial interrogation, he disclosed the petitioner, Sukhchain, as the seller of heroin. Apprehending arrest, Sukhchain applied for anticipatory bail; however, even with this kind of evidence and heroin falling on the lowest band of the intermediate category, Ld. Special Court dismissed the anticipatory bail. Feeling aggrieved, the petitioner, Sukhchain Masih, came up before this Court under 482 BNSS, 2023, seeking anticipatory bail by invoking the concurrent jurisdiction of the High Court. By a detailed order dated 24-09-2025, this Court, after analysing evidence, assessing the arguments, and applying the law, granted him interim anticipatory bail on merits and kept the matter for hearing on the question of law. The Counsel for the State of Haryana and the Union Territory of Chandigarh were also requested to make their

submissions, because the outcome would impact them, and an Amicus was also appointed.

[3] The facts in the bail petition [FIR No. 99, dated 23.7.2025, Police Station Ranjit Avenue, Amritsar, Punjab], filed by Amit Sharma, are that on July 23, 2025, the police recovered 21 grams of heroin and Rs 1000/- drug money from his possession. After analysing and appreciating the evidence from the FIR and the arguments addressed before the Court, and considering Amit's pre-trial custody of two months, by a detailed order dated 23-09-2025, this Court had granted interim regular bail on merits and adjourned the case for the State's written response.

[4] I have heard counsel for the parties, as well as the States of Punjab, Haryana, UT Chandigarh, and Ld. Amicus, and its analysis would lead to the following outcome.

[5] The status report dated 30.09.2025, filed in CRM-M-52685-2025, Amit Sharma v. State of Punjab, by the concerned DySP, is taken on record, and its relevant portion that mentions the prosecution case reads as follows:

"3. That the deponent humbly submits that the facts of the aforesaid case FIR No. 99, dated 23.07.2025 are that on 23.07.2025, the police party headed by SI Jagbir Singh posted at Police Station Ranjit Avenue, Amritsar, was present at Naka PR Chowk, Ranjit Avenue, Amritsar and were conducting checking of suspected persons and vehicles. There one youngster was seen while coming from ITI College Side, who on seeing the police party took out some heavy substance from his pocket, threw it on the ground and turned backwards. He was apprehended with the help of accompanying police officials by Jagbir Singh SI and enquired about his identity, who disclosed his identity as Amit Sharma @ Veeru (present petitioner). SI Jagbir Singh made efforts to join independent public witness in the police party before conducting personal search of the present petitioner Amit Sharma @ Veeru, but no one consented to join the police party. The present petitioner Amit Sharma @ Veeru was asked about the substance threw on ground by him. Then the petitioner Amit Sharma alias Veeru picked up the above heavy substance wrapped in one plastic packet, handed it over to SI Jagbir Singh and told him that it was Heroin, which he had thrown on seeing the police party. Therefore, the above said plastic packet was opened and checked by SI Jagbir Singh, during which 21 grams of heroin and drug money Rs. 1000/- were recovered from the plastic packet, which were taken into police possession in accordance with law. Hence, in pursuance of the aforesaid recovery effected from the present petitioner Amit Sharma @ Veeru, the present case FIR No. 99, dated 23.07.2025, under Sections 21 (b), 27A/61/85 NDPS Act, Police Station Ranjit Avenue, Amritsar was registered in this respect and the present petitioner Amit Sharma @ Veeru was arrested in this case.

[6] It will also be relevant to reproduce paragraph 12 of the reply, which reads as under: -

"12. The role of the petitioner: That the deponent humbly submits that the present petitioner Amit Sharma @ Veeru was involved in drug peddling and 21 grams of Heroin and drug money Rs. 1000/- was recovered from him."

[7] A perusal of the FIR reveals that offences under 27-A of the NDPS Act are also invoked against the present petitioners.

[8] Given the legislative mandate of 27-A and sub-clauses (i) to (v) of clause (viii-b) of 2, of the NDPS Act, 1985, if any person is arraigned as an accused for financing illicit traffic or harboring any offender, the sentence that can be imposed on conviction shall be not less than 10 years but may extend up to 20 years; and fine between INR 1 Lac to 2 lacs or even more.

[9] It is relevant to refer to Section 37 of the NDPS Act, 1985, which reads as follows:

37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[10] In **Union of India v. Niyazuddin Sk.**, 2018 13 SCC 738 , the Hon'ble Supreme Court holds,

[6]. Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said section. They are:

(1) In the case of a person accused of an offence punishable under Section 19,

(2) Under Section 24,

(3) Under Section 27-A and

(4) Of offences involving commercial quantity.

[11] The mischief is being played taking advantage of the provisions of 27-A of the NDPS Act because whenever 27-A is added as an offence in any FIR, the statutory

rigors of 37 of the NDPS Act, 1985, apply, and the accused seeking bail must satisfy its twin conditions. On reading 37 of the NDPS Act, 1985, it is clearly inferable that to curb the drug menace, the legislature added teeth to make bail difficult for commercial quantities, drug finance, etc. The provisions are couched in negative language and explicitly mandate that to grant bail, the Court must record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offence. Even if the Court fulfills one of the conditions, namely, reasonable grounds for believing that the accused is not guilty of such an offense, it still cannot conclude a finding on the assurance that the accused is not likely to commit any such crime again. However, both the twin conditions must be satisfied before a person accused of violating Section 27-A of the NDPS Act is released on bail. If either of these conditions is not met, the bail embargo remains in effect.

[12] A perusal of the response filed by the State does not utter a single reason that, relying on which evidence, and on what basis, the Investigator as well as the Supervisory Officers, declared the cash of INR 1000/- found besides drugs as the drug money; and further, how drug money would make out financing illicit traffic. It does not mention an iota of evidence, not even worth a pinch of salt, on what basis the Investigator termed the cash of INR 1000/- as financing illicit traffic, as defined in 27-A of the NDPS Act, 1985. It is clear that simply because the accused also had cash along with the heroin, the Investigator assumed the same to be drug money and further misinterpreted drug money as "financing illicit traffic" to arraign the accused for violating stringently harsh provisions of 27-A of the NDPS Act. It was most likely done to invoke the stringent provision of 37 of the NDPS Act and appears to have caused serious prejudice to the accused.

[13] The significant and moot question before this Court is how INR 1000/-, which was recovered along with heroin, constitutes an offence of financing illicit traffic of the prohibited contraband punishable under 27-A, NDPS Act?

[14] Whenever 27-A is invoked, the bail is subject to satisfying the rigorous twin conditions of 37 of the NDPS Act. This Court is lifting the veil to rule out the possibility of 27-A being invoked capriciously to unwarrantedly trigger 37 of the NDPS Act, with an ulterior motive to make bail difficult, at least at the initial stage of pre-trial incarceration.

[15] It shall be relevant to refer to 27-A of the NDPS Act, 1985, which reads as follows:

27A. Punishment for financing illicit traffic and harbouring offenders.

-Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of clause (viii) [Clause (viii) re-lettered as clause (viii) thereof by Act 16 of 2014, s. 2 (w.e.f. 1-5-2014).] of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less

than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

[16] It shall also be relevant to extract 2(viiiib) [Clause (viiiia) relettered as clause (viiiib) thereof by Act 16 of 2014, s. 2 (w.e.f. 1-5-2014).] of the NDPS Act, which reads as follows:

(viiiib) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes-

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the afore-mentioned activities;

[17] Shorter Oxford English Dictionary defines financier as, "FINANCIER [Shorter Oxford English Dictionary, 6th Edition, 2007.] -Engage in or manage financial operations provide oneself with capital." The New Lexicon Webster's Dictionary [The New Lexicon Webster's DICTIONARY, Vol.1, 1988 Edition, Lexicon Publications, Inc., New York, Encyclopedic Edition.] defines finance as follows:

finance (fain ns, f in ns, fin ns) 1. n. monetary affairs || the management of public or company revenue || (pl.) monetary resources 2. v.t. pres. part. financing past and past part. financed to provide with money or provide money for || to raise the money for financial (fain nf?l, fin nf?l) adj. pertaining to financiers or financial operations [O.F.]

[18] Financing illicit traffic in the context of 27-A read with 2(viiiib) of the NDPS Act means dealing in any activities, production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-

State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances, including cultivating coca, opium poppy, cannabis, handling or letting out any premises for the carrying on of any of these activities, in contravention of the NDPS Act, 1985 or any rule or order, or any condition of any licence, term or authorisation issued, abetting, conspiring, financing, directly or indirectly, harbouring persons engaged in any of the activities mentioned above. Thus, the usage of the words 'financing illicit traffic' by the legislature, in 27A, suggests relational roles -financing, which nourishes the economy and logistics of illicit trafficking and harbouring, which means to give shelter, refuge, and "harboring a fugitive". [<https://www.merriam-webster.com/dictionary/harboring>]

Only when the proceeds are proved to finance the organised chain can the provision of 27A be invoked.

[19] "Drug money" is a broad concept encompassing all traceable cash, property, or assets, including property of substituted or equivalent value, derived from NDPS offences.

[20] Section 27-A and 2(viib) of the NDPS Act nowhere, directly or indirectly, mentions any cash found along with the contraband as "Drug Money" or "Proceeds of Drug Sale". Since the legislature did not use the term "Drug Money" in 27-A or 2(viib) of the NDPS Act, this Court cannot import such words because apparently the usage looks like a folly. Before invoking 27-A of the NDPS Act, one needs to show that the said money was to be used to finance the illicit traffic of drugs. Even when, along with contraband, any money or sovereign metal, etc., is recovered, 27-A does not permit an investigator to treat such money, etc., automatically, as "financing illicit traffic".

[21] In addition to 21 grams of heroin, what was recovered from the petitioner Amit Sharma were the currency notes amounting to INR 1000/-. Even if this amount was proceeds of sale of drugs, or drug money, i.e., illegally acquired proceeds of drug trafficking, it is liable for forfeiture under 68-C of the NDPS Act, or 3 of the Prevention of Money-Laundering Act, 2002, in accordance with law, and not under S. 27-A.

[22] Sections 68A to 68Z of Chapter VA of the NDPS Act deal with "FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY". Section 68C prohibits holding illegally acquired property, and 68F defines seizure or freezing of illegally acquired property.

Section 68C reads as follows:

68C. Prohibition of holding illegally acquired property.- (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.

[23] In *Aslam Mohd. Merchant v. Competent Authority & Ors*, Cr.A 1053-2003, decided on July 08, 2008, the Hon'ble Supreme Court of India holds,

[17]. Chapter VA contains stringent provisions. It provides for forfeiture of property. Such property, however, as the heading of the Chapter shows, must be derived from or used in illicit traffic. Illegally acquired property in relation to any person to whom the chapter applies would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from property.

[18]. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of 'identifying' is, that the property was derived from or used in the illicit traffic.

[23]. Before, however, an order of forfeiture can be passed, the Competent Authority must not only comply with the principles of natural justice, he is also required to apply his mind on the materials brought before him. It is also necessary that a finding that all or any of the properties in question were illegally acquired properties is recorded.

[24] It shall also be relevant to refer to S. 2(u) and 3 of "The Prevention of Money Laundering Act, 2002", and these provisions read as follows:

2(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad; Explanation.-For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence;

3. Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.-For the removal of doubts, it is hereby clarified that,-

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

[25] In *Vijay Madanlal Choudhary v. Union of India*, SLP (CrI) 4634-2014, decided on 27-07-2022, a three-judge bench of the Hon'ble Supreme Court holds,

[45]. It is common experience world over that money-laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals to deal in such money. It is the means of livelihood of drug dealers, terrorist, white collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. Thus, the onus on the Government and the people to identify and seize such money is heavy. If there are any proactive steps towards such a cause, we cannot but facilitate the good steps. However, passions aside we must first balance the law to be able to save the basic tenets of the fundamental rights and laws of this country. After all, condemning an innocent man is a bigger misfortune than letting a criminal go.

[26] The legal tender of the currency note is a promote, to be redeemed for equal value by the Government of India under a promise made through the Governor of the Reserve Bank of India. As per Section 26 of the Reserve Bank of India Act, 1934, the Bank is liable to pay the value of a banknote. This is payable on demand by the RBI, being the issuer. The promissory clause printed on the banknotes, i.e., "I promise to pay the bearer the sum of Rupees ", denotes the obligation on the part of the Bank

towards the holder of the bank note." [Reserve Bank of India: Home >> FAQs - Display <https://rbi.org.in/CommonPerson/english/scripts/FAQs.aspx?Id=3158>]

[27] Even Section 269SS of the Income-tax Act, 1961, does not prohibit a person from keeping or using cash; it simply regulates the mode in which certain kinds of receipts, namely loans, deposits, or "specified sums" given as advances for immovable property, may be taken. Section 269SS expressly permits the taking or accepting of loans, deposits, or specified sums in cash up to an aggregate of Rs.20,000 from any one person confirming that handling money in moderate amounts is not only lawful but also expected in day-to-day life. Any amount higher than Rs.20,000 must be paid by an account-payee cheque, an account-payee bank draft, or an electronic transfer to a bank account.

[28] Thus, keeping money, issued by a Sovereign, can never be an offence unless a statute makes it so or the tender itself has expired. Money is a legal tender-Cash is, however, narrower than money. [Supreme Court of India, Dhampur Sugar Mills Ltd v. Commissioner of Trade Tax U.P., 2006 INSC 338, Civil Appeal No. 2635 of 2006, decided on May 12, 2006, Page 691

[29] The concept of money in India, when viewed through its statutory, institutional, and functional dimensions, reveals a layered architecture that extends well beyond coins and currency notes. Legally, money begins with legal tender-banknotes issued by the Reserve Bank of India, coins minted by the Government of India, and now the emerging digital rupee (CBDC), each recognised as sovereign liabilities under the RBI Act, 1934, and the Coinage Act, 2011.

[30] S. 2(h) and (i) of The Foreign Exchange Management Act, 1999, [FEMA] defines money as follows:

2(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(i) "currency notes" means and includes cash in the form of coins and bank notes;

[31] Section 2(b) of The Prize Chits and Money Circulation Schemes (Banning) Act, 1978, defines money as 2(b) "money" includes a cheque, postal order, demand draft, telegraphic transfer or money order;

[32] Section 2(75) of The Central Goods and Services Tax Act, 2017, excludes currency that is held for its numismatic value (coins, etc., held as a collection) from the definition of money and defines money as follows:

2(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to

settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

[33] Section 2(7) of The Sale of Goods Act, 1930 does not define 'money' or 'currency' but excludes money from the definition of the word 'goods', and it reads as follows:

2(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

[34] The concept of money has experienced evolution from commodity? metallic currency ?paper currency ?digital currency. Reserve Bank of India Act 1934; Coinage Act 2011; Banking Regulation Act 1949; FEMA 1999; Payment & Settlement Systems Act 2007; Master Direction - PPIs (RBI) [Balances stored in PPIs, such as mobile wallets, are contractual obligations of the issuer to the holder]; Central Bank Digital Currency (e?) [Concept Note (RBI 2022)] make the money as a legal tender and if anyone, based on any Statute, Sub-ordinate legislation, inquiry, or investigation, disputes such possession, the initial burden starts from the accuser and the presumption of the currency being a legal tender stays with the holder.

[35] We are not yet a completely cashless economy, and almost everyone, as a rule and not as an exception, would keep currency notes with them, whether at home or while travelling. To label any discovered value proximate to narcotics as "drug money," and then often leap to 27A, by giving an incorrect interpretation by analogy to the statute's structure, would be contrary to its scope.

[36] There is no prohibition on keeping money on one's person, and several statutes explicitly affirm its ordinary use. For instance, Section 269SS of the Income-tax Act, 1961 allows loans, deposits, or specified sums up to Rs.20,000 to be taken or accepted in cash. Given the functions money serves-as a medium of exchange, unit of account, and store of value, it is a necessary and routine feature of personal and commercial existence that individuals carry or control some amount of it, whether as cash, deposit balances, or accessible digital value. In India's contemporary financial ecosystem, where digital payments, mobile wallets, and CBDC apps coexist with cash, the law thus recognizes both actual and constructive possession of money as legitimate, integral aspects of economic agency, unified by their ultimate convertibility into sovereign legal tender.

[37] In **Standard Chartered Bank v. Directorate of Enforcement**, 2005 4 SCC 530, decided on 05-05-2005, a Constitutional bench of the Hon'ble Supreme Court holds,

[27]. ... It is true that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain

meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of -All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment.

[38] Placing the word "financing" inside this continuum shows that 27A is designed to tackle the networked, profit-driven activity, and not the edges of consumption or ad-hoc street peddling. The mischief Parliament targeted was financial/organisational enablers of drug crime. Judicial construction must suppress financiers/harbourers, not inflate liability onto end-users or casual sellers. The genus is organised illicit traffic; the drug dependents, subsistence-levels, end-consumers, or personal-use dealings are outside that genus. The most effective and legally consistent way to define "drug money" is the "proceeds of crime" generated from illicit traffic in the NDPS Act and includes the substituted assets where the original proceeds are converted or intermingled. Drug money is the value that feeds drug crime.

[39] Section 27A is a scalpel for the financial sinews of organised traffic, not a net for every case with cash near contraband. These are statutory fidelity and proportionality devices: they keep 27A aimed at the organised economy of drug crime. Even if, during interrogation by the police, custodial or otherwise, any accused confesses before the police that the money was drug money, still, based on this inadmissible evidence, such money cannot be treated as an offence under 27A unless there is some other primary evidence. Any interpretation that expands 27A to petty actors or isolated transactions collides with legislative design and distorts graded culpability.

[40] The lack of evidence of "financing illicit traffic" would militate strongly against the application of Section 27A. It must be confined to conduct that demonstrates sustained or structural support for the trafficking network, rather than mere transactional-level procurement or consumption. If there is prima facie sufficient evidence of illicit financing of drug trafficking, then even the recovery of the drug or the drug money is not a statutory condition precedent for invoking Section 27A.

[41] Section 54 of the NDPS Act, 1985, applies only where the accused is found in possession of "any narcotic drug or psychotropic substance or controlled substance" or any article or plant which he has reason to believe to be such. By its plain wording, the provision is confined to possession of narcotic or controlled substances and related articles. Currency notes, being legal tender, do not fall within the ambit of these expressions.

[42] Section 35 of the NDPS Act, 1985, incorporates a statutory presumption regarding the culpable mental state of the accused. However, this presumption operates only in relation to an established actus reus - that is, once the prosecution has first proved, beyond a reasonable doubt, that the accused has committed a prohibited act under the Act, such as possession, transportation, or sale of narcotic or psychotropic

substances. The presumption of mens rea is therefore contingent upon the prior establishment of the physical element of the offence.

[43] Unless the prosecution first demonstrates through credible and substantive evidence that the money in question was either derived from or intended to facilitate illicit trafficking of narcotic drugs or psychotropic substances, the foundational actus reus necessary to trigger the presumption under Section 35 remains unestablished. In the absence of such proof, the statutory presumption of culpable mental state cannot lawfully attach to the mere possession of currency. To hold otherwise would amount to extending the operation of Section 35 beyond its legislative intent and would risk criminalizing conduct that is, in principle, lawful and constitutionally protected.

[44] There is no statutory presumption that mere possession of cash indicates involvement in illicit traffic. Since possession of legal tender money is, in principle, a lawful and neutral act, any attribution of criminality to such possession must rest upon credible evidence signifying a plausible and proximate nexus between the seized money and the alleged offence. A contrary presumption would be against the principles of fairness, reasonableness, and proportionality, and would violate Article 21 of the Constitution of India, because it would reverse the burden of proof in a manner not sanctioned by the statute. When the possession of the legal tender is inherently lawful, any contrary presumption of culpability in respect of such money would offend Article 21 of the Constitution unless supported by a specific statutory basis or tangible evidence of a plausible nexus with illicit traffic.

[45] Since coins and paper currency are issued and guaranteed by the sovereign authority, the burden of proving their illicit derivation, i.e., illicit finance, illegal trafficking, drug money, or proceeds of crime, lies upon the investigating agency. To bring possession of money within Section 27A or Chapter VA (forfeiture provisions) of the NDPS Act, there must be a specific nexus shown between the money and illicit trafficking activities.

[46] If law enforcement agencies were permitted to infer criminality solely from possession of money, it would undermine procedural fairness and dilute the evidentiary threshold required in criminal jurisprudence. Therefore, the initial burden lies with the investigative agency to demonstrate, through supportable indicators-such as prior transactions, communication records, or patterns of financial flows-that the seized cash bears a palpable link to illicit drug trafficking. Such a standard maintains the delicate balance between effective enforcement and the protection of individual rights. It reinforces the notion that suspicion, however strong, must not replace the necessity of reasoned belief grounded in objective facts.

[47] In *K.K. Ashraf v. State*, 2009 KER 39346, decided on 13-09-2009, Kerala High Court observed,

[17]. Apart from mentioning Section 27A as an offence which is alleged to have been committed by the accused, there is no factual foundation for an

allegation that they have committed an offence under Section 27A of the Act. There is no allegation that the petitioner indulged in financing, directly or indirectly, any of the alleged activities. There is also no allegation that the petitioner has harboured any person engaged in such activities. The materials on record show that the first accused Shanavas purchased the heroin from the petitioner (second accused) for a sum of Rs.1,80,000/- and some amount is due to the petitioner. That means the consideration was not paid in full to the petitioner. What is the balance amount due is not forthcoming. The question is whether sale of narcotic drug to a person reserving a part of the price to be paid by the purchaser later would amount to "financing" within the meaning of Section 27A of the Act. The expression "financing" is not defined in the Act. In Blacks Law Dictionary, the verbal meaning of "finance" is shown as "to raise or provide funds". In Chambers Dictionary, the meaning of "finance" is shown as "to manage financially; to provide or support with money". If a person has sold narcotic drugs or psychotropic substances on credit, could it be said that he has indulged in financing? If the full amount is realised by such sale, it cannot be said that he has indulged in financing. What difference it would make if a part of the consideration is reserved to be paid at a later point of time? To my mind, it cannot be said that receipt of part payment of the sale consideration of the contraband reserving the balance to be paid at a later point of time would attract the offence of "financing" within the meaning of Section 27A of the Act. Sale of a narcotic drug on credit is different from financing the activity of sale of a narcotic drug. It cannot be said that a person who did not receive the value in full of the drug would be in a more disadvantageous position than a person who got the full price of the same. The expression "financing" is not related to the payment of the value of the narcotic drug. On the other hand, it involves an activity other than sale or purchase of the narcotic drug, in which a person invests or provides funds or resources for facilitating the activities mentioned in sub-clauses (i) to (v) of clause (viii) of Section 2 of the NDPS Act. "Financing" involves the presence of a party who is not a party to the sale of the drug

[18]. Thus it is clear that in order to attract Section 27A, there must be an allegation of financing or harbouring as mentioned therein

[48] Once the veracity of prosecution case against the respondent is in serious doubt, further analysis on the other factors about financing the drug trafficking and harbouring of offender need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which respondent is sought to be connected with such alleged planting could only be regarded as false and fanciful, at least at this stage. [Supreme Court of India, in State of West Bengal v. Rakesh Singh, Cr.A 923-2022, decided on 11 July 2022, para 16.3.]

Therefore, finance of "illicit traffic", within the meaning of Section 27-A of NDPS Act, connotes drug peddling on regular and continuous basis, different from illicit sale/purchase of contraband items [Mohd. Aslam v. UT of J&K, CRM(M) No. 157-2025 & Bail App No. 297-2024. Decided on 19.08.2025, Para 32] . Thus, if Section 27A is read in its entirety, it indicates that financing is in respect of illicit traffic through which the financier expects monetary or other returns. [Bombay High Court in Rhea Chakraborty v. The Union of India, BA-st-2386-2020, decided on 07 Oct 2020, para 65]

[49] Even if, on arrest, the accused confesses before the Police that the cash which was recovered is the proceeds of drug sale, still, such a confession by an accused in police custody shall not be proved, as mandated under Section 23 (1) and (2) of BSA, 2023.

[50] Mere association with drug offenders or recovery of money from the accused who named another person as the seller of the drug, and when such a person is arraigned as a co-accused, merely based on disclosure statement of the principal accused of purchasing drugs from such co-accused and without any other allegation, such disclosure does not prima facie make out an offence of "financing illicit traffic" and is insufficient to invoke 27-A of the NDPS Act against such co-accused.

[51] Section 27-A is specific, restrictive, and requires concrete evidence of financing or harboring, and the statutory ingredients require either the active provision of resources for illicit traffic or the sheltering of offenders, and in countenance, whenever any Investigating agency invokes the stringent provisions of Section 27A, the possibility is writ large that mischief is being carried out to make the offence non-bailable and bail difficult by triggering the legislative restrictions placed on bail through Section 37 of the NDPS Act.

[52] When 27A of the NDPS Act has been invoked without any evidence of illicit financing or trafficking of drugs, the restrictions imposed under 37 of the Act shall neither apply nor frustrate the rule of bail, because when the restrictions of 37 do not apply, the factors for bail become similar to those under the regular statutes.

[53] In the present matters, while possession of a narcotic substance by Amit Sharma may constitute an offence under the NDPS Act, possession of money or currency notes does not, per se, fall within the ambit of any prohibited act under the statute. Currency, being a legal tender, is by its very nature neutral and lawfully possessed. Hence, mere recovery of some cash in conjunction with contraband does not, in itself, constitute an actus reus under the NDPS framework. Sukhchain Masih was arraigned as an accused on the basis of the disclosure statement of Gagandeep Singh, who was arrested for possessing 5 grams of heroin and INR 1000/- as drug money.

[54] Given above, the petitions are allowed, and the interim orders, in both the cases mentioned above, are made absolute. Pending applications, if any, stand disposed of

2026(1)CNC110

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: Shivashankar Amarannavar)

Criminal Petition No 10355 of 2025 dated 12/11/2025

Jeelan Pasha S/o Hafeez Ulla Pasha

Versus

State of Karnataka

BAIL REJECTION

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 41, Sec. 52, Sec. 37, Sec. 22, Sec. 42 - Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 Rule 14 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483, Sec. 47 - Bail Rejection - Petition filed under Sec. 483 of BNSS seeking bail for offences under Sec. 8(c) and 22(c) of NDPS Act - Petitioner contended that search conducted after sunset without authorization and grounds of arrest not informed - Arrest made without communication of grounds under Sec. 52 - Qualitative and quantitative reports delayed - Government Pleader submitted contraband seized positive for MDMA and commercial quantity - Search and seizure conducted properly and FSL report supports prosecution - Court observed grounds of arrest communicated prior to production before Magistrate - Contraband weight confirmed commercial quantity attracting Sec. 37 NDPS - Investigation ongoing and petitioner failed to make out case for bail - Petition Dismissed

Law Point: Communication of grounds of arrest prior to production before Magistrate satisfies mandate under Article 22 and Sec. 47 of BNSS - Delay in quantitative report does not affect applicability of rigour under Sec. 37 of NDPS Act when FSL confirms commercial quantity.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 41, Sec. 52, Sec. 37, Sec. 22, Sec. 42

Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 Rule 14

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483, Sec. 47

Counsel:

Hasmath Pasha (Senior Counsel), Vivekananda N, Channappa Erappa

JUDGEMENT

Shivashankar Amarannavar, J.- [1] This petition is filed by the sole accused under Section 483 of Bharatiya Nagrika Suraksha Sanhita, 2023 praying to grant bail in Crime No.159/2025 of Ashoknagar Police Station registered for offences punishable under Sections 8(c) and 22(C) of Narcotic Drugs and Psychotropic Substances Act.

[2] Heard the learned Senior Counsel for petitioner and learned High Court Government Pleader for respondent - State.

[3] Learned Senior Counsel for petitioner would contend that, the search has been conducted after sunset and before sunrise and grounds of belief are not recorded as contained in proviso to Section 42 of NDPS Act. The authorization of the superior Officer as required under sub-Section (2) of Section 41 of NDPS Act has not been obtained. The contents are weighed including the ziplock.

The currency notes were not found with the petitioner from sale of Contraband. The petitioner has been taken into custody at 11:35 p.m. and he has not been informed the grounds of arrest as required under Section 52 of NDPS Act. In the remand application, the arrest of the petitioner has been shown at 4.00 a.m. Sri. Manjappa, Police Inspector who conducted the raid has not informed the grounds of arrest. The inventory has not been conducted in the presence of the petitioner/accused. The qualitative and quantitative test reports have not been obtained within time as contained in Rule 14 of NDPS (Seizure Storage Sampling and Disposal) Rules, 2022. The two wheeler does not belong to the petitioner. The purchasers have not been identified. There are no previous cases against the petitioner. The petitioner is in custody since last five (5) months. As the quantitative test report has not been obtained, at this stage, it cannot be said that, quantity seized is commercial quantity to attract rigour of sub-Section 1(b) of Section 37 of NDPS Act.

[4] On the above grounds, the learned Senior Counsel has placed reliance on the following decisions:

- i) SARIJA BAND VS. STATE THROUGH INSPECTOR, 2004 Supreme 257 (SC)
- ii) AHMED MANSOOR VS. STATE OF T.N. by Supreme Court decision In CRL.A.4505/2025
- iii) **VIHAAN KUMAR VS. STATE OF HARYANA**, 2025 5 SCC 799
- iv) DHANANJAYA BELCHADA VS. STATE OF KARNATAKA unreported decision of KARNATAKA HIGH COURT in CRL.A NO.246/2016
- v) PRABIR PURKAYASTHA VS. STATE (NCT OF DELHI), 2024 Supreme 463 (SC)
- vi) **BHARATH CHAUDHARY VS. UNION OF INDIA**, 2021 20 SCC 50
- vii) NAGARAJ J @ WILSON GARDEN NAGA VS. STATE OF KARNATAKA, 2025 SCCOnLineKar 4319

viii) **BHARAT AAMBALE VS. STATE OF CHHATTISGARH**, 2025 8 SCC 452

ix) **RUSHAB SHARMIK MASTRULAL VS. STATE**, 2025 SCC OnLine Kar 10526

x) **STATE OF W.B. VS. BABU CHAKRABORTHY**, 2004 12 SCC 201

xi) **JIRIMIYA MAJHI VS. STATE BY THE HIGH COURT OF KARNATAKA** in CRL.P. NO.1380/2024.

On the above grounds, he prayed to allow the petition.

[5] Per contra, learned High Court Government Pleader for respondent would contend that, the FSL report of contraband seized has been obtained and it is positive for MDMA and the quantity seized is a commercial quantity. The quantity seized is worth Rs.4,00,000/-. The investigation is in progress, the offence alleged against the petitioner is punishable with imprisonment for ten (10) years and it may extend to twenty (20) years. If the petitioner is granted bail, there are chances of him hampering the investigation and tampering the prosecution witnesses and committing similar offence. With these, he prayed to reject the petition.

[6] Having heard the learned Senior Counsel for petitioner and learned High Court Government Pleader for respondent, the Court has perused FIR, complaint and other materials placed on record.

[7] One of the grounds urged by the learned Senior Counsel is that, grounds of arrest are not communicated to the petitioner. The Hon'ble Apex Court in the case of AHMED MANSOOR (supra) has observed as under:

"In such view of the matter, we are inclined to hold that the present appeal deserves to succeed only on the ground that the mandate of furnishing the grounds of arrest at the time of securing the appellants has not been complied with. Therefore, we are not inclined to go into the merits of the case. However, while setting aside the order passed by the High Court and consequently setting aside the order of arrest and remand, we would only say that liberty is granted to the respondents to take recourse to law, to arrest, if a case is made out."

[8] The Hon'ble Apex Court in the case of VIHAAN KUMAR (supra) has observed as under:

"19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee

guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty.

The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second."

[9] In the case of DHANANJAYA BELCHADA (supra), this Court while dealing with the appeal against conviction in the case of for offences under Section 25(1-A) of Arms Act, 1959 has observed as under:

"16. Learned High Court Government Pleader would contend that even though the Panchas - PWs.2 and 3 have not supported regarding seizure of MOs.1 to 4 under Exs.P1 and P3, but the evidence of PWs.1 and 4 being the police officers would establish the seizure mahazars - Exs.P1 and P3. The very act that PW1 arresting this appellant - accused No.1 without any grounds, continued investigation, seized two live bullets from his possession under mahazar, recorded his confessional statement, seized MOs.2 to 4 under Ex.P3 and thereafter, himself prepared a complaint and himself registered it and thereafter continued further investigation and arrested accused No.2 and seized MO.5, two live cartridges from his house at his instance as per Ex.P7. This itself shows that PW1 is an interested person in registering the case against this appellant - accused No.1. PW4 being the police constable is subordinate to PW1. Even the arrest mahazar has not been prepared at the time of arrest of the appellant - accused No.1 and the grounds of arrest have not been stated by him and there were no grounds at all to arrest him at that point of time and there is no evidence regarding intimation of arrest of the appellant - accused No.1 to his family members. Therefore, the evidence of PWs.1 and 4 with regard to seizure of MO.1 under Ex.P1 - mahazar and seizure of MOs.2 to 4 under mahazar - Ex.P3 at the instance of this appellant - accused No.1 is not reliable in the absence of independent witnesses. PWs.2 and 3 have not supported the case of the prosecution. Even PW8 - landlord of the house of accused No.2 has not supported the case of the prosecution with regard to he opening the key of the house of accused No.2 and the appellant - accused

No.1 showing the arms kept in the house and seizure under Ex.P3. Even the statement of PW2 as per Ex.P11, PW3 as per Ex.P12 and PW7 as per Ex.P13 and PW8 as per Ex.P14 are not confronted to Investigating Officer (PW1) who recorded the statements. The said statements of PWs.2, 3, 7 and 8 remained not proved."

[10] Recently, the Hon'ble Apex Court in the case of **MIHIR RAJESH SHAH VS. STATE OF MAHARASHTRA AND ANOTHER**, 2025 INSC 1288 decided on 06.11.2025 has observed as under:

"52. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the magistrate.

56. In conclusion, it is held that:

- i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);
- ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;
- iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.
- iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

[11] The raid has been conducted by Sri. Manjappa C.A., Police Inspector, Anti Narcotics Wing, Central Crime Branch, Bengaluru. He found the petitioner possessing the contraband kept in his Access two wheeler bearing No.KA 03 JA 0134. He seized the contraband under Mahazar and took the petitioner into custody and produced the seized contraband and the petitioner along with his report before the Station House

Officer, Ashoknagar Police Station, Bengaluru at 4:00 a.m. on 14.06.2025 and a case has been registered in Crime No.159/2025 for the aforesaid offences.

The Station House Officer who registered a case has arrested the petitioner at 4:00 a.m. and produced the petitioner before the Jurisdictional Magistrate at 4:00 p.m. In the order sheet, the Jurisdictional Magistrate recorded the petitioner being produced on 14.06.2025 at 4:00 p.m. with remand application and producing the Supreme Court eleven (11) guidelines form, grounds for arrest, check list, arrest intimation and medical report.

[12] Considering the above aspect, it is clear that, at the time of production of the petitioner to the Jurisdictional Magistrate, grounds of arrest have been intimated to the petitioner. Even along with the petition, the intimation, grounds of arrest of the petitioner/accused under Section 47(1) of BNSS has been produced and it contains the signature and LTM of the petitioner/accused. In the aforesaid document, there is mention of grounds of arrest of the petitioner for having conscious possession of contraband/MDMA weighing 32.06 grams and its seizure.

[13] In the case of MIHIR RAJESH SHAH (supra) the Hon'ble Apex Court has held that, the arresting Officer unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds should be communicated in writing within a reasonable time and in any case atleast two hours prior to the production of the arrestee for remand proceedings before the Magistrate.

[14] Considering the above aspects, the grounds of arrest are communicated to the petitioner in writing prior to the petitioner producing before the Magistrate seeking his remand.

[15] The search of the vehicle of the petitioner has taken place at 11:35 p.m. to 2:15 a.m. In the Mahazar, there is a mention of not obtaining Warrant for search and ground of belief are recorded for search after sunset and before sunrise as contained under Section 42 of NDPS Act. The inventory and sampling in the presence of the petitioner as held in the case of BHARAT AAMBALE Supra and in the case of NAGARAJ J @ WILSON GARDEN NAGA (supra) cannot be considered at this stage as no materials are placed on record regarding conducting of inventory and sampling and more so, the investigation is in progress.

[16] The contraband seized sent to FSL for examination and the report indicates that, the weight of the sample before examination is 31.78 grams and weight of the sample after examination is 30 grams and it is opined that, the contraband examined is positive for MDMA. Considering the quantity examined i.e., 31.78 grams, it is clear that, the quantity seized from the petitioner is a commercial quantity.

[17] Learned High Court Government Pleader has submitted that, the quantitative test is underway and he has to receive the report. Merely because, the quantitative analysis has not been done within thirty days as required under Rule 14 of NDPS (Seizure Storage Sampling and Disposal) Rules, 2022, at this stage, it cannot be said

that, quantity seized from the conscious possession of the petitioner is not a commercial quantity. Considering the above aspects, the rigour under Section 37 of NDPS Act applies. It cannot be said at this stage that, there are no reasonable grounds for believing that, he is not involved commission of offence under NDPS and he is not likely to commit any offence while on bail. The investigation is in progress. The offences alleged against the petitioner is punishable with imprisonment for not less than ten (10) years which may extend to twenty (20) years. If the petitioner is granted bail, there are chances of hampering the investigation and tampering the prosecution witnesses.

[18] Considering all the above aspects, the petitioner has not made out a case for grant of bail. In the result, the Criminal Petition is dismissed

2026(1)CNC116

HIMACHAL PRADESH HIGH COURT

(Hon'ble Judge: G S Sandhawalia; Jiya Lal Bhardwaj)

Cr W P (Criminal Writ Petition) No 15 of 2025 **dated 11/11/2025**

Uved Khan

Versus

State of HP & Others

PREVENTIVE DETENTION

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 21, Sec. 20, Sec. 29 - Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 Sec. 3 - Preventive Detention - Petition challenged preventive detention order issued under Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act - Detention extended based on advice of Advisory Board - Contention raised that opportunity to file representation was not provided resulting in violation of constitutional safeguards - State justified action based on prior conviction and recovery cases under NDPS Act - Detaining authority relied on assumptions about illegal income from alleged drug trade - Court observed that Advisory Board overlooked essential procedural requirement and that preventive detention cannot be based on suspicion or past cases without proper justification - Detention orders found to infringe fundamental rights - Orders quashed - Petitioner directed to be released if not required in other cases - Pending applications disposed of. - Petition Allowed

Law Point: Preventive detention under NDPS or PIT NDPS Acts must strictly adhere to constitutional safeguards under Article 22(5) and cannot rest solely on past criminal cases or suspicion without giving detenu fair opportunity for representation.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 22, Sec. 21, Sec. 20, Sec. 29

Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 Sec. 3

Counsel:

Sunny Rawat, Priyanka Chauhan

JUDGEMENT

G.S. Sandhwalia, C.J.- [1] Challenge in the present petition is to the order dated 21.06.2025, passed by the Additional Chief Secretary (Home), Government of Himachal Pradesh, (Annexure P-1), whereby the petitioner was detained for a period three months and was taken into custody on 28.06.2025, primarily on account of the fact that there were five cases registered against the petitioner under the Narcotic Drugs and Psychotropic Substances Act, 1985 and in one of the cases, i.e., at Sr. No. 2 bearing Case No. 193 of 2016, dated 15.12.2016, lodged at Police Station Laldu, Mohali, Punjab, conviction had been recorded.

[2] The said power was exercised by the State under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act), (as amended). The reasoning as such was given that the preventive custody of the petitioner would have a significant impact in reducing the rate of recidivism, drug abuse and drug-related crimes in the regions and his custody would also rehabilitate him, preventing him from continuing his drug-related activities and severing his ties with his criminal network. The details of the said cases are as under:-

- "1. Case No. 67/2015 dated 10.08.2015, Police Station Ani, District Kullu, Himachal Pradesh under Section 20 NDPS Act, about 415 grams of Charas was recovered from his possession.
2. In case number 193/2016 dated 15.12.2016, Police Station Laldu, Mohali, Punjab, under section 21,29 NDPS Act, about 20 grams of Heroin packet was recovered from his possession.
3. In case No. 228/2017 dated 16.08.2017 under Section 22 of NDPS Act, Police Station Sadar Solan, Himachal Pradesh, about 5.56 gm Heroin/Chitta was recovered from his possession.
4. No. Case No. 80/2023 dated 31.03.2023 under Section 21 NDPS Act at Police Station Past Shimla. Himachal Pradesh, about 9.69 grams of Heroin/Chitta was recovered from his possession.
5. In case No. 28/2024 dated 20.04.2024 under Police Station Kandaghat, Himachal Pradesh under Para 21, 29 NDPS Act, about 12.26 grams of Heroin/Chitta was recovered from his possession."

[3] During the pendency of the proceedings, we were informed that the detention of the petitioner which was otherwise to expire on 28.09.2025, was extended on the basis of the order dated 11.08.2025 passed by the Himachal Pradesh State Advisory Board, and resultantly, his detention has now been extended after 28.09.2025 by passing a fresh order by the State in pursuance to the advice received. The said order dated 23.09.2025, is also subject matter of challenge by filing an amended petition.

[4] The primary contention, which had also been raised at the initial point of time by the learned Counsel for the petitioner was that there was no opportunity as such given for filing a representation when the first detention order itself was passed. The said aspect also missed the notice of the State Advisory Board, while recommending his continued detention.

[5] The State, on the other hand, in its reply sought to justify the detention orders on the ground that there was a Source Report (Annexure R-3/2) and that the petitioner has been convicted in one of the cases, as noticed above.

[6] We have also gone through the Source Report (Annexure R-3/2), whereby it has been mentioned that the petitioner's father has a tailor shop in the name of "R.K. Tailor" at Old Court Road Kandaghat and the petitioner has a vehicle No. HP-01S-1599 K-10, white colour and his mother has also a vehicle No. HP-01S-1917 Etios, white colour.

[7] Apparently, the State was able to convince the Advisory Board as such that the petitioner was indulging in drug peddling in a large extent and he was also having no source of legal income and also owned two vehicles and therefore, inference as such was drawn that he was generating funds from the said trade of drugs as such.

[8] Learned Counsel for the petitioner has placed some additional documents on record showing that both the vehicles were financed from Mahindra Finance, and one of the vehicles i.e. vehicle No. HP-01S1917 Etios was in the name of his mother and the second vehicle, i.e. vehicle No. HP-01S-1599 K-10, was in his name. It has also been brought to our notice that vehicle No. HP-01S-1917 Etios has been sold thereafter.

2. It is not disputed that small intermediate quantity of 'charas' was recovered and conviction as such by the Special Judge, Mohali revealed that it was for 20 grams of heroin and the conviction was for the undergone period of three months and nine days alongwith another co-convict.

[9]

[10] The Specific Case Is That An Opportunity To File A Representation Was Not Given And Therefore, There Was Violation Of The Provisions Of Article 22(5) Of The Constitution Of India And Also The Law Laid Down By A Five Judges Bench Of The Apex Court In **Kamleshkumar Ishwardas Patel Versus Union Of India And Others**, 1995 4 SCC 51.

[11] The learned Counsel for the petitioner has accordingly placed reliance upon another judgment of the Apex Court in **Rekha Vs. State of Tamil Nadu TR Sec. To Govt. & another**, 2011 4 SCR 740, to submit that the Apex Court has time and again held that liberty granted under Article 21 of the Constitution of India should not be violated and such detention orders are only on the ground of mere suspicion as such and merely on the background of the large number of cases would not be justified. It is also submitted that on account of the detention, it would be prejudicial as such to the petitioner that the prosecution was still under process and the petitioner would not be in a position to interact with his lawyer. The relevant portion of the judgment reads as under:-

"29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal" 30 to 34. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx 35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande, (supra) - para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital."

[12] In similar circumstances, in Criminal Writ Petition No. 20 of 2025, titled as **Sachin Kumar Vs. State of Himachal Pradesh & another**, decided on 25.09.2025, we have also allowed the petition, whereby the detention period was again extended by the Advisory Board, on mention that one of the recoveries was of commercial quantity, whereas the recovery was of intermediate quantity.

[13] As notice herein also, learned Counsel for the petitioner is able to demonstrate that both the vehicles were financed from Mahindra Finance and therefore, impression given as such was that the petitioner was involved in illegal

activities and was generating a large amount of income, seems to be based on a biased information given by the State. We are not in a position to agree with the advice given by the Advisory Board keeping in view the peculiar facts and circumstances of the case.

[14] Resultantly, we are of the considered opinion that the present petition deserves to be allowed. Accordingly, we quash the detention orders dated 11.08.2025 and 23.09.2025 passed by the State and the Advisory Board, respectively on the ground that there is violation of fundamental rights of the petitioner.

[15] The petitioner be set free, if not required in any other case.

[16] Pending application(s), if any, also stands disposed of

2026(1)CNC120

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: Bechu Kurian Thomas)

Crl A (Criminal Appeal) No 1218 of 2015 **dated 07/11/2025**

Aneesh S/o Nassar

Versus

State of Kerala

NDPS POSSESSION

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 50, Sec. 52A, Sec. 22, Sec. 42, Sec. 57 - NDPS Possession - Accused challenged conviction under NDPS Act for possession of psychotropic substance - Contended delay in production and non-compliance of mandatory provisions - No independent witnesses examined - Procedural lapses in taking samples and conversion of quantity - Prosecution failed to prove compliance under Sections 42, 50, 52A and 57 - Court held recovery doubtful - Conviction set aside - Appeal Allowed

Law Point: Strict procedural compliance under NDPS Act is mandatory; failure thereof renders conviction unsustainable.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 50, Sec. 52A, Sec. 22, Sec. 42, Sec. 57

Counsel:

P Mohamed Sabah, Libin Stanley, Saipooja, Sadik Ismayil, R Gayathri, M Mahin Hamza, Alwin Joseph, Benson Ambrose, Sreeja V

JUDGEMENT

Bechu Kurian Thomas, J.- [1] Appellant assails the verdict of guilty apart from the consequent conviction and sentence imposed upon him under section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). By the impugned judgment, appellant has been sentenced to undergo rigorous imprisonment for a period of thirteen years and to pay a fine of Rs.1,00,000/-, with a default sentence.

[2] The prosecution alleged that on 21.10.2011, the accused was found in possession of 174 ampules of Lupigesic and 24 unlabelled ampules. Prosecution further alleged that each ampule contained 2 millilitres (ml) of contraband and 12 of the ampules were found in the pocket of the pants of the accused, apart from Rs.200/- found in his shirt pocket and thereby the accused committed the offences alleged.

[3] The prosecution case was attempted to be proved through PW1 to PW6, apart from Exhibit P1 to Exhibit P20 and material objects MO1 to MO5, while the defence tried to justify the claim of innocence of the accused and marked Exhibit D1. However, after analysing the evidence adduced in the case, the Trial Court found the accused guilty and sentenced him as mentioned earlier.

[4] Smt. Saipooja, the learned counsel for the petitioner contended inter alia that the production of contraband before the Court was delayed by around seven days, thereby creating doubts on the veracity of the prosecution case. The learned counsel also pointed out that the requirements under section 52A of the NDPS Act had not been complied with and the accused could not have been convicted since the sample was not taken in the presence of the Magistrate as required by section 52A of the Act and as held in the decision in **Noor Aga v. State of Punjab and Another**, 2008 16 SCC 417 and **Nadeem Ahamed v. State of West Bengal**, 2025 INSC 993. The learned Counsel further submitted that there was no compliance of section 50 of the NDPS Act as it was compulsory to make an endeavour to take the accused to a Magistrate as held in **Ranjan Kumar Chadha vs. State of Himachal Pradesh**, 2023 AIR(SC) 5164. The learned Counsel also contended that Exhibit P1 and Exhibit P13 reports filed under section 42 and section 57 of the NDPS Act respectively, were not in accordance with law. In order to buttress her submissions that the prosecution was totally flawed, the learned counsel relied upon the absence of any independent witnesses in Exhibit P2 consent statement of the accused, absence of any independent local witnesses and the presence of two papers with the signatures of the accused and witnesses, all of which, according to her create doubts on the prosecution case itself. The learned counsel also pointed out that as per the deposition of PW2-the Village Officer, the width of the road was so narrow that a container lorry could not have been parked there. The learned counsel further submitted that the NDPS Act indicates quantity of contraband on the basis of grams while the prosecution case dealt with millilitres and in the absence of any evidence regarding quantum of alleged contraband after converting it into grams or even any reference in the court charge to the

equivalent grams of contraband, the charge by itself is faulty and the accused cannot be found guilty, that too, for the offence of possessing commercial quantity of the contraband. It was further submitted that the two independent witnesses examined by the prosecution as PW4 and PW5, had turned hostile and there was no attempt to identify any of the signatures in the records. It was submitted that the evidence adduced by the prosecution being full of inconsistencies and incongruities, their case is unbelievable.

[5] Smt. V. Sreeja, the learned Public Prosecutor on the other hand contended that the accused was found in possession of 174 ampules of Lupigesic carried by him in a plastic kit, apart from another 12 ampules of the same drug recovered from the pocket of his pants, each containing 2 millilitres and that every procedure required by law has been complied with. It was submitted that Exhibit P1 is the document that satisfies the compliance of section 42 of the NDPS Act, while Exhibit P13 is the document that depicts compliance of section 57 of the NDPS Act. The learned Prosecutor submitted that section 50 of the NDPS Act also stands satisfied in the instant case and that it was not compulsory that the accused should be taken to the Magistrate. It was further submitted that Section 52A has no application in the instant case since what was produced and marked in the trial court was not a representative sample but the entire quantum of drugs seized from the possession of the appellant. The learned Public Prosecutor further submitted that there is no delay in producing the documents before the Court and further that the width of the road as deposed to by PW2 was clarified by the Investigating Officer when examined as PW6 and considering the nature of evidence adduced, there is no reason to disbelieve the prosecution case. The learned Public Prosecutor also submitted that the seized contraband was produced before the Magistrate's court without any delay.

[6] On an appreciation of the rival contentions, the following issues arise for consideration;

1. Whether the requirements under sections 42 and 57 of the NDPS Act have been satisfied or not?
2. Whether the requirements under section 50 of the NDPS Act have been complied with?
3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?
4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?
5. Whether there was any delay in production of the contraband before the Court?
6. Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

Issue No. 1: Whether the requirements under sections 42 and 57 of the NDPS Act have been satisfied or not?

[7] The prosecution case was built on the allegation that on 21-10-2011 at around 4.30 pm, an anonymous information was received regarding a person indulging in sale of drugs near Aquinas College. The said information was taken down in writing and a copy thereof was sent to the Circle Inspector, Palluruthy. Exhibit P1 is the information communicated to the immediate official superior, dated 21-10-2011 and is endorsed as received on the same date itself. Further, the said document contains the seal of the Magistrate's Court with the date "22 Oct 2011". Exhibit P13 is the report of arrest and seizure as required under section 57 of the NDPS Act. The said report is also seen received by the immediate official superior. However the date of receipt as endorsed by the said superior officer has created some confusion, as it can be read either as "27-10-2011" as well as "21-10-2011", but more as the former. Though the learned Counsel argued that the date can only be read as 27-10-2011, it can be seen from the endorsement on the document that it was received by the Magistrate's Court on 22-10-2011. Further, PW6 had, in his deposition, deposed that he writes the numeric '1' in that manner. No doubts were raised by the defence to that answer during the evidence stage and the said statement remains unchallenged. Hence it has to be concluded that both Exhibit P1 and Exhibit P13 were received by the superior officer on 21-11-2010.

[8] Law requires compliance of Section 42 of the NDPS Act as mandatory. Non compliance will vitiate the trial. The first step under Section 42 of the NDPS Act starts with the information received by the empowered officer, about the commission of an offence under the NDPS Act, and recording the information or the grounds of belief, as the case may be, in writing. The second step is to send a copy of the recorded information or grounds of belief to his immediate official superior within seventy two hours. Section 57 of the NDPS Act requires the arrest or seizure to be reported to the immediate official superior within forty eight hours. On an appreciation of the oral and documentary evidence mentioned earlier, it is evident that Exhibit P1 and Exhibit P13 were received by the immediate official superior on the same day itself and within the time limits prescribed by law. Thus, the requirements under sections 42 and 57 of the NDPS Act have been satisfied in the instant case.

Issue No. 2. Whether the requirements under section 50 of the NDPS Act have been complied with?

[9] Section 50 of the Act requires that when a person is to be searched under the provisions of the NDPS Act, he should be made aware of his right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the provision has application only in cases of personal search of a person and does not extend to the search of a vehicle or a container or a bag or even premises. Further, section 50 of the NDPS Act has no application in cases where the recovery of the contraband is made from a bag or a container carried by the suspect, as it has been held that those articles do not come within the sweep of the word "person" in the said provision. Needless to

mention that the provisions of section 50 of the NDPS Act will come into play only in the case of personal search of the accused and not of anything which the accused may be carrying in his hands. Reference to the decisions in **State of Punjab v. Baldev Singh**, 1999 6 SCC 172, **Jarnail Singh v. State of Punjab**, 2011 AIR(SC) 964, **Than Kunwar v. State of Haryana**, 2020 5 SCC 260 and **Ranjan Kumar Chadha v. State of Himachal Pradesh**, 2023 AIR(SC) 5164 are relevant in this context.

[10] In Exhibit P13 report, it is mentioned that when PW1 reached the place where the accused was standing, he found a white plastic kit in his hands. Immediately on seeing the police party, the accused tried to hide behind a container lorry parked on the side of the road. Thereafter, the accused was restrained and when questioned regarding the contents of the kit in his hands, he initially informed that he was carrying certain food items and when demanded it to be opened, it was found to contain another kit, which, when inspected, was found to contain ampules of Lupigesic.

[11] The accused was then informed that the search of his body was required to be carried out, for which he had the right to have it conducted in the presence of a Gazetted Officer or a Magistrate. The report also mentions that the accused insisted on being searched in the presence of a Gazetted Officer and hence the Excise Circle Inspector, Kochi was attempted to be contacted but since the said Officer was on leave, the Circle Inspector of Fort Kochi was contacted and he reached the place by 5:20 pm. After ensuring that the police officers present at the scene did not have any contraband in their possession, the accused was searched, which revealed that he possessed 12 ampules of Lupigesic inside the pocket of his pants and Rs.200/- as cash. PW1 and PW6 have given evidence to the above effect as well and Exhibit P2 is the written consent statement of the accused agreeing to be searched.

[12] Section 50 of the NDPS Act imposes an obligation on the Police Officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or a Magistrate. The mandate under the provision depends upon the decision of the suspect. If the suspect declines his right to be searched in the presence of either of the two persons mentioned in the provision, the empowered officer can proceed to conduct the search of the person himself. In the decision in **Vijaysinh Chandubha Jadeja v. State of Gujarat**, 2011 AIR(SC) 77, it has been held that the obligation of the authorised Officer under section 50(1) of the Act is mandatory and requires strict compliance. It was also observed that failure to comply with the provision would render the recovery of the illicit article doubtful and even vitiate ? conviction.

[13] As mentioned earlier, the learned counsel for the appellant contended that the no endeavour was made by the Detecting Officer to take him to a Magistrate which was a mandatory requirement under section 50 of the NDPS Act as held in **Ranjan Kumar Chadha v. State of Himachal Pradesh**, 2023 AIR(SC) 5164. The argument, though compelling initially, a deeper analysis reveals it as legally untenable. In **Ranjan Kumar Chadha** (supra) the Supreme Court had laid down ten propositions

relating to the procedure under section 50 of the Act. As those propositions lucidly explains the ambit of the provision, it is reproduced as follows:

"66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows: -

(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.

(vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings. (emphasis supplied)."

[14] The obligation of the empowered officer to inform the suspect of his right to be searched in the presence of the nearest Gazetted Officer or a Magistrate is a mandatory condition. As held in para 66(vi) of the above judgment, once the right is exercised, the choice whether to take the suspect to a Gazetted Officer or to a Magistrate is that of the empowered officer and not that of the suspect or the accused. Though, it would be ideal to take the suspect to a Magistrate and endeavour should also be made to take him before the nearest Magistrate, such an ideal requirement cannot be elevated to the status of a mandatory requirement. The contention to the contrary cannot be accepted.

[15] It is trite that a judgment cannot be read like a statute and the words or observations in a judgment should not be read in isolation. The decisions in **P. S. Sathappan v. Andhra Bank Ltd. and Others**, 2004 11 SCC 672 and that in **Goan Real Estate and Construction Limited and Another v. Union of India and Others**, 2010 5 SCC 388 are relevant in this context. Thus, though the obligation of the empowered Officer under section 50(1) of the Act to inform the suspect of his right to be searched is mandatory, the requirement to, endeavour to take him to a nearest Magistrate, cannot be regarded as a mandatory requirement. Hence, in the instant case, the requirements of section 50 of the NDPS Act have been complied with.

Issue No. 3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?

[16] On a perusal of the nature of evidence adduced and also the material objects produced, it is evident that the entire quantum of contraband seized was produced before the Court and has even been marked in evidence. Section 52A of the NDPS Act deals with disposal of seized narcotic drugs and psychotropic substances. The contention raised by the learned counsel for the appellant, relying upon the decisions in **Noor Aga v. State of Punjab and Another**, 2008 16 SCC 417 and **Nadeem Ahamed v. State of West Bengal**, 2025 INSC 993 was that when the procedure under section 52A has not been complied with, the sampling becomes flawed and the case of the prosecution has to fail.

[17] The aforesaid contention of the learned counsel is misplaced. First and foremost, section 52A of the NDPS Act has not been considered to be mandatory, as observed in **Nadeem Ahammed's** case (supra) itself. The irregularity in sampling for failure to comply with section 52A of the NDPS Act cannot automatically result in vitiating the entire procedure adopted by the prosecution or treat the evidence of the

prosecution to be unworthy of credence. Further, as held in **Kashif** (supra), any lapse or delay in complying with section 52A of the Act by itself will not vitiate the trial.

[18] Secondly, the scope and ambit of section 52A of the NDPS Act arises in cases where the contraband seized is disposed of by destruction or otherwise or when a representative sample alone is produced before the Court during trial. In the decision in **Narcotic Control Bureau v. Kashif**, 2024 11 SCC 372, it was observed that the purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. It was also held that sub-section (2) of section 52A lays down the procedure for the purpose contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would merely be a procedural irregularity which would not vitiate the trial on that ground alone.

[19] Similarly, in the decision in **Bharat Aambale v. State of Chhattisgarh**, 2025 8 SCC 452 it has been held, after considering all the decisions on the issue, that, although Section 52A of the Act is primarily for the disposal and destruction of seized contraband in a safe manner, yet, it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a Magistrate. It was also observed that any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act would have to be mandatorily treated as primary evidence irrespective of whether the substance in original is actually produced before the court or not. Further, the court held that mere noncompliance of the procedure under section 52A will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution case doubtful, which may not have been there had such compliance been done.

[20] Thus, the requirement to comply with section 52A of the NDPS Act will arise when the contraband seized is not produced in its entirety before the Court and instead only a representative sample was produced. When a representative sample alone is produced and marked in evidence, and the procedure prescribed under section 52A of the NDPS Act had been complied with, then the representative sample would be reflective of the entire lot and the same would be treated as the primary evidence. The above proposition can be explained through an illustration as follows. Imagine a case where a commercial quantity of a contraband is seized from an accused. Normally the entire quantity of contraband seized must be produced to justify the prosecution case that the accused was found in possession of a commercial quantity of the contraband. However, if the contraband is required to be destroyed or cannot be stored or is unable

to be produced in its entirety, a representative sample can be taken as prescribed under section 52A of the NDPS Act. If such a sample is taken, then the said representative sample shall by law be treated as the primary evidence of the entire quantity and nature of contraband seized.

[21] In the light of the above mentioned principles and taking note of the fact that the entire contraband seized was produced during evidence, this Court is of the view that the question of compliance or non-compliance of section 52A of the NDPS Act does not arise in the instant case. Issue No.4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?

[22] The contraband seized from the possession of the appellant was 174 ampules of Lupigesic and 24 unlabelled ampules. Each ampule contained 2 millilitres of the said contraband. The NDPS Act specifies the commercial quantities in grams or kilograms and not in millilitres or litres. The appellant argued that the quantum of contraband seized was specified in millilitres and not in grams and hence there was nothing to prove that the contraband seized falls within the commercial category as spelt out in the statute. The said contention though appealing prima facie, it falters on a closer appreciation of the evidence. The narcotic drug contained in the contraband seized is Buprenorphine and is scheduled in the Table of NDPS Act as serial No.169. Commercial quantity of Buprenorphine as per the Table is 20 grams. Exhibit P20 chemical analysis report specifically mentions that the strength of Bupremorphine per one millilitre is equivalent to 0.299 mg. Hence the quantum of 194 ampules seized from the appellant contained a total strength of 116 grams of Buprenorphine and falls in the commercial category. Since the conversion is mentioned in the chemical analysis report, reference to millilitres in the quantum of contraband seized and the charge framed has not affected the prosecution case.

Issue No.5. Whether there was any delay in production of the contraband before the Court?

[23] Exhibit P18 is the remand report and it contains the remand order dated 22-10-2011 written by the learned Magistrate. The remand order refers to the accused alone as having been produced before the Magistrate. There is no mention of the contraband having been produced along with the accused. Exhibit P14 is the property list dated 22-11-2011, which contains the seal of the Sessions Court with the date 28-11-2011. Though there is an endorsement in green ink with the date 22-10-2011, there is nothing to indicate that the said sign belongs to the Magistrate or that the contraband was produced before the Magistrate at any time. The property (thondi) number is seen allotted on 27-10-2011. The forwarding letter Exhibit P19 is dated 28-10-2011. The documentary evidence adduced do not disclose as to who was in custody of the contraband from the date of seizure till 28-10-2011. The depositions of the witnesses do not shed any light on this aspect. No attempt was made to identify the signature in the green ink with the date 22-10-2011 on Exhibit P14. The said signature does not

have any similarity with the signature of the Magistrate on the remand order. Thus, it has to be concluded that the contraband seized on 21-10-2011 reached the Court only on 28-11-2011 or at least on 27-10-2011. No attempt was even made to explain the reason for the delay or even the mode and manner in which the contraband was kept in custody. Hence it has to be held that there was an unexplained delay in producing the seized contraband before the Court.

Issue No. 6. Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

[24] In the decision in **State of Uttar Pradesh v. Hansraj alias Hansu**, 2018 18 SCC 355, the Supreme Court was considering a case where the contraband seized was sealed and deposited in the police station and later produced before the Court. There was no evidence as to how and at what time and date the samples were taken for analysis. The High Court acquitted the accused after coming to the conclusion that there was no evidence to show as to how and in what condition the articles were preserved at the police station and how safely they were taken from there to the respective chemical examiners. The Supreme Court refused to interfere and held that there was no perversity to interfere with the said conclusion.

[25] Similarly, in **Faijas v. State of Kerala**, 2020 CrLJ 4758 a learned single Judge of this Court considered a case where the seizure was on 15.11.2011 while the property list showed its production before the court only on 19-11-2011. This Court came to the conclusion that the prosecution had failed to explain the reason for the delay in producing the contraband. In the decision in **Renjith v. State of Kerala**, 2024 KER 76032, it was held that when there is inordinate delay in producing the contraband before the Court, without proper explanation for the delay, and when no evidence is adduced to show who was keeping the contraband till such time, and under what conditions, it is a strong circumstance to doubt the genuineness of the sample and the credibility of the prosecution case.

[26] On an appreciation of the above principles it can be discerned that if there is delay in production of the contraband before the Court, in the absence of a reasonable explanation from the side of the prosecution, the credibility of the prosecution case will be affected. The accused will, in such circumstances, be entitled to the benefit of doubt. In this context, it is relevant to note that the seizure mahazar does not contain the specimen seal, which is yet another factor that leans in favour of the accused. As there is no evidence forthcoming regarding the person in whose custody the contraband was kept, the conditions under which it was kept in the police station or elsewhere, the unexplained delay in producing the contraband before the Court coupled with the absence of the specimen seal on Exhibit P11 seizure mahazar, the integrity of the prosecution case becomes doubtful. The cumulative effect of the above factors persuade this Court to give the benefit of doubt to the appellant and the impugned judgment is liable to be interfered with and the accused has to be acquitted.

In the result, the conviction and sentence imposed upon the appellant in S.C. No.641 of 2011 on the files of the Additional Sessions Court-VIII, Ernakulam, is hereby set aside and the appellant is acquitted. The fine amount if any, deposited by the appellant, shall be refunded to him.

This appeal is allowed as above
