



**Reserved on : 24.03.2025**

**Pronounced on : 29.04.2025**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13661 OF 2024 (GM - RES)

**BETWEEN:**

SRI NAGARAJ J.,  
@ WILSON GARDEN NAGA  
S/O. JAYARAJ,  
AGED ABOUT 37 YEARS,  
RESIDING AT NO. 101,  
1<sup>ST</sup> MAIN, 2<sup>ND</sup> CROSS,  
VINAYAKA NAGAR,  
ADUGODI,  
BENGALURU – 560 030.

... PETITIONER

(BY SRI MADHUKAR DESHPANDE, ADVOCATE FOR  
SRI GAURAV N., ADVOCATE)

**AND:**

1 . THE STATE OF KARNATAKA  
THROUGH KORAMANGALA POLICE STATION,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,

BENGALURU – 560 001.

2 . THE POLICE SUB-INSPECTOR,  
KORAMANGALA POLICE STATION,  
BENGALURU CITY,  
BENGALURU – 560 034.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO DIRECTION OR APPROPRIATE RELIEF / RELIEF'S TO QUASH FIR AND COMPLAINT DTD 23.09.2021, BEARING CRIME NO. 0206/2021, AS AGAINST THE PRESENT PETITIONER, FOR THE ALLEGED OFFENCE PUNISHABLE U/S 21, 22 OF THE N.D.P.S ACT, 1985, A COPY OF THE FIR AND COMPLAINT DTD 23.09.2021, IS ANNEXED HERETO AS ANNEXURE-A AND ANNEXURE-B RESPECTIVELY; QUASH CHARGE SHEET DTD 29.08.2022, BEARING NO. 206/2021 , FILED BEFORE THE XXXIII ADDL. CITY CIVIL AND SESSION JUDGE AND SPECIAL JUDGE FOR NDPS CASES, BENGALURU (CCH-33), AGAINST 2 ACCUSED PERSONS, FOR THE ALLEGED OFFENCES PUNISHABLE U/S 21, 22 OF THE N.D.P.S ACT, 1985, AS AGAINST THE PRESENT PETITIONER A COPY OF THE CHARGE SHEET DTD 29.08.2022, IS ANNEXED HERETO AS ANNEXURE-C; QUASH ENTIRE PROCEEDINGS , IN SPL. CC. NO. 2063/2022, PENDING ON THE FILE OF THE XXXIII ADDL. CITY CIVIL AND SESSION JUDGE AND SPECIAL JUDGE FOR NDPS CASES, BENGALURU AS AGAINST THE PRESENT PETITIONER (CCH-33). A COPY OF THE ENTIRE ORDER SHEET MAINTAINED IN THE CASE IN SPL. C.C NO. 2063/2022, WHICH IS PRESENTLY PENDING ON THE FILE OF THE XXXIII ADDL. CITY CIVIL AND SESSION JUDGE AND SPECIAL JUDGE FOR NDPS CASES, BENGALURU, IS PRODUCED HERETO AS ANNEXURE-D.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is before this Court calling in question proceedings in Special C.C.No.2063 of 2022 registered for offences punishable under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short) and pending before XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru.

2. Heard Sri Madhukar Deshpande, learned counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

It is the case of the prosecution that on 23-09-2021 at about 2.30 p.m., the complainant/CW-1 receives credible information that outside "Pinger Family Bar and Restaurant" accused No.1 has been

selling drugs to consumers. The complainant lodged a complaint with Koramangala Police Station and pursuant to registration of crime, a team of officers CWs-2 to 7 proceed to the place of alleged selling and conduct a surprise raid, wherein accused No.1 who had come to the spot to sell drugs was caught by the Police for selling MDMA pills to the consumers. The officers took accused No.1 into custody, seized about 12.20 grams of MDMA tablets contained in a black plastic bag and on the same day, registered complaint for offence punishable under Sections 21 and 22 of the Act in Crime No.206 of 2021. The police, after investigation, filed a charge sheet against two persons. Here comes accused No.2, the petitioner. The concerned Court, on filing of the charge sheet, took cognizance of the offence against both the accused for offences punishable under Sections 21 and 22 of the Act. Filing of the charge sheet and taking of cognizance of offences is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel Sri Madhukar Deshpande appearing for the petitioner would vehemently contend that Section 52A of the Act has been violated. This a mandatory procedure, violation of

which, would vitiate the proceedings is his submission. To buttress his submission, the learned counsel would place reliance upon four judgments of the Apex Court in the cases of: (i) **UNION OF INDIA v. MOHANLAL**<sup>1</sup>, (2) **SIMARNJIT SINGH v. STATE OF PUNJAB**<sup>2</sup>, (3) **MANGILAL v. STATE OF MADHYA PRADESH**<sup>3</sup> and (4) **BOTHILAL v. INTELLIGENCE OFFICER, NCB**<sup>4</sup>. He would further contend that confession statement secured from the hands of the co-accused to pin down the petitioner runs counter to Section 67 of the Act and is inadmissible in evidence. He would seek to place reliance upon the following judgments to buttress the said submission: (5) **STATE v. PALLULABID AHMAD ARIMUTTA**<sup>5</sup>, (6) **BALWINDER SINGH v. NARCOTICS CONTROL BUREAU**<sup>6</sup>, (7) **FIRDOSKHAN KHURSHIDKHAN v. STATE OF GUJARAT**<sup>7</sup> and (8) **MR.PARITOSH CHANDRASHEKAR KULKARNI v. STATE OF KARNATAKA**<sup>8</sup>. In all, it is the submission of the learned counsel

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<sup>1</sup> (2016) 3 SCC 379

<sup>2</sup> 2023 SCC OnLine SC 906

<sup>3</sup> 2023 SCC OnLine SC 862

<sup>4</sup> 2023 SCC OnLine SC 498

<sup>5</sup> (2022) 12 SCC 633

<sup>6</sup> 2023 SCC OnLine SC 1213

<sup>7</sup> 2024 SCC OnLine Sc 680

<sup>8</sup> Crl.P.No.1850 of 2023 decided on 19-07-2024

that entire proceedings are vitiated on account of violation of law, as contended hereinabove.

5. Per contra, the learned Additional State Public Prosecutor would submit that the procedure under Section 52A of the Act is in fact followed and even if it is not followed, it is a mere irregularity and not illegality that would vitiate the proceedings. He would clarify that the Apex Court in a later judgment reported in **BHARAT AAMBALE v. STATE OF CHHATTISGARH**<sup>9</sup> has clarified the position. All the judgments that the learned counsel for the petitioner has placed reliance upon have been considered and the law is steered clear in the said judgment.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The petitioner is accused No.2. A crime comes to be registered on credible information that drugs being sold outside Pinger Family Bar and

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<sup>9</sup> 2025 SCC OnLine SC 110

Restaurant. A search is conducted and a crime in crime No.206 of 2021 is registered against unknown persons initially. Accused No.1 is apprehended and investigation would commence. The Police after investigation file a charge sheet. The summary of the charge sheet as obtaining in column No.17 reads as follows:

“17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಎ1 ಮತ್ತು ಎ2 ಆರೋಪಿಗಳು ಅಕ್ರಮವಾಗಿ ಹಣವನ್ನು ಗಳಿಸುವ ಉದ್ದೇಶದಿಂದ ಎ2 ಆರೋಪಿಯು ನೀಡಿದ್ದ ಮಾದಕ ವಸ್ತು, ಎಂ.ಡಿ.ಎಂ.ಎ/ಎಕ್ಸ್‌ಸಿ ಟ್ಯಾಬ್ಲೆಟ್‌ಗಳನ್ನು ಎ1 ಆರೋಪಿಯು ತನ್ನ ವಶದಲ್ಲಿಟ್ಟುಕೊಂಡು ದಿನಾಂಕ:23/09/2021 ರಂದು 14-40 ಗಂಟೆಗೆ ಬೆಂಗಳೂರು ನಗರ, ಕೋರಮಂಗಲ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದು, 1ನೇ ಬ್ಲಾಕ್, ಪಿಂಗಾರ್ ಫ್ಯಾಮಿಲಿ ಬಾರ್ ಅಂಡ್ ರೆಸ್ಟೋರೆಂಟ್ ಬಳಿ ಗಿರಾಕಿಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಿ ಅಕ್ರಮವಾಗಿ ಹಣ ಸಂಪಾದನೆ ಮಾಡಲು ಬರುತ್ತಿರುವ ಬಗ್ಗೆ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಖಚಿತ ಮಾಹಿತಿ ಬಂದ ಮೇರೆಗೆ ಸಾಕ್ಷಿ-1 ರವರು ನೀಡಿದ ದೂರನ್ನು ಪಡೆದು ಸಾಕ್ಷಿ-9 ರವರು ಪ್ರಕರಣ ದಾಖಲಿಸಿ ಸಾಕ್ಷಿ-2 ಮತ್ತು 3 ರವರ ಸಮಕ್ಷಮ ಸಾಕ್ಷಿ-5 ರಿಂದ 7 ರವರ ಜೊತೆಯಲ್ಲಿ ಮೇಲ್ಕಂಡ ಸ್ಥಳಕ್ಕೆ ಬಂದು ದಾಳಿ ಮಾಡಿ ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ/ ಎಕ್ಸ್‌ಸಿ ಟ್ಯಾಬ್ಲೆಟ್‌ಗಳನ್ನು ಸಾಗಣೆ ಮಾಡಿಕೊಂಡು ಗಿರಾಕಿಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಲು ಬಂದಿದ್ದ ಎ1 ಆರೋಪಿಯನ್ನು ವಶಕ್ಕೆ ಪಡೆದು 12.20 ಗ್ರಾಂ ತೂಕ ಎಂ.ಡಿ.ಎಂ.ಎ/ಎಕ್ಸ್‌ಸಿ ಟ್ಯಾಬ್ಲೆಟ್‌ಗಳನ್ನು ಹಾಗೂ ಸದರಿ ಟ್ಯಾಬ್ಲೆಟ್‌ಗಳನ್ನು ಹಾಕಿ ತಂದಿದ್ದಂತಹ ಒಂದು ಪ್ಲಾಸ್ಟಿಕ್ ಕವರ್ ಮತ್ತು ಜೀಪ್ ಕವರ್ ಸೇರಿದಂತೆ ಒಟ್ಟು 26 ಖಾಲಿ ಕವರ್‌ಗಳನ್ನು ಅಮಾನತ್ತು ಪಡಿಸಿ ಠಾಣಾ ಮಾಲು ಪಟ್ಟಿ ಸಂಖ್ಯೆ 132/2021 ರಲ್ಲಿ ನಮೂದಿಸಿ ಮಾನ್ಯ ನ್ಯಾಯಾಧೀಶರಿಂದ ಸದರಿ ಮಾದಕ ವಸ್ತು, ಎಂ.ಡಿ.ಎಂ.ಎ/ ಎಕ್ಸ್‌ಸಿ ಟ್ಯಾಬ್ಲೆಟ್‌ಗಳನ್ನು ಇನ್ನೆಂಟ್ರಿ ಮಾಡಿಸಿ ಸ್ಯಾಂಪಲ್ ತೆಗೆಸಿ ಎಫ್.ಎಸ್.ಎಲ್ ಪರೀಕ್ಷೆಗೆ ಕಳುಹಿಸಿದ್ದು, ಸಾಕ್ಷಿ-4 ರವರು ನೀಡಿರುವ ವರದಿಯಲ್ಲಿ ಸದರಿ ವಸ್ತುವು ಮಾದಕ ವಸ್ತು, ಎಂ.ಡಿ.ಎಂ.ಎ, ಎಂದು ಧೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಸದರಿ ಆರೋಪಿಗಳು ಮೇಲ್ಕಂಡ ಕಲಂ ಅನ್ವಯ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧ ವೆಸಗಿರುತ್ತಾರೆಂದು ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ.”

The concerned Court, takes cognizance of the offences punishable under Sections 21 and 22 of the Act. Taking of cognizance is what

has driven the petitioner to this Court in the subject petition. The preliminary submission is violation of Section 52A of the Act. The learned counsel has placed reliance upon four judgments of the Apex Court to buttress his submission with regard to violation of Section 52A of the Act. I, therefore, deem it appropriate to notice Section 52A of the Act in the first instance. It reads as follows:

**“52-A. Disposal of seized narcotic drugs and psychotropic substances.—**(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or

conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

Section 52A deals with disposal of seized narcotic drugs and psychotropic substances. When drugs are seized in a search in any proceedings under the Act, an application to be mandatorily made before any Magistrate for the purpose of certifying correctness of the inventory so prepared and the alleged inventory being taken in the presence of the Magistrate and allowing to draw representative samples of such drugs or substances in the presence of the

Magistrate. Therefore, the entire act in the aftermath of search and seizure has to be done in the presence of the Magistrate. The seizure, in the case at hand, has happened is a matter of record.

The inventory drawn pursuant to seizure is as follows:

“ವಿಷಯ :- ಪ್ರಕರಣದಲ್ಲಿ ಅಮಾನತ್ತು ಪಡಿಸಿಕೊಂಡಿರುವ ಮಾದಕ ವಸ್ತುವಾದ MDMA /Ecstasy ಅನ್ನು ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ಇನ್ವೆಂಟರಿ ಮಾಡಲು, ಮತ್ತು ಎಫ್.ಎಸ್.ಎಲ್. ಗೆ ಕಳುಹಿಸುವ ಸಲುವಾಗಿ ಸ್ಯಾಂಪಲ್ ಗಾಂಜಾವನ್ನು ತೆಗೆದು ಕೊಡಲು ಕೋರಿ ಮನವಿ.

ಉಲ್ಲೇಖ:- ಕೋಮಂಗಲ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ.ಸಂ. 206/2021 ಕಲಂ. 21, 22 ಎನ್.ಡಿ.ಪಿ.ಎಸ್. ಆಕ್ಟ್

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ಮೇಲ್ಕಂಡ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖನಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನಿವೇದಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ದಿನಾಂಕ:-23/09/2021 ರಂದು ಮಧ್ಯಾಹ್ನ 12-00 ಗಂಟೆಯಲ್ಲಿ ಶ್ರೀ.ಕಾಳಿಂಗಪ್ಪ ಕೆ., ಪಿ.ಎಸ್.ಐ. ರವರು ಠಾಣೆಯಲ್ಲಿರುವಾಗ ಬಾತ್ಮಿದಾರರು ಠಾಣೆಗೆ ಬಂದು ನೀಡಿದ ಮಾಹಿತಿ ಏನೆಂದರೆ, ಯಾರೋ ಒಬ್ಬ ಆಸಾಮಿಯು ಈ ಹಿಂದೆ ಎರಡು ದಿನಗಳಂದು 14-30 ಗಂಟೆಗೆ ಕೋರಮಂಗಲ 1ನೇ ಬ್ಲಾಕ್ ಪಿಂಗಾರ ಫ್ಯಾಮಿಲಿ ಬಾರ್ ಅಂಡ್ ರೆಸ್ಟೋರೆಂಟ್, ಬಳಿ ಇರುವ ಸರ್ಜಾಪುರ ರಸ್ತೆಯಲ್ಲಿರುವ ಸಾರ್ವಜನಿಕ ಶೌಚಾಲಯದ ಹತ್ತಿರ ಬಂದು ಗಿರಾಕಿಗಳಿಗೆ ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಎಂಬ ಡ್ರಗ್ಸ್‌ನ್ನು ಮಾರಾಟ ಮಾಡಿ ಹೋಗಿದ್ದು, ಇಂದು ಸಹ 14-30 ಗಂಟೆಯ ಸಮಯಕ್ಕೆ ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಎಂಬ ಡ್ರಗ್ಸ್‌ನ್ನು ಮಾರಾಟ ಮಾಡಲು ಬರುತ್ತಿರುವುದಾಗಿ ಮಾಹಿತಿಯನ್ನು ತಿಳಿಸಿ, ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಎಂಬ ಡ್ರಗ್ಸ್‌ನ್ನು ಮಾರಾಟ ಮಾಡಲು ಬರುತ್ತಿರುವ ಆಸಾಮಿಯು ನೋಡಲು ಸುಮಾರು 30-35 ವರ್ಷದ ವಯಸ್ಸಿನವನಾಗಿದ್ದು ಸುಮಾರು ಐದೂವರೆ ಅಡಿ ಎತ್ತರ ಇದ್ದು, ಸಾದಾರಣ ಮೈಕಟ್ಟು ಹೊಂದಿದ್ದು, ಹಾಗೂ ಎಣ್ಣೆಗೊಂಪು ಮೈಬಣ್ಣದವನಾಗಿರುತ್ತಾನೆಂದು, ತಿಳಿಸಿ ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಎಂಬ ಡ್ರಗ್ಸ್‌ನ್ನು ತರುತ್ತಿರುವ ಬಗ್ಗೆ ಖಚಿತ ಮಾಹಿತಿ ನೀಡಿರುತ್ತಾರೆ. ಸದರಿ ಮಾಹಿತಿಯನ್ನು ಹಿರಿಯ ಅಧಿಕಾರಿಗಳಿಗೆ ತಿಳಿಸಿ ಠಾಣಾ ದಿನಚರಿಯಲ್ಲಿ ನಮೂದಿಸಿರುತ್ತದೆ.

ಒಬ್ಬ ಅಪರಿಚಿತ ವ್ಯಕ್ತಿಯು ಎಲ್ಲಿಂದಲೋ ಮಾದಕವಸ್ತು ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಎಂಬ ಡ್ರಗ್ಸ್‌ನ್ನು ಕೋರಮಂಗಲ 1ನೇ ಬ್ಲಾಕ್ ಪಿಂಗಾರ ಫ್ಯಾಮಿಲಿ ಬಾರ್ ಅಂಡ್ ರೆಸ್ಟೋರೆಂಟ್, ಬಳಿ ಇರುವ ಸರ್ಜಾಪುರ ರಸ್ತೆಯಲ್ಲಿರುವ ಸಾರ್ವಜನಿಕ ಶೌಚಾಲಯದ ಬಳಿಗೆ ತಂದು ಗಿರಾಕಿಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಿ, ಅಕ್ರಮವಾಗಿ ಹೆಚ್ಚಿನ ಹಣವನ್ನು ಸಂಪಾದನೆ ಮಾಡಿಕೊಳ್ಳುವುದರೊಂದಿಗೆ, ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ.

ಟ್ಯಾಬ್ಲೆಟ್ ಗಳನ್ನು ಮಾರಾಟ ಜಾಲವಾಗಿ ವಿಸ್ತರಿಸುತ್ತಿರುವುದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ. ಇದರಿಂದ ಶಾಲಾ ವಿದ್ಯಾರ್ಥಿಗಳು, ಯುವಕರು, ಯುವತಿಯರು, ಐಟಿಬಿಟಿ ಕಂಪನಿಯ ಉದ್ಯೋಗಿಗಳು ಹಾಗೂ ಸಾರ್ವಜನಿಕರನ್ನು ಮಾದಕ ವ್ಯಸನಿಗಳನ್ನಾಗಿಸುವ ಸಾಧ್ಯತೆ ಇರುತ್ತದೆ. ಅಲ್ಲದೆ ಸಮಾಜದಲ್ಲಿನ ಸ್ವಾಸ್ಥ್ಯವು ಹಾಳಾಗಿ ಯುವ ಪೀಳಿಗೆಯ ಜೀವನ ಹಾಳಾಗುವ ಸಾಧ್ಯತೆ ಇರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಈ ದಿನ 14-30 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಮಾದಕ ವಸ್ತು ಎಂ.ಡಿ.ಎಂ.ಎ. ಟ್ಯಾಬ್ಲೆಟ್ ಮಾರಾಟ ಮಾಡಲು, ಬರುತ್ತಿರುವ ಅಪರಿಚಿತ ಆಸಾಮಿಯನ್ನು ವಶಕ್ಕೆ ಪಡೆದು ಆತನ ವಶದಲ್ಲಿರುವ ಯಾವುದೇ ಮಾಧಕ ವಸ್ತುಗಳನ್ನು ವಶ ಪಡೆಯಲು ಹಾಗೂ ಮಾದಕ ವಸ್ತುವಿನ ಮೂಲವನ್ನು ತಿಳಿಯಲು ಸದರಿ ಆಸಾಮಿಯ ವಿರುದ್ಧ ಕಲಂ 21, 22 ಎನ್.ಡಿ.ಪಿ.ಎಸ್ ಆಕ್ಟ್ ರೀತ್ಯಾ ಪ್ರಕರಣ ದಾಖಲಿಸಿ ಮುಂದಿನ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿ ನೀಡಿದರ ದೂರಿನ ಮೇರೆಗೆ ನಾನು ರಾಣಾ ಮೊ.ಸಂ.206/2021 ಕಲಂ 21, 22 ಎನ್.ಡಿ.ಪಿ.ಎಸ್ ಆಕ್ಟ್ ರೀತ್ಯಾ ಪ್ರಕರಣವನ್ನು 12-30 ಗಂಟೆಗೆ ದಾಖಲಿಸಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಗೂ ಹಿರಿಯ ಅಧಿಕಾರಿಗಳಿವೆ ಪ್ರ. ವ. ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತದೆ. ಭಾತ್ಯಾದಾರರ ಮಾಹಿತಿಯಂತೆ ದಾಳಿ ಮಾಡಿ ಆರೋಪಿಗಳಾದ 1) ಅಪ್ಪಯ್ಯ @ ರಾಜು ಬಿನ್ ಕೃಷ್ಣಪ್ಪ, ವಯಸ್ಸು 32 ವರ್ಷ, ವಾಸ ನಂ.81, 1ನೇ ಮೈನ್, 2ನೇ ಕ್ರಾಸ್, ಮಹಾಲಿಂಗೇಶ್ವರ ಬಡಾವಣೆ, ಆಡುಗೋಡಿ ಪೊಲೀಸ್ ಕ್ವಾರ್ಟರ್ಸ್ ಎಂದು, ಆಡುಗೋಡಿ, ಬೆಂಗಳೂರು ನಗರ. ಈತನ ವರದಿದ್ದ 12.20 ಗ್ರಾಂ ತೂಕದ MDMA / Ecstasy ಅಮಾನತ್ತು ಪಡಿಸಿ ರಾಣಾ ಮಾಲು ಪಟ್ಟಿ ಸಂಖ್ಯೆ 132/2021 ರಲ್ಲಿ ನಮೂದಿಸಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಸದರಿ ಗಾಂಜಾವನ್ನು ಇನ್‌ವೆಂಟರಿ ಮಾಡಿಕೊಡಲು ಮತ್ತು ಸದರಿ MDMA /Ecstasy ಯನ್ನು ಪರಿಶೀಲನೆಗಾಗಿ ಎಫ್.ಎಸ್.ಎಲ್. ಮಡಿವಾಳ ರವರಿಗೆ ಕಳುಹಿಸುವ ಸಲುವಾಗಿ ಸ್ಯಾಂಪಲ್ MDMA /Ecstasy ಯನ್ನು ತೆಗೆದು ಕೊಡಬೇಕೆಂದು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಕೋರಿದೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಶ್ವಾಸಿ.

ಸಹಿ/-

Sub Inspector of Police  
Koramangala Police Station,  
Bangalore City - 95."

"Criminal Case No

INVENTORY OF SEIZED NAROCOTIC DRUGS, PSYCHOTROPIC  
SUBSTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES

(under section 52A(2) of the Narcotic Drugs and psychotropic  
Substances Act,1985)

Case No: 206/2021

Seizing agency: Police Sub-Inspector, Koramangala

Police Station.

Seizing Officer: Shivappa Sonnad. PSI

Date Of Seizure:- 23/09/2021

Place Of Seizure: Near Public Toilet, Opp top Pingara,  
1<sup>st</sup> block, koramangala, Bengaluru.

Name and designation of the officer preparing this inventory:  
Shivappa Sonnad, PSI, Sub-inspector, Koramangala Police  
station, Bangalore.

Sl. No.	Narcotic Drug/Psychotropic substance/controlled/conveyance	Quality	Quantity	Mode of Packing	Mark and Numbers	Other identifying particulars of seized items or packing	Country of origin	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	MDMA/ECSTACY	-	12.20 Grams	Packed in white kora cloth	STD seal after seizure	Seizure Mahazar drawn in the presence of panchas		

Signature and Designation of the Officer

Sub Inspector of Police  
Koramangala Police Station,  
Bangalore City - 95."

**"-: Annexure-1:-"**

INVENTORY OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC  
SUBSTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES.

[UNDER SECTION 52A(2) OF THE Narcotic Drugs and  
psychotropic substances Act.1985]

Case No:-206/2021 U/S 21, 22 NDPS ACT.

Seized Agency:-Koramangala Police Station Bangalore.

Seizing officer :- Sri. Shivappa Sonnad, PSI Date of Seizer:-  
23/09/2021.

Place of seizure:- Near Public Toilet, opp. to Pingara,  
Koramangala 1<sup>st</sup> block, Benglauru

Nature and designation of the  
Officer preparing this Inventory :- Sri. Shivappa Sonnad. PSI

Sl. No.	Narcotic Drug/Psychotropic substances/controlled substances conveyance	Quality	Quantity	Mode of Packing	Mark and Numbers	Other identifying particulars of seized items or packing	Country of origin	Remarks
1	MDMA/ECSTACY	-	12.20 Grams	Packed with white Cloth and sealed with 'STD' seal	Article - 01	Label on pack, signed by panchas & Police Officer	India	Seized the said property through mahazar in presence of Panchas

Date: 30/09/2021

Place: Bengaluru

Yours faithfully,  
Sd/-

Sub Inspector of Police  
Koramangala Police Station,  
Bangalore City-95."

The aforementioned is the inventory drawn. It becomes apposite to notice the judgments of the Apex Court on the issue.

8. The Apex Court in the case **BOTHILAL** *supra* has held as follows:

".... ...."

#### **OUR VIEW**

9. The prosecution's case is that PW-2, who was the Intelligence Officer of the NCB, received information on 16<sup>th</sup> May 2002 at about 10: 45 a.m that accused no. 1 who was indulging in drug trafficking, has come to Chennai and was staying in room no. 213 of the Himalaya Lodge, Triplicane, Chennai. He had come there to receive 5 kilograms of heroin from accused nos. 2 and 3, who were staying in room no. 211 of Hotel Blue Star International, Chennai. The information received was that

the accused nos. 1, 2 and 3 had planned to deliver the contraband to accused no. 4 who was residing in room no. 303 of Hotel Suriya, Periamet, Chennai. The job of accused no. 4 was to transfer it to Tuticorin and from there, to Sri Lanka. PW-2 raided room no. 303 occupied by accused no. 4 along with other officers and two independent witnesses namely, Devendran and Prabhu. According to the prosecution's case, after the door was knocked on, it was opened and it was found that all the four accused were present there. When PW-2 questioned whether they were in possession of any narcotic drug, the first accused took out a blue coloured rexine bag which, according to the prosecution, contained packets of a total of 5.067 kilograms of heroin. PW-2 seized the heroine and took two samples from each packet by placing them in two plastic covers separately. The plastic packets were sealed and the remaining contraband was also sealed. According to the prosecution's case, all the accused made confessional statements under Section 67 of the NDPS Act.

**10.** Though the two independent witnesses were not examined before the Court, their statements were marked as Exhibits P-19 and P-71. A perusal of the impugned judgment of the High Court shows that it was held that the conditions prescribed by Section 53A of the NDPS Act were not fulfilled and therefore, these two statements were inadmissible. The High Court believed the testimony of PW-2 and PW-4 to PW-7 and held that the confessional statements of the accused could be taken as corroboration for the evidence of official witnesses.

**11.** Paragraphs 158.1 and 158.2 of the majority view in *Tofan Singh's case*<sup>1</sup>, read thus:

**"158.** We answer the reference by stating:

**158.1.** That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

**158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a**

**confessional statement in the trial of an offence under the NDPS Act.”**

(emphasis added)

**12.** Admittedly, the confessional statements were made by the accused to an officer empowered under Section 53 of the NDPS Act and hence, in view of the bar of Section 25 of the Evidence Act, the confessional statements will have to be kept out of consideration.

**13.** As regards the statements of the official witnesses at Exhibits P-19 and P-71, the Special Court relied upon the same. The High Court considered the provisions of Section 53A, which reads thus:

**“53A. Relevancy of statements under certain circumstances. -**

(1) A statement made and signed by a person before any officer empowered under section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains. -

- (a) when the person who made the statement is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceeding before a court, as they apply in relation to a proceeding before a court.”

**14.** A finding was recorded by the High Court that the prosecution has not proved that the witnesses are dead or cannot be found or are incapable of giving evidence or kept out of the way of the accused or their presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. These findings are based on the perusal of the entire record. There is no explanation offered by the prosecution about their failure to examine these two independent material witnesses. Hence, the statements of both witnesses are not admissible in evidence.

**15.** Admittedly, PW-2 drew two samples from each of the packets of the contraband found in the hotel room and kept them in two separate plastic covers. These covers were sealed and the remaining contraband was also sealed. Thus, the prosecution claims that the samples were prepared even before the packets were sent to the Station House Officer. The submission of the learned senior counsel appearing for the appellant in Criminal Appeal 451 of 2011 was that a grave suspicion is created about the prosecution's case as this action by the PW-2, was contrary to Section 52-A of NDPS Act.

**16.** In paragraphs 15 to 17 of the *Mohanlal's case*, it was held thus:

**"15.** It is manifest from Section 52-A(2) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

**16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-**

**bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.**

**17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise.** This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

(emphasis added)

**17.** Thus, the act of PW-2 of drawing samples from all the packets at the time of seizure is not in conformity with what is held by this Court in the case of *Mohanlal*<sup>2</sup>. This creates a serious doubt about the prosecution's case that the substance recovered was contraband.

**18.** Even according to the prosecution's case, as can be seen from the version of PW-2, accused no. 1 (appellant in Criminal Appeal No. 1185 of 2011) was staying in room no. 213 of Himalaya Lodge, Triplicane, Chennai. He was to receive 5 kilograms of heroin from accused no. 2 and accused no. 3 (appellant in Criminal Appeal no. 451 of 2011). Accused nos. 2 and 3, according to the case of the prosecution, were staying in room no. 211 of Hotel Blue Star International, Chennai. It was accused no. 4 who was staying in room no. 303 of Hotel Suriya, Periamet, Chennai where PW-2 and other members of her party entered. The case of the prosecution is that after PW-2 and others entered the room, they called upon all the four accused who were present there to disclose whether they were in possession of the contraband. The prosecution's case is that accused no. 1 showed a blue coloured bag from which the

recovery of about 5 kilograms of heroin was made. It is not the case of the prosecution that accused no. 1 was carrying that bag with him or that it was in his custody. The bag was in the room occupied by accused no. 4. Thus, it cannot be said that the contraband was found in the custody of accused no. 1. At the highest, it was found in the room occupied by accused no. 4. We may note here that accused no. 4 has been convicted by the High Court only for the offence punishable under Section 30 of the NDPS Act which is for the offence of making preparation to do or omitting to do anything which constitutes an offence punishable under the provisions of Sections 19, 24 and 27A. The prosecution has not produced any evidence to show that the contraband was brought to the room of the accused no. 4 by the other three accused persons or anyone of them. It is not the case that the room of accused no. 4 was in possession of accused nos. 1 to 3 who were staying in different hotels."

Further, in the case of **SIMARNJIT SINGH** *supra*, the Apex Court

holds held as follows:

"... .."

**4.** The appellant was convicted by the Special Judge under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") for the offence punishable under Section 15 of the said Act. The appeal preferred by the present appellant has been dismissed by the impugned judgment of the High Court.

**5.** The case of the prosecution in brief is that SI Hardeep Singh (PW-7) along with other police officers were present at a bridge on a canal in the area of village Balak Khurd for the purposes of patrolling. When they noticed that a tempo coming from the side of village Matran, they signalled the tempo to stop. The driver and other two persons sitting in the tempo were apprehended. According to the case of the prosecution, search was conducted in the presence of the District Superintendent of Police of the tempo which led to recovery of eight bags of poppy husk which were concealed under tarpaulin. From each bag, two samples of 250 gms were taken out and made into sixteen

parcels and residue of poppy husk in each bag was found to be of 29.5 kgs.

**6.** The learned counsel appearing for the appellant relied upon a decision of this Court in the case of *Union of India v. Mohanlal*<sup>1</sup>. He submitted that the prosecution is vitiated as the work of drawing sample was done by PW-7 without taking recourse to sub-section 2 of Section 52A of the NDPS Act. He also pointed out that the examination-in-Chief of PW-7 SI Hardeep Singh which shows that the samples were drawn immediately after the seizure.

**7.** The learned counsel appearing for the respondent-State supported the impugned judgments.

**8.** We have perused the evidence of PW-7 Hardeep Singh in which he has stated that from the eight bags of poppy husk, two samples of 250 gms each were drawn and converted into 16 parcels. This has been done immediately after the seizure.

**9.** In paragraphs 15 to 17 of the decision of this Court in *Mohanlal's case*<sup>1</sup>, it was held thus:

"15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples

so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

**10.** Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of *Mohanlal*<sup>1</sup>. This creates a serious doubt about the prosecution's case that substance recovered was a contraband."

Later, the Apex Court in the case of **MANGILAL** *supra* has held as follows:

".... ....

**3.** Of these witnesses, the public witnesses, namely, P.W.2, P.W.3, P.W.4 and P.W.6 turned hostile. Among them P.W.2 & P.W.6 were panch witnesses. These two witnesses signed majority of the exhibits. P.W.5 though not declared hostile has deposed in clear term that the narcotic substance was in existence at the police station even before the alleged occurrence. This part of the testimony has not been questioned by the prosecution. Both the Courts placed reliance upon the FSL Report along with the police witnesses in rendering conviction. To be noted, two of the witnesses bearing testimony to the arrest memo have not been examined by the prosecution for the reasons best known to it.

**SCOPE OF SECTION 52A OF THE NDPS ACT, 1985:**  
**Section 52A of the NDPS Act**

**52A. Disposal of seized narcotic drugs and psychotropic substances.**— (1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Criminal Procedure Code, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

**4.** Sub-section (1) of Section 52A of the NDPS Act facilitates the Central Government a mode to be prescribed to dispose of the seized narcotic substance. The idea is to create a clear mechanism for such disposal both for the purpose of dealing with the particular case and to safeguard the contraband being used for any illegal purpose thereafter.

**5.** Sub-section (2) of Section 52A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.

**6.** The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn. In due

compliance of Section 52A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued a Notification No. G.S.R. 339(E) dated 10.05.2007 which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction:

"4. Manner of disposal

- 1) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs or psychotropic substances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A as per Annexure 2 to this notification.
- 2) After the Magistrate allows the application under sub-section (3) of section 52A, the officer mentioned in clause (1) above shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the drug consignments to the Chairman of the Drug Disposal Committee for a decision by the committee on the disposal. The officer shall send a copy of the details along with the drug consignments to the officer-in-charge of the godown.

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**4.2 Mode of disposal of drugs.**

- (i) Opium, morphine, codeine and thebaine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.
- (ii) In case of drugs other than the drugs mentioned in clause (i), the Chief Controller of Factories shall be intimated by the fastest means of communication available, details of drug consignments that are ready for disposal.

- (iii) The Chief Controller of Factories shall indicate within 15 days of the date of receipt of the communication, the quantities of drugs, if any, that are required by him to supply as samples under Rule 67B.
- (iv) Such quantities of drugs, if any, as required by the Chief Controller of Factories under clause (iii) shall be transferred to him and the remaining quantities of drugs shall be destroyed as per the procedure outlined in para 4.1.2.
- (v) Destruction shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards. Such incineration may only be done in places where adequate facilities and security arrangements exist. In order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, should be obtained. Destruction shall be carried out at the presence of the Members of the Drug Disposal Committee.

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#### **4.4 Certificate of destruction.**

A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the drugs seized, etc., shall be prepared and signed by the chairman and members of the Drug Disposal Committee as per format at Annexure 3. The original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Drug Disposal Committee. Details of disposal of drugs shall be reported to the Narcotics Control Bureau in the Monthly Master Reports."

**7.** To be noted, the aforesaid notification was in existence at the time of the commission of the offence alleged in the case on hand, stood repealed with effect from 23.12.2022 vide Notification No. G.S.R.899(E). In any case a notification issued in derogation of the powers conferred under sub-section (1) of Section 52A of the NDPS Act can never contradict the main

provision, particularly sub-Section (2). However, any guideline issued by way of a notification in consonance with Section 52A of the NDPS Act has to be followed mandatorily.

**8.** Before any proposed disposal/destruction mandate of Section 52A of the NDPS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples. The afore-stated principles of law are dealt with *in extenso* in *Noor Aga v. State of Punjab*, (2008) 16 SCC 417:

"89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in *State of Kerala v. Kurian Abraham (P) Ltd.* [(2008) 3 SCC 582], following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan* [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of

physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

92. Omission on the part of the prosecution to produce evidence in this behalf must be linked with a second important piece of physical evidence that the bulk quantity of heroin allegedly recovered indisputably has also not been produced in court. The respondents contended that the same had been destroyed. However, on what authority it was done is not clear. Law requires that such an authority must flow from an order passed by the Magistrate. Such an order whereupon reliance has been placed is Exhibit PJ; on a bare perusal whereof, it is apparent that at no point of time had any prayer been made for destruction of the said goods or disposal thereof otherwise. What was necessary was a certificate envisaged under Section 110(1-B) of the 1962 Act. An order was required to be passed under the aforementioned provision providing for authentication, inventory, etc. The same does not contain within its mandate any direction as regards destruction.

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95. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.

96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act.

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100. Physical evidence of a case of this nature being the property of the court should have been treated to be sacrosanct. Non-production thereof would warrant drawing of a negative inference within the meaning of Section 114(g) of the Evidence Act. While there are such a large number of discrepancies, if a cumulative effect thereto is taken into consideration on the basis whereof the permissive inference would be that serious doubts are created with respect to the prosecution's endeavour to prove the fact of possession of contraband by the appellant. This aspect of the matter has been considered by this Court in *Jitendra v. State of M.P.* [(2004) 10 SCC 562 : 2004 SCC (Cri) 2028] in the following terms : (SCC p. 565, para 6)

"6. ... In the trial it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of *charas* and *ganja* were seized from the possession of the accused. The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act."

**9.** On the issue of seizure in the presence of Magistrate, we wish to place reliance upon the decision of this Court in *Union of India v. Mohanlal*, (2016) 3 SCC 379:

"16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the

absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to reexamine the matter and take suitable steps in the above direction."

... ..

**13.** There is a serious doubt with respect to the seizure. P.W.5 who was a police officer himself had deposed on the existence of the very same seized materials even before the occurrence. This testimony which destroys the very basis of the prosecution case has not even been challenged.

**14.** Both the Courts have mechanically placed reliance on the FSL Report while taking the statement of P.W.11 as the gospel truth. The views expressed by him can at best be taken as opinion at least on certain aspects. There are too many material irregularities which create a serious doubt on the very case of the prosecution. On a proper analysis we have no hesitation in holding that the impugned judgments are liable to be set aside and the appellant is to be acquitted by rendering the benefit of doubt."

The Apex Court, in the aforesaid judgments, has held that compliance with Section 52A of the Act is mandatory. The samples must be drawn in the presence of the Magistrate and in the

presence of the accused. The Apex Court in the case of **MOHAMMED KHALID V. STATE OF TELANGANA**<sup>10</sup> reiterates the mandatory nature of Section 52A of the Act. The Apex Court holds that non-compliance with Section 52A for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate if violated, the FSL report subsequent to the said act would become nothing but a waste paper.

9. In a subsequent judgment in the case **BHARAT AAMBALE** *supra* the Apex Court considers entire spectrum of Section 52A and all the earlier judgments and deduces the following principles:

“**50.** We summarize our final conclusion as under:—

**(I)** Although Section 52A 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. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

**(II)** Although, there is no mandate that the drawing of samples from the seized substance must take place at

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<sup>10</sup> (2024) 5 SCC 393

the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

- (III)** Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.
- (IV)** The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.
- (V)** Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.
- (VI)** If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

- (VII)** Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.
- (VIII)** Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.
- (IX)** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
- (X)** Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR** **(ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

The Apex Court holds that although there is no mandate that drawing of samples from the seized substance must take place at the time of seizure before the Magistrate as held in **UNION OF**

**INDIA v. MOHANLAL**<sup>11</sup>, the Apex Court was of the opinion that the process of inventory, photograph and drawing samples of seized substance shall take place in the presence of the accused, though may not be done at the very spot of seizure. The Apex Court further holds that any inventory, photograph or samples prepared in substantial compliance of the procedure prescribed under Section 52A of the Act would not vitiate the proceedings. Mere non-compliance with the procedure under Section 52A or the Standing Orders and Rules thereunder would not be fatal to the trial. The Apex Court holds that drawing up of samples, inventorying, photographing and seizing shall as far as possible take place in the presence of the accused. Though the words used are 'as far as possible', in the light of the earlier judgments of the Apex Court which hold that drawing of samples in the presence of the accused is mandatory, it would undoubtedly vitiate the proceedings. The order, on the inventory in the case at hand, reads as follows:

**"INVENTORY ORDER**

The Sub Inspector of Kormangala Police Station has submitted a requisition to this court to certify the correctness of the inventory and to permit to take photographs of the seized items as a part of inventory and to certify those photographs to

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<sup>11</sup> (2012) 7 SCC 712

be true and also to permit to draw samples in my presence and to certify the correctness of the samples intended to be drawn if permitted.

Invoking the powers conferred under section 52A(2) of NDPS Act., the above requisition is hereby allowed. The Sub-Inspector and his supporting police staff are permitted to conduct the inventories in relation to the present matter with respect to the Narcotic and Psychotropic substance alleged to have been seized by them at the instance of the accused.

The aforementioned PSI has produced a bag sealed with a white thread and a brown colored seal on the same knot of the thread.

The said bag came to be opened in my presence. My supporting staff is present to assist me during inventory whenever required.

After opening all the seal and after taking out the entire materials present in the said bag, with the help of electronic weighing machine this court has learnt that the properties below such as, PF.No.132/2021-12.20 grams of MDMA/ECSTACY.

Photography of the entire inventory procedure came to be conducted. 02.25 grams of samples came to be drawn and the same came to be kept in a bag made of a cloth. The said bags, in which the samples are present, they came to be sealed with a white thread and seals also came to be affixed on the knots of the threads to ensure that they shall not be opened unless for the purposes of procedures contemplated under NDPS Act and Rules, before appropriate officer only.

In so far as the remaining materials aforesaid are concerned, they came to be put into other empty bags made of a cloth and the said bags also came to be sealed with qualitative threads and a sealed knots also came to be put and departmental seals also came to be affixed by police.

The IO is directed to act in-accordance with law in so far as above properties are concerned and shall follow the law contemplated under the provisions of NDPS Act and Rules with letter and spirit without giving scope to any procedural and legal flaws.

However it is made clear that the above properties are in the custody of the Sub-Inspector of Kormangala Police Station only and the afore-mentioned proceedings are only the inventory procedures contemplated U/s.52A(2) of NDPS Act.

As per Section 52A(2) of NDPS Act the photographs so taken in the course of inventory are required to be certified to be true if those photographs are genuine in accordance with law and if those photographs are taken in the presence, of Magistrate who certifies the correctness of the inventories so prepared. Therefore for want of hard copies of photographs the certification is not done today i.e., 10:00AM

For production of photographs and for further orders by 03:PM today.

Sd/-  
S.S.Bharath  
XLI ACMM, B'lore.

The IO has produced the photographs and submitted that, he took the photographs copies as those photographs were present in the device used yesterday for taking photographs. The CD which is stated to be inclusive of the soft copies of the photographs sought to be certified, is also produced. It is hereby made clear that above photographs and CD are the part and parcel of the records of the present matter. The photo studio person has submitted his certificate stating that he has developed the photograph produced by the IO from Kormangala Police station by using scientific procedure, to convert the soft copies present in the mobile phone into hard copies of the same. The hard copies of the photographs which have been already produced are genuine, and are not altered in what-so-ever manner.

Therefore the certificate is also hereby ordered to be kept on record as permanent record for all the purposes of this matter. The document through the model seals are produced herein to ascertain the genuineness of the seals present on the seized materials, also on the samples so drawn, is hereby placed on record and directed to be considered to be the part and parcel of the Inventory and the record. Further it is hereby

made clear that, as per the PF submitted by the Kormangala Police, vide PF.No.132/2021-12.20 grams of MDMA/ECSTACY.

Therefore the certification is as follows,

### **CERTIFICATE**

It is hereby certified that, the inventory conducted/prepared is correct as it has been done in my presence. The photographs afore-mentioned are hereby certified to be true which depict the seized items in the inventory process and they depict the presence of myself and the IO and his supporting staff in the process of the inventory. Those photographs were permitted to be taken in my presence. The samples present in the separate sealed bags are also hereby certified to be correct as they have been taken in my presence as per list of the samples present in the application submitted by the IO, as per Annexure -2 of the application.

The above proceedings noted and the certification shall be the part and parcel of the order sheet and the IO is hereby directed to take the certified copy of this order sheet which is inclusive of the certification and the contents as to process of the inventory, to maintain them for documentary purposes of this matter and the photographs, samples and the materials seized as above by the police shall form the part of the entire record of this case.

Sd/-  
S.S.Bharath  
XLI ACMM, B'lore."

The inventory order is no doubt drawn in the presence of the Magistrate, but not in the presence of the accused. Therefore, what is seized and what is produced before the Magistrate could vary. It is for this reason that the law requires the inventory being done in the presence of the accused. In the case at hand, it is not done in

the presence of the accused is an admitted fact, as the order quoted *supra* nowhere indicates that it is done in the presence of the accused. This would vitiate the entire proceedings, from the registration of crime till the filing of charge sheet.

10. The next submission of the learned counsel for the petitioner is with regards to accused No.2, the present petitioner being drawn while filing the charge sheet. He is drawn on the confession statement recorded on 23-09-2021 when accused No.1 is apprehended. This is again an admitted fact. Section 67 of the Act reads as follows:

**“67. Power to call for information, etc.—**Any officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act—

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;
- (b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;
- (c) examine any person acquainted with the facts and circumstances of the case.”

The interpretation of Section 67 of the Act need not detain this Court for long or delve deep into the matter. This court in **MR.PARITOSH CHANDRASHEKAR KULKARNI v. STATE OF KARNATAKA**<sup>12</sup> has held as follows:

“.... ....

8. The afore-narrated facts are not in dispute. It is a matter of record that when the crime was registered and the house was searched, it related only to accused Nos. 1 and 2. Statements of accused Nos. 1 and 2 were recorded under Section 67 of the Act. Section 67 of the Act reads as follows:

**“67. Power to call for information, etc.—Any officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act—**

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;**
- (b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;
- (c) examine any person acquainted with the facts and circumstances of the case.”

(Emphasis supplied)

The empowered officer is entitled to record the statement of the accused in terms of the afore-quoted provision of the Act. The statements of accused 1 and 2 were recorded. When the search was conducted the petitioner was not found anywhere. It is the case of accused Nos. 1 and 2 while giving statements that

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<sup>12</sup> **Cri.P.No.1850 of 2023 decided on 19-07-2024**

the petitioner ran away from the place and it is because of the petitioner that they have got into the habit of consuming ganja. These are statements rendered by accused Nos. 1 and 2. This is again a matter of record.

9. The petitioner is dragged into the crime as accused No.3 and in the charge sheet as absconder only on the confessional statements made by accused Nos. 1 and 2. There is no corroboration of any of the fact that became attachable to the petitioner. Therefore, it becomes an admitted fact that the petitioner is got into the web of crime only on the confessional statements of the co-accused without any spec of corroboration. In such circumstances, whether further proceedings should be permitted against the petitioner is required to be answered. The answer need not detain this Court for long or delve deep into the matter.

10. The Apex Court in the case of **TOFAN SINGH v. STATE OF TAMIL NADU**<sup>13</sup> has held as follows:

“.... ....”

**158.** We answer the reference by stating:

**158.1.** That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” **within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.**

**158.2.** That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(Emphasis supplied)

The Apex Court in the case of **STATE v. PALLULABID AHMAD ARIMUTTA**<sup>14</sup> has held as follows:

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<sup>13</sup> (2021) 4 SCC 1

<sup>14</sup> (2022) 12 SCC 633

" .... .... "

**11.** Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the petitioner NCB and on carefully perusing the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433]’ [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431]’ [Abu Thahir v. State, 2019 SCC OnLine Kar 3517]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294]’ [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] passed in each case, **it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking.** It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569 of 2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

**12. It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1: (2021) 2 SCC (Cri) 246] , 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 for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433]’ [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431]’ [Abu Thahir v. State, 2019 SCC OnLine Kar 3517]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294]’ [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] 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 [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516] , 14-1-2020 [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433] , 16-1-2020 [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431] , 19-12-2019 [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] and 20-1-2020 [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] 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 [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516] ' [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433] ' [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431] ' [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] ' [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294] ' [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] 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."

(Emphasis supplied)

The Judgment in the case of **TOFAN SINGH** is reiterated in **BALWINDER SINGH v. NARCOTICS CONTROL BUREAU**<sup>15</sup> where the Apex Court holds as follows:

".... ....

**26.** Now that it has been declared in Tofan Singh's case (supra) that the judgments in the case of Kanhaiyalal (supra) and Raj Kumar Karwal (supra) did not state the correct legal position and they stand overruled, the entire case set up by the prosecution against Balwinder Singh, collapses like a House of cards. It is not in dispute that Balwinder Singh was not apprehended by the NCB officials from the spot where the naka was laid and that Satnam Singh alone was apprehended in the Indica car. **The version of the prosecution is that after Satnam Singh was arrested, his statement was recorded under Section 67 of the NDPS Act wherein**

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<sup>15</sup> 2023 SCC OnLine SC 1213

he ascribed a specific role to the co-accused - Balwinder Singh and the Sarpanch. The NCB officers claimed that they were on the lookout for both of them since they had managed to run away from the spot. While Sarpanch could not be apprehended, the NCB officers learnt from reports in the newspaper that Balwinder had been arrested by the Amritsar Police in an NDPS case and was lodged in the Central Jail, Amritsar. Permission was taken from the concerned Court to take Balwinder Singh into custody in the instant case and he was arrested. A notice was served on him under Section 67 of the NDPS Act and his statement was recorded. Treating his statement as a confessional statement, Balwinder Singh was arrested.

27. Once the confessional statement of the co-accused, Satnam Singh recorded by the NCB officers under Section 67 of the NDPS Act, who had attributed a role to Balwinder Singh and the subsequently recorded statement of Balwinder Singh himself under Section 67 of the NDPS Act are rejected in the light of the law laid down in Tofan Singh (supra), there is no other independent incriminating evidence that has been brought to the fore by the prosecution for convicting Balwinder Singh under the NDPS Act. On ignoring the said confessional statements & recorded before the officers of the NCB in the course of the investigation, the vital link between Balwinder Singh<sup>3</sup> and the offence for which he has been charged snaps conclusively and his conviction order cannot be sustained.

28. As a result of the above discussion, we are of the opinion that Balwinder Singh deserves to be acquitted of the charge of being in conscious possession of commercial quantity of heroin under the NDPS Act. Ordered accordingly.

... ..  
 31. Thus, it can be seen that the initial burden is cast on the prosecution to establish the essential factors on which its case is premised. After the prosecution discharges the said burden, the onus shifts to the accused to prove his innocence. However, the standard of proof required for the accused to prove his innocence, is not pegged as high as expected of the prosecution. In the words of Justice Sinha, who speaking for the Bench in Noor Aga (supra), had observed that:

"58. .... Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond



**Anwarkhan(A-1) to a later point of time because, as per the arrest memo(Exhibit-43) his arrest is shown at 11 : 45 p.m. It seems that this deferment in formal arrest of Anwarkhan(A-1) was only shown in papers so that the Intelligence Officer could record the statement of Anwarkhan(A-1) under Section 67 of the NDPS Act and avoid the same being hit by the rigours of Article 20(3) of the Constitution of India.**

**26. The admissibility of a confessional statement of the accused recorded under Section 67 of the NDPS Act was examined by this Court in the case of Tofan Singh (supra) and it was laid down that such confessional statements are not admissible in evidence.**

**27.** Hence, the statement(Exhibit-42) of Anwarkhan(A-1) wherein he allegedly identified the appellant Firdoskhan(A-2) as the person who had escaped from the spot cannot be read in evidence against the appellant Firdoskhan(A-2) because the manner in which the said statement was recorded leaves much to be desired and creates a grave doubt on the sanctity thereof, in addition to the same having rendered inadmissible by virtue of Tofan Singh (supra).

**28.** The prosecution witness Deepak Pareek(PW-2) claimed that Firdoskhan(A-2) was apprehended from Shah Jahan Pur Police Station, Madhya Pradesh. However, no document pertaining to the apprehension/detention of appellant Firdoskhan(A-2) at the Shah Jahan Pur Police Station was placed on record by the prosecution. **Thus, the very manner in which the said accused was apprehended and brought to the NCB Office at Ahmedabad in the purported exercise of recording his statement under Section 67 of the NDPS Act is full of doubt and creates grave suspicion. Even otherwise, the confession of the accused recorded under Section 67 of the NDPS Act cannot be admitted in evidence as a confession as had been held in the case of Tofan Singh (supra). Hence the confessional statement(Exhibit-42) does not lend any succour to the prosecution in its quest to prove the charges against the accused Firdoskhan(A-2)."**

(Emphasis supplied)

11. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, what would unmistakably emerge is that, the proceedings against the petitioner cannot be permitted to be continued, as there is not an iota of corroboration that would pin the petitioner to the offences, except the voluntary / confessional statements of the co-accused i.e., accused Nos. 1 and 2, recorded under Section 67 of the Act, which is clearly hit by Section 25 of the Evidence Act, as is considered by the Apex Court on an interplay between Section 25 of the Evidence Act and Section 67 of the Act. Permitting further proceedings against the petitioner who at any point in time was not alleged to be involved in any crime except in the aforesaid statements, would become an abuse of the process of law and result in patent injustice. The petitioner, who is a student pursuing his Masters elsewhere, beyond the shores of the nation, should not be made to suffer for the voluntary / confessional statements of the co-accused."

In the light of the afore-quoted order passed by this Court and considering the entire spectrum of law on interpretation of Section 67 of the Act, the twin circumstances in the case at hand would lead to unsustainability of the proceedings against the petitioner, as admittedly the petitioner is drawn into the web of proceedings on a confession statement recorded under Section 67 of the Act. There is no other material available against the petitioner, except the confession statement of the co-accused i.e., accused No.1. In that light, the petition deserves to succeed the whole hog.

11. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The proceedings in Crime No.206 of 2021 pertaining to Spl.C.C.No.2063 of 2022 pending before XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru stand quashed *qua* the petitioner/accused No.2.
- (iii) It is made clear that the findings rendered in this order would not become applicable to any other accused in Spl.C.C.No.2063 of 2022.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

bkp  
CT:MJ