

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Bail App. No. 263/2025 c/w
CRM(M) No. 305/2024**

Reserved on: 11.05.2026
Pronounced on: 13.05.2026
Uploaded on: 13.05.2026

*Whether the operative part or full
judgment is pronounced-**Full***

**Rameez Ahmed Aged-38 Yrs.
S/O Mohd. Rafiq Khan
R/O Village Ramgal
Tehsil &P/S Uri, District Baramulla, J&K**

.....Appellant/petitioner(s)

v/s

Through :- Mr. M.A Bhat, Advocate with
Mr. Toquir Mustfa, Advocate.

**Union of India
through Intelligence Officer,
Narcotic Control Bureau, Jammu**

.....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

CRM(M) No. 305/2024

01. Petitioner has invoked inherent jurisdiction of this Court for the quashment of order dated 09.02.2024, passed by learned 1st Additional Sessions Judge, Jammu [“the trial court”], whereby he came to be charged for offences under Sections 8/21/27-A/29 and 60 of The Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “NDPS Act”) and Section 483 BNSS for his enlargement on bail, after his plea for a similar relief came to be rejected by the trial court.

THE PROSECUTION CASE

02. Background facts of the prosecution case are that Intelligence Officer of Narcotics Control Bureau (NCB), received a source information on 31.03.2023 at about 1645 hours that one Rameez Ahmed (the petitioner) was carrying a huge quantity of heroin, in a Maruti Celerio car bearing registration No. JK05E-1165 from Banatalab, Jammu to Punjab and he would reach Akhnoor Highway via Barnai Morh at around 2000 hours to 2200 hours. The NCB team, at around 1930 hours, reached Barnai Morh and intercepted the said car at about 2030 hours. The petitioner, who was driving the car, was signaled to stop and park the vehicle on the roadside. The Intelligence Officer, after his introduction, told the petitioner about the secret information received by NCB regarding smuggling of heroin in his vehicle from Banatalab to Punjab. He asked the petitioner about the keys of the vehicle, to which he told the Intelligence Officer that, apprehending recovery of heroin from his car, he had thrown the keys of the vehicle into the bushes alongside the road. On this, the NCB team broke the rear door mirror of the car and opened the lock. During search of the vehicle, the team recovered a wheat brown coloured jute bag from the front passenger seat of the car; which was found to contain three transparent packets in which there was white coloured material. On being questioned by the Intelligence Officer, the petitioner revealed that it was heroin. Packets were opened in the presence of the petitioner and, on testing the material with the NDD kit, the result came out to be positive for heroin. Each packet weighed 1.005 kgs with packing material and net weight of the contraband without packing material was 1 kg.

03. Further case of the prosecution is that when statement of the petitioner under Section 67 NDPS Act was recorded by the Intelligence Officer, he not only admitted recovery of 03 kgs of heroin from his possession, but he also

revealed that heroin was supplied to him by one Tanveer Ahmed Tantrey of Uri, Baramula for transportation to Punjab, in lieu whereof, he had received Rs. 35.00 lacs (50% amount of the consignment). On this statement, petitioner formally came to be placed under arrest on 01.04.2023 at 1800 hours in Crime No. 01/2023, for offences under Sections 8/21/27-A/60 NDPS Act.

04. During investigation, the investigating agency produced the petitioner, along with case property, in the Court of learned Principal Session Judge, Jammu and extracted six representative samples of seized contraband. Thereafter case property along with samples came to be deposited in NCB Malkhana, Jammu on 02.04.2023 for safe custody. Samples, each containing 05 grams heroin were sent to Central Revenues Control Laboratory, New Delhi (CRCL) for chemical analysis and, as per the chemical test report, samples on test were found positive for heroin.

05. On the basis of statement of the petitioner recorded under section 67 NDPS Act, co-accused Tanveer Ahmed Tantrey came to be arrested on 22.08.2023. The investigating agency also received CAF, CDRs of seized mobiles of the petitioner and co-accused and their bank account statements, which according to the prosecution, indicate money transactions between them. The investigation culminated in the presentation of charge-sheet against the petitioner and co-accused.

CHARGE

06. The petitioner and co-accused came to be charged by the trial court on 09.02.2024 for offences under Sections 8/21/27-A/60 NDPS Act, whereby they pleaded not guilty and claimed trial.

07. The petitioner, pending trial approached the trial court for bail, which came to be rejected primarily citing rigor of Section 37 of NDPS Act.

GROUND OF CHALLENGE

08. Petitioner is aggrieved of both the orders, whereby he came to be charged by the trial court and his bail plea came to be declined, *inter alia*, on the following grounds:-

- (a) *That the content of the complainant itself is so absurd & unbelievable that no prudent person can believe such an assertion. In para-6 of complaint it is contended that the intelligence Officer/Seizing officer sought permission/Liberty of the accused before searching the vehicle allegedly containing contraband but the accused denied it. It is further stated that the NCB team tried to open the door but could not open it. The keys were requisitioned from the accused by the intelligence officer but he told him that he had thrown the key away in the bushes on the road side because of the threat of being caught with consignment in his car so they broke the glass of rear door from the driver side & opened the lock for searching of the vehicle and recovered the contraband. The story is unbelievable because it is not clear from the complaint that if the keys were lost then how the offending car was taken from the place of occurrence to NCB office and thereafter to Gulshan ground (DPL) Jammu. The contents of the complaint itself make the case fit for grant of bail to the petitioner in the present case.*
- (b) *That the charge will also not sustain because the alleged Contraband is non-existent and is not part of seized material. Though it is alleged that the alleged Contraband has been destroyed by the NCB but there is no material on record to show that the alleged Contraband has been destroyed as per procedure provided in section 52A of NDPS Act for the said purpose. In due compliance of Section 52A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued a notification No. GSR 89(E) dated 10.05.2007 which furnished an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction but this notification was repealed in the year 2022 and new Rules of Seizure, sampling and destruction of Contraband were notified vide notification No. GSR 899 (E) of 2022 dated 23-12-2022 called as the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. The rules are comprehensive and provide a complete procedure and process for disposal of the seized material. Copy of the notification is enclosed herewith for ready reference and marked as ANNEXURE- II. Once the charges are not sustainable, the bail in such a case can be granted to the petitioner.*

It is clear from the provision of section 52A of NDPS Act and the Notification No. GSR 889 (E) of 2022 states that Contraband can be destroyed only after application is made before magistrate for destroying the Contraband and the magistrate allows the destruction of the Contraband after following due process of law. In the present case, no such procedure has been followed. The complaint filed by the respondent before the trial court does not contain such an application filed before a magistrate seeking permission and urgency to destroy and even not before the trial court. The complaint contains a certificate of destruction signed by Superintendent NCB Jammu Deputy Superintendent of ANTF And Zonal Director NCB Jammu. The certificate does not show any reason for destroying the Contraband and also the samples. Morphine is a drug which has to be disposed of by transferring to

the Government Opium and Alkaloid Works under Chief Controller of Factories as per Rule 23 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Thus the destruction of the contraband in the present case is totally illegal and this action of the respondent has not only vitiated the trial but is in utter violation of order of the learned Additional Session court Jammu vide order dated 0810612023 on the application of judicial remand of the petitioner/accused. In the said order the accused/petitioner had made a request through video conference mode before the court that he wants to get the seized material to be retested and accordingly the court had directed the intelligence Officer to make more samples and keep them apart so that the accused can make the remedy available under law. The respondent in order to avoid any such retesting just one and half month after the order have destroyed the Contraband and samples. Under such circumstances when neither the Contraband nor the samples is available, the applicant/accused can't be made to face trial without there being any seized material before the trial court. Which could be identified by the witnesses during the trial or attributed to the petitioner. Thus in such circumstances, the petitioner charges could not have been framed against the petitioner and the petitioner was entitled to be released on bail.

- (c) *That the Hon'ble supreme court and High courts has directed in several judgments that while making recovery of any contraband under NDPS Act, the provisions of Section 52A of the NDPS Act should be strictly complied before taking out samples of contraband, destruction/disposal of narcotics substances which has blatantly violated by the respondent in the present case. The violation goes to the root of the case and it cannot be presumed that the petitioner has committed the alleged crime so the rigors of section 37 could not have been applied to the case of the petitioner and bail was required to be granted to the petitioner. The petitioner is entitled to bail in view of the blatant violation of the provisions of section 52A of the NDPS Act.*
- (d) *That before any proposed disposal/destruction mandate of Section 524 of the NPDS Act requires it 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. In the present case, the alleged seized material and samples have been destroyed even before filing the complaint and thus leaving nothing to be proved during the trial and thus an inference has to be drawn against the NCB that there was no such material in existence which could be termed as contraband making the petitioner liable to be prosecuted. Under such circumstance, the petitioner is required to be admitted to bail and the present application is required to be allowed.*

(e) *That Hon'ble Supreme Court of the country has time and again reiterated that the Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-a-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. Hon'ble Supreme 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. The logical corollary 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 in the present case 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. There is nothing with the NCB to produced before the court as physical evidence regarding recovery and seizure. 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 contraband allegedly recovered indisputably has been destroyed and cannot now be produced in court. The positive case of the respondent is 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. On a bare perusal of the complaint, 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. The destruction of the seized material without authority of law is fatal to the prosecution case so no charge can be framed in absence of any seized material. The discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. The prosecution case suffers more blow because the physical evidence relating to the samples taken from the bulk amount of the contraband has also been destroyed and cannot now be produced in court of law. 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 contraband as envisaged under Section 52-A of the Act. 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. The possession of the contraband by the petitioner can never be proved before the Trial Court at any stage in absence of the seized material and the samples which have already been destroyed so the petitioner cannot be charged as a matter of course and thus under such facts and circumstances, the applicant is entitled to bail during the pendency of the trial.”*

STAND OF THE RESPONDENTS

09. The plea has been resisted on the other side by the respondent-NCB mainly on the ground that non-compliance of Section 52-A neither vitiates the trial nor can be a ground for bail. It is contention of the respondents that since conduct of the petitioner falls within the purview of illicit trafficking, presumption under Section 54 of NDPS Act also gets attracted. According to the respondents there is sufficient material on record to establish deep nexus of the petitioner with co-accused.

10. Opposing the bail plea, it is urged by the respondents that liberty of an individual is subject to reasonable exceptions and, since a commercial quantity of contraband has been recovered from the conscious possession of the petitioner, he does not deserve the leniency of bail in view of bar under Section 37 of NDPS Act.

ARGUMENTS

11. Having heard learned counsels for the parties, I have gone through the record and considered the case law cited at bar.

12. Mr. M.A. Bhat, learned counsel for the petitioner, has heavily relied upon a Supreme Court verdict rendered in **Mangilal vs. The State of Madhya Pradesh [Criminal Appeal No. 1651 of 2023 dated 12.07.2023]** to reiterate the grounds urged in the memo of petition.

13. Mr. Bhat has submitted that Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (hereinafter referred to as "Rules of 2022") are comprehensive in nature and provide a complete procedure and process for the disposal of contraband seized under NDPS Act. The contraband can be destroyed only after an application is made before the

Magistrate concerned and it is allowed. Learned counsel has submitted that complaint filed in the trial court only contains a certificate of destruction, but there is no application filed before the Magistrate concerned for permission and urgency to destroy the contraband along with samples. According to learned counsel for the petitioner, with the destruction of entire seized material along with samples, before filing of the complaint, there is nothing left to prove the factum of recovery of the contraband, as primary evidence which violates Section 52-A of NDPS Act and vitiates the trial.

14. Another ground urged by learned counsel for the petitioner is that respondent-NCB destroyed the entire bulk material of the contraband along with samples in violation of order dated 08.06.2023 passed by learned Additional Sessions Judge, Jammu, in order to avoid re-testing. It is contended that during judicial remand of the petitioner, his request for re-testing came to be allowed by the Court and Intelligence Officer was directed to draw more samples of the contraband and keep them apart so as to enable the petitioner to avail the remedy available under law. According to learned counsel for the petitioner, the respondent-NCB destroyed the whole contraband along with samples after one and a half months from the aforesaid order passed by the competent court with a view to prevent the petitioner from availing the remedy of re-testing, which makes the alleged recovery and seizure suspect.

15. *Per contra*, Mr. Vishal Sharma, learned DSGI has relied upon **Narcotics Control Bureau vs. Kashif; 2024(11) SCC 372** to submit that non-compliance of Section 52-A neither vitiates the trial affecting conviction nor can be a ground to seek bail. Mr. Sharma has vehemently argued that any lapse on the part of the investigating agency with the compliance of Section 52-A NDPS Act

is merely a procedural irregularity, which does not entitle the petitioner to be released on bail.

JUDICIAL DETERMINATION

16. Petitioner seeks quashment of the impugned order of charge and his enlargement on bail predominantly on the ground of infraction of Section 52-A of NDPS Act.

Let us have a look at Section 52-A:-

“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 1972) 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.”

17. It is evident from a plain reading of Section 52-A, which commences with the heading **“Disposal of seized narcotic drugs and psychotropic substances”**, that it came to be introduced primarily for the early disposal of

seized narcotic drugs and psychotropic substances, having regard to their hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or other relevant considerations, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances. The provision lays down a comprehensive procedure for the disposal of seized narcotic drugs and psychotropic substances.

18. The Central Government, by virtue of sub-section (1) of Section 52-A has been vested with the power to prescribe the procedure for the disposal of drugs and psychotropic substances by notification in the Official Gazette, specifying such narcotic drugs and psychotropic substances etc. Sub-section 2 prescribes the procedure to be followed by the officer specified in sub-section 1 for the disposal of the contrabands at the pre-trial stage. As per the procedure, where narcotic drugs, psychotropic substances, controlled substances or conveyances have been seized or 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) is required to prepare an inventory including details, such as description, quantity, quality, mode of packing, marks, numbers or such other identifying particulars of the contraband or the packing in which they are packed, identifiable marks and numbers, country of origin and other particulars as necessary, and make an application to any Magistrate for the purpose of satisfying the correctness of the inventory so prepared; or for taking photographs of the drugs, substances or conveyances in his presence and certifying the same; or to draw representative samples of such drugs or substances in the presence of the Magistrate and certifying the correctness of any list of samples so drawn. Pertinently, the Magistrate in terms of sub-section (3), as soon as possible, has to allow the application made under sub-section 2.

Said inventory, the photographs of narcotic drugs and psychotropic substances etc. and any list of samples drawn under sub-section 2 and certified by the Magistrate are treated as primary evidence in respect of such offence, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972).

19. Mr. Bhat learned counsel for the petitioner, as stated, has relied upon **Mangilal** (Supra) to contend that failure on the part of the prosecution to make an application and seek permission of the Magistrate for the destruction of the contraband and samples vitiates the trial.

20. The necessity for the insertion of Section 52A NDPS Act, its scope, ambit and repercussions of non compliance or belated compliance arose for a detailed consideration in **Kashif** (supra) whereby it was held by Supreme Court that delayed compliance or “non compliance of section 52 A NDPS Act” neither vitiates the trial affecting conviction nor can be a ground for bail. The Apex clearly ruled that Section 52-A came to be inserted only for the early disposal of seized narcotic drugs and psychotropic substances, as a measure required to be taken to implement the provisions of International Conventions on narcotic drugs and psychotropic substances but any deviation or delay in making the application, under sub section 2 by the concerned officer to the Magistrate or delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality, which would nullify or vitiate entire case of the prosecution.

21. Incidentally, both **Mangilal** and **Kashif** came to be discussed in detail by Hon’ble Supreme Court in its recent pronouncement in **Bharat Aambale vs State of Chattisgarh; (2025) 8 SCC 452.**

22. Supreme Court in **Bharat Aambale** had an occasion to delve into the legislative history of Section 52-A NDPS Act, and its long line of decisions rendered from time to time in **Union of India vs. Mohan Lal; (2016) 3 SCC 379, Noor Aga vs. State of Punjab & Anr.; (2008) 16 SCC 417, Union of India vs. Jarooparam; (2018) 4 SCC 334, Yusuf vs. State; (2024) 14 SCC 217, Simranjit Singh Vs. State of Punjab; (2024) 14 SCC 222, Mohd. Khalid vs. State of Telangana: (2024) 5 SCC 393**, along with **Mangilal** (supra) and **Kashif** (supra) and held that what is discernible from all these decisions is that mere non-compliance of the procedure under Section 52-A or the standing orders/rules thereunder, by itself will not render the trial vitiated or result into an automatic acquittal.

23. No doubt, Hon'ble Supreme Court in **Mangilal** had observed that Section of 52-A of NDPS Act is a mandatory rule of evidence which requires the "physical presence of Magistrate", followed by an order facilitating his approval for certifying the inventory or for a photograph taken, apart from the list of samples of drugs, because the reason behind the provision is to inject fair play in the process of investigation, however, Supreme Court in **Bharat Aambale** has underlined that in **Mangilal**, conviction was not only set-aside on the ground of non-compliance of Section 52-A but also for the reason that some witnesses had either turned hostile or were not examined at all, and further due to discrepancies in the prosecution case itself.

Relevant excerpt captured in para 27 for the facility of reference, is extracted below:-

"27. What is discernible from the various decisions referred to by us, is that mere non-compliance of the procedure under [Section 52A](#) or the Standing Order(s) / Rules thereunder will not by itself render the trial vitiated or into an automatic acquittal. In all instances where this Court set-aside the order of conviction, it did so not solely for the reason that there was a violation of [Section 52A](#) but because of and on the strength of the other discrepancies or shortcomings in the prosecution's case that rendered it doubtful. In [Jarooparam](#) (supra) the order of acquittal had been upheld as the independent witnesses had also turned hostile and not supported the case of the prosecution. Similarly, in [Mangilal](#) (supra) aside from the non-compliance of [Section 52A](#), the order of conviction was held unsustainable as some of the witnesses to the seizure either turned

hostile or were not examined at all and due to discrepancies in the very case of the prosecution. In [Mohammed Khalid](#) (supra) also, the conviction was set-aside as the FSL report was found to be very doubtful and in complete contradiction of the seizure that had taken place. Thus, this Court whilst setting aside the order of conviction has consistently looked for something more than just a mere non-compliance of the procedure under [Section 52A](#) that renders the case of the prosecution doubtful.”

(Emphasis Supplied)

24. Carrying the enunciation further, Hon’ble Supreme Court in [Bharat Aambale](#) summarized and concluded as under:

“56.1. 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](#).

56.2 Although, there is no mandate that the drawing of samples from the seized substance must take place at 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.

56.3 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](#) sub-section (4) of the [NDPS Act](#), irrespective of whether the substance in original is actually produced before the court or not.

56.4 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.

56.5 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.

56.6 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. .

56.7 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.

56.8 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.

56.9 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.

56.10 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.”

25. What emerges from the above is that primary scope of Section 52-A of NDPS Act is safe disposal and destruction of the seized contraband, though it also serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. The provision enhances the credibility and reliability of evidence adduced during the trial, thereby minimizing the scope for disputes relating to the handling and disposal of seized contraband. Non-compliance or delayed compliance of Section 52-A or the rules framed thereunder may lead the Court to draw an adverse inference against the prosecution, but that by itself will not make the entire evidence inadmissible. It depends upon peculiar facts and circumstances of each case. The burden lies on the accused to lay foundational facts showing infraction of Section 52-A, and once such foundational facts are laid, the onus shifts on the prosecution to prove, by cogent evidence, that there was substantial compliance with the mandate of Section 52-A or to satisfy the Court that such non-compliance does not affect its case.

26. A perusal of the record of the present case would show that investigating agency produced the petitioner along with case property, before learned Principal Session Judge, Jammu and extracted six representative samples of the seized contraband; S1 to S6, each containing 05 grams heroin, which were sealed with seal impression “NARCOTICS CONTROL BUREAU JMMU01”. These six samples, along with four Lots of the contraband; Lot-A, Lot-B, Lot-C and Lot-P were duly entered in the Godown Register of the NCB vide Godown Receipt (Cr. No. 01/2023 dated 31.03.2023), which appears to have been taken over by the Zonal Director, NCB, Jammu on 02.04.2023.

27. In addition to the above six samples, the investigating agency extracted three more samples; S7, S8 and S9, each containing 05 grams of heroin, in the

presence of the Magistrate pursuant to order dated 08.06.2023 passed by learned Additional Sessions Judge, Jammu, whereby I.O was directed to make additional samples and keep them apart to enable the accused to avail the remedy under law. An application in this respect was moved by the Intelligence Officer of the NCB under sub-section (2) of Section 52-A for certification of correctness of the inventory, photographs and samples of the seized narcotic drugs, psychotropic substances and controlled substances. On the said application for certification, the Magistrate, in exercise of powers under sub-section 3 of Section 52 A NDPS Act, vide order dated 08.06.2023, certified the correctness of the inventory. Thereafter, contraband came to be destroyed, vide Certificate of Destruction dated 17.07.2023.

28. In view of the above, contention of the petitioner that complaint filed before the trial court only contains Certificate of Destruction and that no application was filed before the concerned Magistrate for requisite permission, is factually incorrect. The NCB, in compliance to order dated 08.06.2023 passed by learned Additional Sessions Judge, Jammu, not only appears to have moved application before the Court concerned for drawing additional samples but the inventory with respect to Court samples; S7, S8 and S9 also appears to have been certified by the concerned Court. In the circumstances of the case, it is for the trial court to determine the admissibility of the evidence in the context and manner in which same was collected and is sought to be used during the course of trial.

29. The evidence collected by the investigating agency, during investigation, which is sought to be used by the prosecution during the course of trial, with respect to seized contraband, cannot be simply brushed aside on the ground of any procedural irregularity or infraction of Section 52A of NDPS Act. True it is

that certified inventory, photographs taken and the list of additional samples; S7, S8 and S9, drawn under sub-section (2), are to be treated by the Court as primary evidence in view of sub-section (3), however, the other documents like the punchnama, recovery-cum-seizure memo etc., prepared by the investigating agency on the spot or during the course of investigation, are also primary evidence within the meaning of Section 62 of Evidence Act. Such evidence carries the same evidentiary value and cannot be overlooked merely on account of some lapse on the part of the investigation agency.

30. What is manifest from the consistent exposition of law by Hon'ble Supreme Court is that ordinarily any recovery or seizure of an incriminating material, under Indian criminal law, must be proved within the strict framework of Indian Evidence Act, 1872, now substantially incorporated into Bhartiya Sakshya Adhinyam, 2023. Ideally, the general principles of evidence, entrenched in Indian Evidence Act or Bhartiya Sakshya Adhinyam would govern the manner in which a seizure or recovery is to be proved.

31. For the foregoing reasons, the contention of the petitioner that complaint filed by the respondent-NCB in the trial court only contains the Certificate of Destruction and that no application was filed by the investigating agency for permission to destroy the contraband and samples, is found to be factually incorrect. The argument of learned counsel for the petitioner that with the destruction of entire seized material along with samples, there remains nothing to prove the factum of recovery of the contraband as primary evidence, is legally flawed, because Hon'ble Supreme Court in **Bharat Aambale** has made it clear, that if other material, in the shape of oral or documentary evidence adduced by the prosecution, inspires confidence and satisfies the Court regarding the recovery and conscious possession of the contraband from accused, Courts

without hesitation, can proceed to hold the accused guilty notwithstanding any procedural defect under Section 52-A NDPS Act. Mere non-compliance with the procedure under Section 52-A or the standing orders/rules framed thereunder will not, by itself, vitiate the trial unless there are other discrepancies in the physical evidence relating to the prosecution case. The Courts in the final analysis are required to take a holistic and cumulative view of the discrepancies and carefully appreciate the same, keeping in mind the procedural lapses.

32. Having regard to the aforesaid, **the petition filed by the petitioner for the quashment of charge on the solitary premise of violation of Section 52-A of NDPS Act is found devoid of merit and is, accordingly, dismissed.**

THE BAIL PLEA

33. Bail plea of the petitioner came to be rejected by the trial court, vide order dated 19.09.2025, primarily on the grounds that offences involved pertain to commercial quantity of contraband recovered from his conscious possession, the evidence recorded so far supports the prosecution case, and that rigor of Section 37 NDPS Act is attracted in the case.

34. Petitioner came to be charged by the trial court on 09.02.2024 for offences under Sections 8/21/27-A/60 NDPS Act, whereby he pleaded not guilty and claimed trial, which promoted the trial court to ask for the prosecution evidence. The prosecution has so far examined 07 out of 10 witnesses cited in the charge-sheet.

35. The occurrence is stated to have been taken place on 31.03.2023 and petitioner formally came to be placed under arrest on 01.04.2023. It means that petitioner is in incarceration for more than three years now. It is case of the prosecution that when statement of the petitioner under Section 67 NDPS Act came to be recorded, he not only admitted the recovery of contraband from his

possession but also disclosed that contraband was supplied to him by one Tanvir Ahmed Tantray of Uri, Baramulla for transportation to Punjab. Co-accused Tanvir Ahmed Tantray, who is stated to be the supplier of the contraband and kingpin of the case, has since been enlarged on bail by the trial court.

36. In the face of aforesaid circumstances, the question that arises for consideration is whether the embargo contained in Section 37 NDPS Act can be construed to have same efficacy, notwithstanding the length of the trial.

37. As stated, the prosecution so far has managed to examine 07 witnesses out of 10 cited in the charge-sheet in a trial for more than 03 years. It is evident from the pace with which the trial is proceeding that examination of remaining 03 prosecution witnesses, completion of other legal formalities and conclusion of the trial is likely to consume considerable time. Therefore, prosecution cannot be permitted to invoke the rigor of Section 37 NDPS Act in perpetuity so as to dilute fundamental right of the petitioner to speedy trial.

38. Thus considered, petitioner is held entitled to bail on the ground of procrastinated trial and prolonged incarceration.

39. Hence, application is allowed and petitioner is directed to be released on bail on his furnishing a solvent surety bond in the amount of Rs. 1.00 lac to the satisfaction of the trial court and a bond of personal recognizance to the satisfaction of Superintendent of the concerned jail, subject, however, to the following conditions that:-

- i) he shall not jump over bail and tamper the prosecution evidence;
- ii) he shall not leave territorial jurisdiction of the UT of J&K without prior permission;
- iii) he shall not, in any way, threaten or coerce the prosecution witnesses; and
- iv) he shall appear before the trial court on each and every date of hearing.

37. Both Bail App No. 263/2025 and CRM(M) No. 305/2024 are accordingly disposed of.

**(Rajesh Sekhri)
Judge**

JAMMU
13.05.2026.
Abinash

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes

