IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2254 OF 2024

Chandrabhan Janardhan Yadav .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 262 OF 2025

Sandip Rambriksh Prajapati .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 266 OF 2025

Vinod Rambachhan Prajapati .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 4709 OF 2024

Kunjal Bhagwan Vishwakarma .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Ayaz Khan a/w Mr. Dilip Mishra, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicants in Criminal Bail Application Nos. 2254 of 2024, 262 of 2025 and 266 of 2025.
- Ms. Supriya Arun Pandey i/b Karmarkar and Associates, Advocates for Applicant in Criminal Bail Application Nos.4709 of 2024.
- Mr. Hitendra J. Dedhia, APP for Respondent No.1 – State in Criminal Bail Application Nos.2254 of 2024, 262 of 2025 and 266 of 2025.
- Mr. Sukanta Karmakar, APP for Respondent No.1 – State in Criminal Bail Application Nos.4709 of 2024.

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CORAM :MILIND N. JADHAV, J.
DATE :MARCH 04, 2025.

JUDGEMENT:

1. Criminal Bail Application No.2254 of 2024 is filed by Accused No.6. Criminal Bail Application No.262 of 2025 is filed by Accused No.4. Criminal Bail Application No.266 of 2025 is filed by Accused No.5. Criminal Bail Application No.4709 of 2024 is filed by Accused No.2.

2. Mr. Khan, learned Advocate represent Accused Nos.4, 5 and 6. Mr. Karmarkar, learned Advocate represent Accused No.2. Since all above four Bail Applications arise out of the same crime, they are heard together and disposed by this common order, though by order dated 12.02.2025, applications of Accused Nos.4, 5 and 6 were tagged together.

3. For convenience, Applicants shall be referred to by their respective nomenclature as Accused in the charge-sheet.

4. Heard Mr. Khan, learned Advocate for Accused Nos.4, 5 and 6, Ms. Pandey, learned Advocate for Accused No.2, Mr. Dedhia, learned APP for Respondent No.1 – State and Mr. Karmarkar, learned APP for Respondent No.1 – State.

5. Briefly stated, prosecution case is as under:-

5.1. All Four Bail Applications are arising in connection with CR.No.69 of 2023 for offences punishable under Sections 8(c), 21(c),

22(c) and 29 of NDPS Act[1] read with Sections 465, 468, 471 and 473 of IPC[2].

5.2. On 01.08.2023, at 23:00 hours in a chance recovery, Accused No.1 was apprehended by prosecution with alleged contraband of 100 bottles of *Codeine Phosphate & Chlorpheniramine Malete Syrup 100 ml, DASLIN – CD+'* [3] containing Codeine Phosphate[4] which is admittedly commercial quantity. On inquiry, he disclosed the name of Accused No.2 as supplier. Prosecution raided house of Accused No.2 on the same night and recovered 42 boxes containing 4200 bottles of the same contraband and 900 tablets of *'Nitrazepam Tablets – IP Nitravet'* [5] containing Nitrazepam[6] from his possession. Accused No.2 disclosed name of Accused No.3 as supplier of Nitrazepam Tablets and Accused Nos.4 and 5 as suppliers of Codeine Phosphate syrup bottles. Common panchnama qua Accused Nos.1 and 2 was completed at 04:25 hours on 02.08.2023 and thereafter FIR was lodged. Accused Nos.1 and 2 were arrested by following due process of law. However, Mr. Khan has seriously disputed this position which is addressed hereinunder.

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1 The Narcotic Drugs And Psychotropic Substances Act, 1985.

2 The Indian Penal Code, 1860.

3 **Codeine Phosphate & Chlorpheniramine Malete Syrup 100 ml, DASLIN – CD+:** A brand of cough syrup packed and sold in configuration of 100 ml containing (5mg/10ml) of *'Codeine Phosphate'*.

4 **Codeine Phosphate:** A substance listed at Sr. No. 28 of the Table as per *sub-clause (viia) of Section 2* of NDPS Act having 'small quantity' as 10 gm and 'commercial quantity' as 1 kg.

5 **Nitrazepam Tablets – IP Nitravet:** A brand of medicine sold in tablet form, each tablet containing 10 mg of *'Nitrazepam'*, generally used for the Treatment of Insomnia.

6 **Nitrazepam:** A substance listed at Sr. No. 221 of the Table as per *sub-clause (viia) of Section 2* of NDPS Act having 'small quantity' as 20 gm and 'commercial quantity' as 500 gm.

5.3. On the following day i.e. on 03.08.2023 at 17:15 hours prosecution intercepted Accused No.3 outside his house and recovered 375 tablets of *Alprazolam Tablets IP 0.5 mg*[7] containing Alprazolam[8] from his conscious possession which is admittedly intermediate quantity. Prosecution also recovered 530 strips of *Combipack of Mifeprostone Tablets IP and Misoprostol Tablets IP CLEAR – KIT*' [9] alongwith cash of Rs.3,50,000/- from his possession after conducting a raid in his house. Panchanama *qua* Accused No.3 was completed at 22:00 hours and thereafter he was arrested. Accused No.3 is already enlarged on bail by order dated 04.05.2024 passed by the Sessions Court.

5.4. On 04.08.2023, prosecution conducted search of residence of Accused No.4 and recovered certain invoices. On the same date, prosecution conducted search of residence of Accused No.5 and recovered rubber stamps of medical practitioners and certain invoices. Accused persons have seriously disputed this position since search of premises of both Accused was carried out without any authorization or search warrant.

5.5. Investigation with Accused No.4, led to Accused No.6 who allegedly procured medicines from Accused No.4 frequently. Accused

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7 **Alprazolam Tablets IP 0.5 mg:** A brand of medicine sold in tablet form, each tablet containing 0.5 gm of *'Alprazolam'* generally used to treat Anxiety by altering brain activity and providing relief from panic attacks by relieving the nerves.

8 **Alprazolam:** A Psychotropic Substance listed at Sr. No. 178 of the Table as per *sub-clause (viia) of Section 2* of NDPS Act having 'small quantity' as 5 gm and 'commercial quantity' as 100 gm.

9 **Misoprostol Tablets IP:** A brand of abortifacients sold in tablet form, each strip containing 5 tablets each having 200 mcg of *'Mifeprostone' and 'Misoprostol'* each.

No.6 was arrested on 18.10.2023. According to Mr. Khan, Accused Nos.4, 5 and 6 are Medical Practitioners working in RPG Life Sciences Company. Equally Accused No. 2 is an employee of Glenmark Pharma.

5.6. Prosecution relies on recovery made on the basis of disclosure statements as well as incriminating WhatsApp chats of Applicant(s) to indict them in the offence. Samples of contraband recovered during search and seizure were marked individually for purpose of identification. Inventory panchanama proceedings before Magistrate under Section 52A of NDPS Act was carried out on 02.09.2023. He would submit that as per the Inventory panchanama appended at page No. 163 in Bail Application No. 266 of 2025, 262 of 2025 and 2254 of 2024 and page No. 177 of Bail Application No. 4709 of 2024, when samples were forwarded for Chemical Testing, the results of the tests affirmed presence of contraband substances as purported by prosecution. Applicants have been in custody for a period of about 1 year and 7 months.

6. Mr. Khan, learned Advocate for Accused Nos.4, 5 and 6 at the outset would submit that investigation is complete and charge-sheet is filed. He would submit that Applicants have been incarcerated for 1 year and 7 months and charges have not been framed by the Sessions Court till date. He would submit that Applicants have no criminal antecedents and they work as Medical Representative in RPG

Life Sciences Company and therefore deserve to be enlarged on bail.

6.1. In so far as Accused No.4 is concerned, he would submit that there is no recovery of any contraband or anything incriminating from him under the NDPS Act. He would submit that Accused No.4's Whatsapp chats with Accused No.6 do not show anything incriminating under the NDPS Act. He has drawn my attention to page No.268 i.e. disclosure panchnama of Accused No.4's mobile phone / chats with other Accused persons which do not disclose anything incriminating so as to indict him. He has drawn my attention to page No.99 i.e. house search panchnama dated 05.08.2023 which refers to recovery of invoices only which cannot be deemed to be incriminating neither linked to or having nexus with the alleged contraband seized in the present case.

6.2. In so far as Accused No.5 is concerned, he has drawn my attention to page No.93 which is house search panchnama wherein save and except recovery of rubber stamps / seals of Medical Practitioners nothing incriminating qua the alleged contraband has been stated to be recovered.

6.3. In respect of Accused Nos.4 and 5, he has vehemently argued that as per their Arrest / Court Surrender Form appended at page Nos.639 and 643 respectively, information of grounds of arrest is

kept completely blank. The second submission of Mr. Khan is that there is no incriminating material found from Accused Nos.4, 5 and 6 so as to indict them in the crime. The third submission pertain to inventory panchnama appended at page No.163 of all 3 Bail Applications argued by Mr. Khan and he would draw my attention to the certificate issued by the Magistrate under Section 52A of the NDPS Act appended thereto and would submit that the same is not in the prescribed Form 5 as per Rules 8 and 18 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 but is simplicitor appended after the Inventory panchnama dated 02.09.2023 in continuity thereof.

7. On the basis of the above submissions, he would argue that the prescribed statutory procedure under the NDPS Act and the NDPS Rules is compromised and as such the prosecution case stands vitiated and Applicants deserve to be released on bail. That apart, he has persuaded the Court to address this larger issue in the interest of justice which is referred to after noting the submissions of the prosecution regarding the following of Section 52A exercise and issuance of the certificate under Section 52A(3) of the NDPS Act in Form 5 which is invariably not done in most of the cases. He would submit that if directions and guidelines are given it would enure to the benefit of the prosecution case itself.

8. Ms. Pandey would adopt the submissions of Mr. Khan insofar as the procedural non-compliance are concerned. She would also submit that Accused No.2 is a salaried employee of Glenmark Pharmaceuticals and thus may have passed certain medicines but was not in any way involved in buying and selling of Recreational drugs and /or psychotropic substances as alleged. She would submit that Accused No2's house was searched after sunset and well into the night which is a clear transgression of Section 42 of NDPS Act. Form 5 Certificate is not issued by the Magistrate as seen from page Nos. 177 to 180 of Bail Application No. 4709/2024. In this case also she would submit that in such a case, the recovery becomes a suspect. She would thus pray for the Applications to be allowed.

9. ***PER CONTRA***, Mr. Dedhia and Mr. Karmakar, learned APPs for Respondent – State would vehemently oppose the grounds raised by Mr. Khan. They would tender across the bar a photocopy of Station Diary and submit that the information received from each accused was noted down in writing and is corroborated by their incriminating chats. He would submit that recovery of official seals of multiple medical practitioners and commercial quantity of contraband make it amply clear that Applicants were involved in illicit activities under the garb of being medical representatives. They would submit that Applicants, posing to be Medical representatives have failed to place

on record documentary proof to show their legitimacy. They would submit that the nature of medicines that Applicants were dealing in has strong potential for recreational abuse. They would ardently submit that once it is established that Applicants were dealing in commercial quantity of prohibited substances, rigors of Section 37 would be applicable. They would submit that Section 37 of NDPS Act contains a *non obstante* clause over the general rule of bail and in cases where Section 37 of NDPS Act is applicable, **Negation of bail is the rule**[10] unless the twin conditions as contemplated under the proviso to Section 37[11] are satisfied. They would submit that a mere technical non-compliance should not pose as an impediment to the manner in which the legislature intended the mischief to be dealt with. He would thus pray for the Application to be rejected.

10. I have heard the learned Advocates at the bar and with their able assistance, perused the record of the case.

11. The case of prosecution against the Applicants before me can be divided into two segments (a) against Accused No.6 (no recovery) and (b) against Accused No.2 (recovery of contraband), Accused No.4

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10 In ***State of M.P. vs. Kajad (2001) 7 SCC 673*** the Supreme Court while considering the scope of Section 37 in the light of the scheme of the Act, had observed that Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). Reiterated In ***Narcotics Control Bureau v. Kashif (2024 INSC 1045)***

11 Under provisions of Section 37 of NDPS Act, if Bail Application is opposed by Public Prosecutor, then only if Court is satisfied of below mentioned twin conditions, bail may be granted to an under-trial accused–

(i) that there are reasonable grounds for believing that the accused is not guilty of such offence; and
(ii) that the accused is not likely to commit any offence while on bail.

(recovery of invoices) and Accused No.5 (recover of medical seals). Indictment of Accused No.6 is purely on the basis of his WhatsApp chats with Accused No.4. Printouts of the said chats are appended in the chargesheet. In the case of ***Bharat Chaudhary Vs. Union of India***[12], the Supreme Court categorically held that printouts of WhatsApp messages downloaded from the mobile phone or device seized cannot be treated as sufficient material to establish link between the accused persons under the NDPS Act at the stage of bail. It also held that statement of co-accused cannot be relied upon under Section 67 of the NDPS Act. Given the limited material placed on record before me at this *prima facie* stage against Accused No.6 and also in the view of the decision in the case of ***Bharat Chaudhary (supra)***, I am inclined to consider release of Accused No.6 on bail subject to common conditions for all Applicants listed in paragraph No. 31 of this judgement.

12. In so far as Accused Nos.2, 4 and 5 are concerned, their indictment is on the basis of (a) Statement of Co-accused (b) WhatsApp chats (c) Recovery of certain incriminating material from them. From Accused No.2 alleged commercial quantity of codeine phosphate syrup is recovered. He has named Accused Nos.4 and 5 as the suppliers. Accused Nos.4, 5 as also Accused No. 2 are Medical Representatives of Pharma Companies involved in marketing of medicines. In my *prima facie* opinion, the prosecution has failed to

12 (2021) 20 SCC 50

sufficiently establish the motive / *mens rea* behind the offence and guilt of the Accused Nos.4 and 5 at this stage. The Supreme Court in a recent judgement of ***Ramu Appa Mahapatar Vs. The State Of Maharashtra***[13] while explaining the threshold of guilt sufficient to convict an Accused indicted on basis of circumstantial evidence observed that such circumstances should only be consistent with the guilt of Accused and totally inconsistent with his innocence. The relevant paragraph reads thus:-

> *"Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.* ***All these circumstances should be complete and there should be no gap left in the chain***

13 2025 INSC 147

> ***of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.*** *The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.*

12.1. In view of the aforesaid and considering the facts of the case, I am of the *prima facie* opinion that the hypothesis of the prosecution is not totally inconsistent with the guilt of the Applicants though Accused No.2 is held with commercial quantity of the contraband. In so far as Accused No. 2 is concerned thrust is on non-compliance of the provisions of Section 52A of the NDPS Act.

13. The other pertinent ground raised by Mr. Khan is non-compliance of Section 52A.This ground rather enures to the benefit of all 4 Accused before me, as identical procedure is followed by the prosecution in their case. As is apparent from the record, the Certificate issued by the Magistrate in all 4 cases is not in the format prescribed under Section 52A of NDPS Act read along with Rule 8 under Chapter III and 18(1) under Chapter IV of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022. These Rules have come into effect *vide* G.S.R. 899(E) dated 23.12.2022, published in the Gazette of India, Ext., Pt. II, S.3(i), dated 23.12.2022. The prescribed

Form 5 under Rule 8 read with Rule 18(1) of the Rules in which the Certificate is required to be issued by the Magistrate on the Application of the Officer-in-Charge is reproduced below for reference:-

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FORM-5

[See rule 8 and rule18(1)]

APPLICATION FOR DISPOSAL OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES UNDER SUB-SECTION (2) OF SECTION 52A OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

[Application to be made by the officer in-charge of a police station or an officer empowered under section 53 of the Narcotic Drugs and Psychotropic Substances Act,1985who has custody of the material seized under the said Act]

To
Learned Magistrate

Sir,

Sub: Application for certification of correctness of inventory, photographs and samples of seized narcotic drugs, psychotropic substances, controlled substances and conveyances.

***1**. All narcotic drugs, psychotropic substances, controlled substances and conveyances have been identified by the Central Government under section 52A of the Narcotic Drugs and Psychotropic Substances Act,1985 as vulnerable to theft and substitution vide Notification No..... dated.....*

***2**. As required under sub-section (2) of section 52 A of the Narcotic Drugs and Psychotropic Substances Act,1985, I submit the enclosed inventory of seized material and request you to-*

(a) certify the correctness of the inventory;

(b) permit taking, in your presence, photographs of the seized items in the inventory and certify such photographs as true; and

(c) allow drawing of representative samples in your presence and certify the correctness of the list of samples so drawn.

***3**. I request you to allow this application under sub-section (3) of*

section 52 A of the Narcotic Drugs and Psychotropic Substances Act,1985 so that the seized narcotic drugs, psychotropic substances, controlled substances or conveyances can thereafter be disposed of as per sub-section (1) of section 52Aof the said Act retaining the certificate, photographs and samples as primary evidence as per sub-section (4) of section 52A.

Yours Faithfully,

Signature, name and designation of the officer

Date:

CERTIFICATE BY THE MAGISTRATE UNDER SUB-SECTION (3) OF SECTION 52A OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT,1985

I allow the above application under sub-section (3) of section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and hereby, certify the correctness of the enclosed inventory, the enclosed photographs taken and the list of samples drawn in my presence.

Signature, name and designation of the Magistrate

Date:

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14. The provisions of Section 52A are crucial for understanding the reason for issuing the above Certificate in Form 5. Section 52A(1) contemplates power of Central Government to notify procedure for disposal of the contraband after seizure. Section 52A(2) contemplates preparation of Inventory panchnama as stated therein and making an application to the Magistrate for the purposes of Section 52A(2) (a), (b) and (c). Section 52A(3) contemplates allowing the Application by Magistrate by issuing the Certificate in Form 5 as per Rules 8 and 18. Form 5 therefore specifically lists the Application to be made and Certificate to be given thereon by the Magistrate together.

15. From the above, it is seen that an Application to the Magistrate is a precursor to the certificate issued by him which is absent in the Certificate issued in the present case. In the present case, if the certificate issued are seen *qua* all 4 Accused persons, it is in continuity with the Inventory panchnama itself and the Application is missing. Rather Form 5 itself is missing in all 4 cases. The certificate should also certify the correctness of the enclosed inventory, which is again missing. The various Forms and proforma in NDPS Act act as an excellent safeguard against oversight. A reading of the aforestated provision makes it clear that purpose of its enactment is to certify the correctness of the inventory so prepared. However, if the mandatory requirement described under the NDPS Rules of 2022 are not complied with, it *prima facie* vitiates the statutory procedure. It also renders the alleged document infructious. In the present case the non-compliance leaves a lacuna which *inter alia* forms a reason for grant of bail. If the statute requires the statutory Authority to act in a particular manner, it is not open to the Authority to follow a different procedure or regime contrary to the established and prevalent Rules / procedure. In this case, Form 5 is absent in all 4 cases before me. If statutory procedural requirements are complied with scrupulously by authorities, it will grant reliability to the prosecution case and may eventually result in rejection of bail if seen in the light of the rigors of

Section 37 of the NDPS Act. However in the facts of the present case, procedure seems to be *prima facie* riddled with issues on the face of record and this makes it difficult for me reject the Application for bail even inspite of the rigours of Section 37 being applicable to Accused No. 2. Mr. Khan has persuaded the Court to address this issue since it is prevalent and repeatedly followed by prosecution invariably in several cases without adhering to the prescribed procedure and Form 5 to be issued under Rule 8 read with Rule 18(1) of the NDPS Rules.

16. Another facet that attracts my attention is the Arrest / Court Surrender Form and more particularly, column No. 8 thereof. The column which requires to record the articles recovered from the individuals arrested, are left blank across the Arrest / Surrender Forms of all 4 accused except in the case of one of the accused, where the recording is 'Nil'. I cannot fathom how come no articles are recovered from Accused No.4 and 5 when the prosecution case is in itself based upon the alleged material recovered from them which is not relating to contraband. Applicants have argued in this context that neither grounds of arrest under Section 50 of CrPC have been conveyed to them before their arrest.

17. This Court regularly deals with Bail Applications filed by under trial prisoners indicted in offences under NDPS Act. The primary limb of defence generally raised by the advocates appearing on behalf

of Applicant – Accused is grounded on non-compliance of procedure prescribed under Chapter – V of the Act. When compared to offences under IPC, the quantum of punishment as well as restriction on grant of Bail in NDPS Act are comparatively more stringent. A bare reading of the provisions of Section 37 makes it amply clear that non-compliance of procedure is not a ground which should have a bearing on Court's mind while deciding Bail Application. However, a closer reading to the said Section brings me to a conundrum. The proviso requires the Bail Court to satisfy itself that– (i) There are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) The accused is not likely to commit any offence while on bail. It is implicit that such reasons or beliefs of the Court need to be recorded[14]. The Supreme Court has time and again reiterated that Bail Courts should not go into the merits of the matter while deciding a Bail Application. The case of ***Puran Vs. Rambilas***[15] aptly deals with the said conundrum, the relevant findings is reproduced hereinbelow:-

> *"8. … Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."*

As recently as of 07.02.2025, the Supreme Court in this very

14 In the case of **Narcotics Control Bureau v. Kashif (2024 INSC 1045)** the Supreme Court has explicitly clarified that the recording of finding as mandated in Section 37 of NDPS Act is a *sine qua non* for granting bail to the accused involved in the offences under the said Act.

15 (2001) 6 11 SCC 338

context namely interpretation of Section 50(1) of the CrPC and the corresponding Section 47 provision of the BNSS[16] in the case of ***Vihaan Kumar Vs. State of Haryana & Anr.***[17] has held that when an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance of Article 22(1) has been made. The Supreme Court holds that if there is non-compliance then the arrest is rendered illegal and it is the obligation of all courts to uphold Fundamental Rights. The Supreme Court in paragraph No.21 of the said judgement has concluded and returned the findings as under:-

> *"21. Therefore, we conclude:*
>
> *a.) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);*
>
> *b.) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;*
>
> *c.) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);*
>
> *d.) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1)*

16 The Bharatiya Nagarik Suraksha Sanhita, 2023

17 Criminal Appeal No. ____ of 2025 arising out of Special Leave Petition (Cri.) No. 13320 of 2024

> *e.) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and*
>
> *f.) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."*

17.1. Keeping the aforesaid in mind I shall make active attempt to satisfy the requirements of Section 37 as well as hold myself back from recording any such findings that will be prejudicial to the interests of parties at the stage of trial.

18. This Court recently dealt with another case[18] involving a facet of non-compliance of procedure under Chapter – V *vis-a-vis* Section 37 of NDPS Act. I deem that the *orbiter dicta* in that case would be apposite to be reproduced herein as well:-

> *"It was indeed with the intention to curb the illicit trafficking of Narcotic and psychotropic substances that NDPS Act was enacted. It contained certain strict provisions aimed to act as a deterrent for prospective drug dealers dealing in commercial quantities of contraband, Section 37 is one such example. For the sake of brevity, I would refrain to repeat the submissions of Mr. Shirsat who has aptly explained the substance of Section 37 of NDPS Act. The said section indeed sways the general rule of bail in a diametrically opposite way - where generally grant of bail is the rule however in NDPS Act where the accused is alleged to be in possession of commercial quantity of contraband, the rule is against grant of bail save the satisfaction of the court with regards to the twin conditions directed under the section.* ***However, where such stringent conditions are imposed upon the accused by virtue of a special act, the reciprocating duty is implicitly cast***

18 Criminal Bail Application No. 2136 Of 2024 decided On 07.02.2025

> ***upon the Investigating Agency to strictly comply with the provisions of the act and ensure that strict compliance of each aspect which may have a negative impact on the Accused, sans any ambiguity, to a point of proof beyond reasonable doubt is done.*** *This duty gets amplified many fold when the question is one involving personal liberty."*
>
> *(emphasis supplied)*

19. In the case of ***Emperor vs H.L. Hutchinson***[19] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution*

19 AIR 1931 ALL 356

> *or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

20. I am of the opinion that in crime where offences under NDPS Act are attracted, an act which is comprehensive, aimed in order to strike a delicate balance between **Interest of the Nation** on one hand and **Rights of Accused** on the other, it is the duty of the Investigating Authority to ensure strict compliance of procedure. This is because **Liberty of an accused is too precious of a right to be taken away on the basis of flimsy / arbitrary procedure**. The prosecution defending a Bail Application firstly needs to satisfy the Court that the contraband which is in question was actually recovered in a justified manner from the Accused and/or is the same which was recovered from the Accused. This can only be done when the prosecution follows the directives of NDPS Act and its statutory Rules. Prior to the enactment of Rules vide Notification dated 23.12.2022 in 2022, the procedure was governed by the 1/88 and 1/89 Standing Instructions, 1/88 Standing Order & G.S.R. 38(E) dated 16.01.2015 issued by Central Government. The case before me is one classic example of how stringent laws can be misinterpreted. Based on the material placed before me and being compelled by the provisions of Section 37 of the Act requiring me to be satisfied of the twin conditions, I record my *prima facie* opinion

that the Applicants are, in all likelihood, not likely to re-offend in the present facts. They appear to be, at best, Medical representatives who may or may not be on the wrong side of law under Section 18 of The Drugs and Cosmetics Act, 1940 or other applicable laws which will be adjudicated at the stage of trial.

21. While I vocalise the need for investigating authorities to follow the procedure under NDPS Act scrupulously, I am equally aware of the difficulties faced by the Learned APPs as well as Learned SPPs who on a daily basis venture on an insurmountable task of defending the non-compliance by the authorities. Their fierce opposition has not gone in vain but has got me think deeply on the repercussions of Drug abuse which is a result of activities of Drug smugglers, peddlers, traffickers. Drug trafficking is a serious crime and the menace of drug traffickers is prevalent not just in India but across the globe. I will not be wrong to describe that drug / psychotropic addiction is a quasi pandemic. The miscreants dealing in drugs in Society need to be dealt with an iron fist but it cannot be at the cost of liberty of an individual. However Courts should not depict their backing to this cause of national importance and international prevalence by mechanically rejecting Bail Applications, after all the purpose of Court of law is to secure the rights of citizens. My Judicial *ex-ante* thinking makes me arrive at a situation where if Courts would

venture into the exercise of mechanically rejecting Bail Applications on every occasion when the embargo under Section 37 is attracted – it will result in an unjust situation where even an innocent individual may be arrested in an arbitrary manner and be made to languish in jail for years pending trial indefinitely. I thus, take it upon me to guide the authorities, as far as I can, to enable them to comply with the statutory demands of the NDPS Act and Rules with the sole aim that this would in turn reduce the number of Bail Applications allowed solely on technical grounds – An ideal situation that Section 37 envisaged.

22. Recently, I came across a communication dated: 18.11.2024 issued by the National Police Mission, Bureau of Police Research and Development, Ministry of Home Affairs, Government of India to the DGPs and IGP of Police of all states / Union Territories including the State of Maharashtra in respect of Model FIR in registration of cases in narcotics under Section 52 of the NDPS Act and Associate documents. This communication is issued in view of the fact that in recent times, a number of NDPS cases have resulted in "Acquittal" in Courts due to procedural irregularities such as compliance of Section 52 of the NDPS Act. This is also the common ground for seeking Bail at the interim stage which cannot be disregarded. The National Police Mission Division of BPRD have prepared a model FIR for the registration of of cases under Section 52 of the NDPS Act and other associated

documents which have been finalised in consultation with Investigating Officers under five heads:-

(i) Model FIR

(ii) Flow Chart

(iii) SOP

(iv) Guidelines

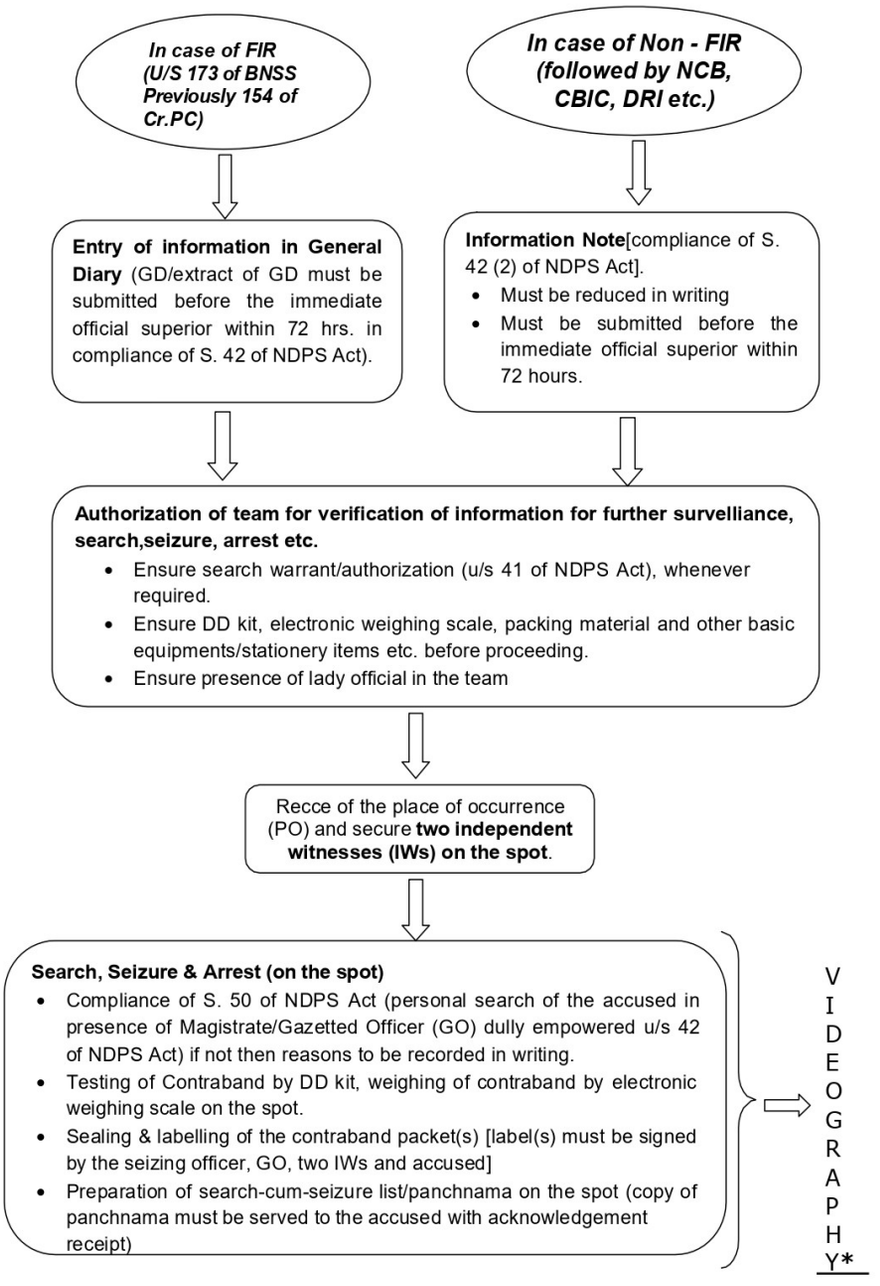
(v) Template format

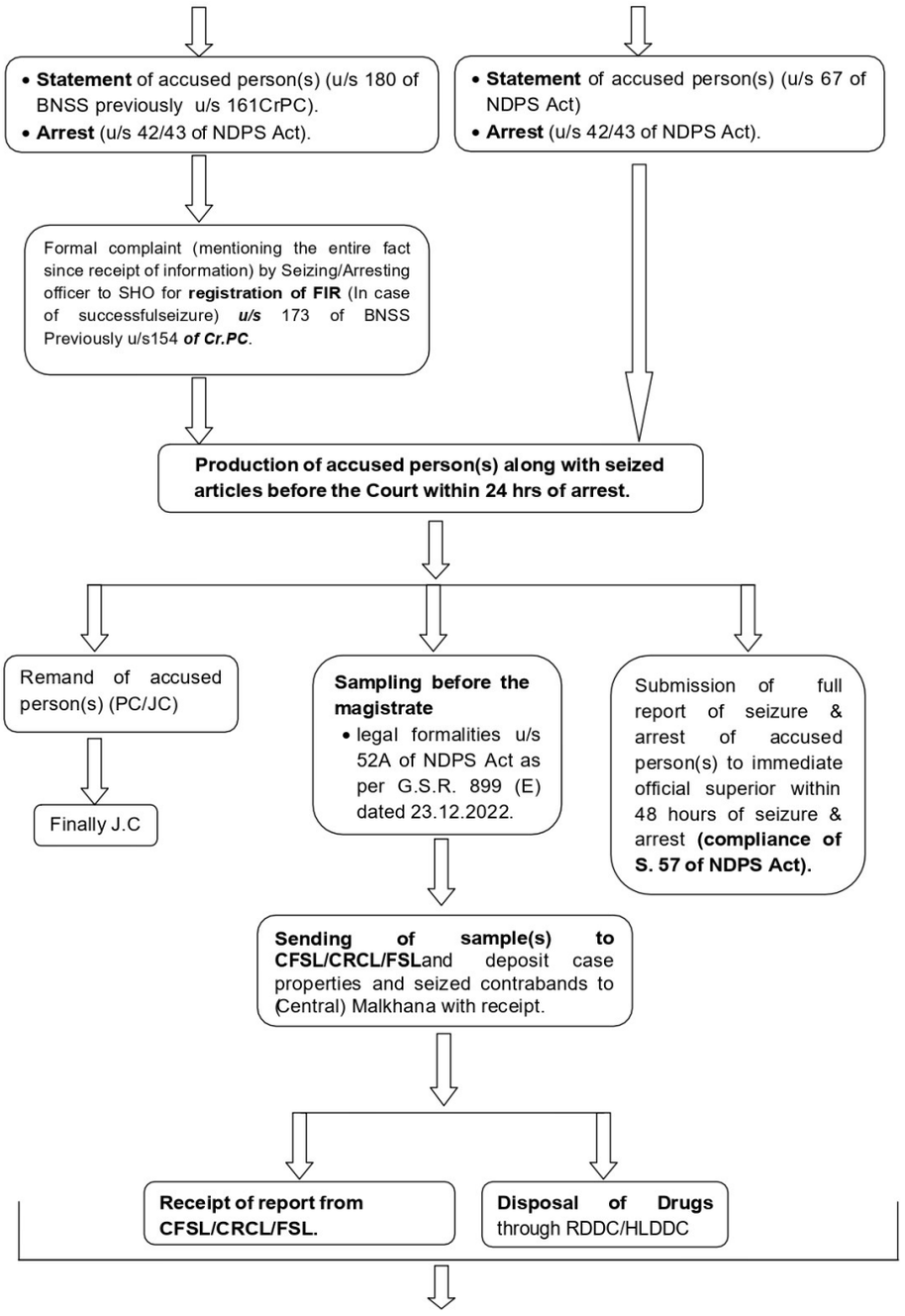
23. The aforementioned letter issued by the National Police Commision has shared the above guidelines with the documents with all States and Union Territories requiring to further disseminate them directly to the Police Officers on the ground so that maximum benefit can be derived from the same during investigation of NDPS cases. These guidelines are also uploaded online @ *https://bprd.nic.in/page/other_significant_task*

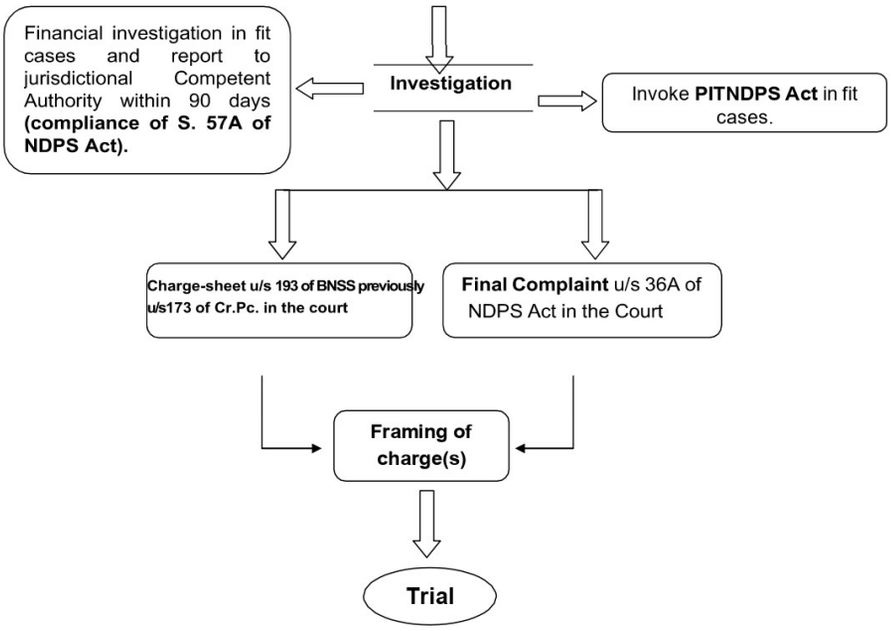
24. From the guidelines which are elucidated, it is seen that the procedure to be followed in NDPS cases is well explained in the following flow chart given in **Annexure – "C"** and guidelines given in **Annexure – "D"** therein. The same is reproduced hereinbelow:-

Annexure - C

Procedures to be followed in NDPS Cases







Note:

* For Videography of search-cum-seizure procedure CRM (NDPS) 492 of 2022 with CRM (NDPS) 493 of 2022 Case Title: KaluSk @ Kuran Vs. State of Hon'bleCalcutta High Court Order dated 22.06.2022 may be referred to.

✓ S. 42, 50, 52A, 57 & 57A of NDPS Act, 1985 (as amended) are mandatory provisions. However, S. 42 & 50 are not mandatory in cases of 'chance recoveries'.

✓ Intimation of arrest of foreigner to be sent to Joint Secretary (CPV Division), Ministry of External Affairs, Govt. of India

Annexure - D

GUIDELINES FOR INVESTIGATING OFFICER TO BE USED IN DRAFTING FIR AND DURING INVESTIGATION OF THE CASE

While drafting the FIR and subsequently, conducting the investigation, following points may help in strengthening the case: -

1. At what time police party left the police station on the day when accused was apprehended?
2. The vehicle used by the police party for raid purpose must be mentioned in the GD of Police Station as well as in the CD file. It is also recommended that while dealing with complaint cases (as done by customs, DRI, CBIC, CAPFs, armed forces and State Departments etc.) the vehicle number needs to be mentioned in the seizure memo of the contraband.
3. Whether the type of vehicle used by police party was private vehicle or official vehicle?
4. What was the registration number and colour of that vehicle?
5. Who was driving that vehicle?
6. If the vehicle used by the police party was private, then who was the owner of that vehicle?
7. How much is the distance of place of recovery from police station?
8. Which route was followed by the police party before the police party reached the place of occurrence?
9. Whether police party checked any other person on its way before it reached the place of occurrence?
10. When the accused tried to run away from the spot who chased the accused and up to how much distance he was chased?
11. Whether IO fired shot in the air when accused tried to run away?

12. Whether the names of those persons were noted by the IO along with their address who refused to join the investigation?
13. Whether any action was taken by the IO against those persons who refused to join the investigation?
14. Whether any show cause notice was given to those persons who refused to join the investigation?
15. Whether any Councillor or Panch or Sarpanch from nearby city or village was called at the spot?
16. Whether IO tried to inquire about the source of contraband?
17. Whether the signatures of alleged person/accused were obtained on the back side of the notice issued under section 50 of NDPS Act.
18. Where was writing work done?
19. Who bought Chairs and table from the nearby shop?
20. Whether that person was joined in the investigation from whose shop chairs and table were brought?
21. At what time ruqa was scribed?
22. In whose hand ruqa was scribed?
23. Who took the ruqa to police station?
24. The time when the complaint/ruqa was send by IO to the Police Station for registration of FIR, the time and the time of receiving back the copy of FIR after registering a case should be the part of CD
25. Whether those weights and scales were issued from the department?
26. Where from those weight and scales were purchased?
27. Do you have any bill of such purchase?
28. Whether accused suffered any disclosure statement during the course of investigation?

29. Whether any recovery was affected on the basis of disclosure statement?
30. Whether the polythene envelope was taken into possession from which the intoxicant was recovered?
31. To whom the intimation regarding arrest of accused was given?
32. Whether that witness was called on the spot to whom intimation regarding arrest of accused was given or whether his/her signatures were obtained in the police station?
33. How many shops were there near the place of recovery?
34. What was the colour of recovered intoxicant powder? (In case recovery is of intoxicant powder).
35. IO to narrate the sequence in which the documents were prepared?
36. How much time was taken to prepare each document including the statement of witnesses also?
37. FIR No. is mentioned in memos. Why? (Underline the FIR No. and reply that it was filled after the receipt of FIR. FIR no. was inserted only after the FIR was received by the IO at the spot.)
38. What was the denomination of weights and scales?
39. In whose hand the memos were prepared?
40. In whose hand the statements of recovery witnesses were scribed?
41. Whether all the directions have been clearly mentioned in the site plan by IO?
42. How many documents were prepared at the spot ?
43. What is the sequence of those documents and how much time was taken to prepare each document?
44. Documents are in different ink. Why?

45. At what time police party reached police station after completing the requisite formalities at the spot?
46. At what time case property was produced before SHO? (IO to see the GD/Roznamcha that whether the SHO was present at police station or whether he had left the police station before the arrival of police party and had either not returned on that day or had returned after a much longer time than the time which the IO is stating).
47. What was the shape of SHO's seal?
48. What was the metal of seal?
49. Whether that seal of SHO has been issued from the department?
50. When did IO receive the seal from recovery witness and at what time?
51. After producing the case property before SHO at what time SHO deposited the same with MHC?
52. At what time the case property was produced before Magistrate?
53. After producing the case property before the Magistrate, at what time it was re deposited with MHC?
54. Whether entries have been made in relevant register and GD (Roznamcha) or not?
55. If any vehicle is involved then whether the owner of vehicle has been arrayed as an accused by the IO or not?
56. Whether the case property i.e contraband and vehicle, if any, has been produced in the court at the time of recording of evidence in the court?
57. What was the source of light when recovery was effected after sunset?
58. Who kept the seal after use?

59. When was the seal returned to IO by recovery witness?
60. The mention of the person to whom the seal belongs to should be the part of the endorsement of the FIR and should be mentioned in the GD. It should be covered in the statement of the person to whom seal is handed over, recorded u/s 180 of the BNSS previously u/s 161 Cr.Pc.
61. After the contraband sealed, to whom, the seal was handed over, the name of that person should be the part of the endorsement of the FIR and should be mentioned in the GD.

*****

25. I direct the Registry of this Court to send a copy of this Judgement to all Commissioners of Police / Superintendent of Police in each district of the state for implementing the provisions of the NDPS Act and Rules strictly through the investigating agencies authorized under the NDPS Act. The said Commissioner of Police / Superintendent of Police of each district / region are directed to provide a copy of the entire guidelines to all Police Stations under their Jurisdiction / Prosecuting agencies under the NDPS Act for following the same. To give an example *qua* the deficiency and lacunae found in the present case at hand when the Magistrate issues the certificate under Section 52A(3) of NDPS Act the said certificate is required to be appended to and it has to be in continuity with the Application for certification of correctness of the inventory,

photographs and samples of seized Narcotics Drugs and Psychotropic drugs and conveyances.

26. In the present case, it is seen that the said certificate is not appended to and not in continuity with the Application for certification but it is appended to the Inventory Panchanama itself. It is seen that the Application for certification is completely missing. It is not in the prescribed Form 5 under Rules 8 and 18(1). The certificate which is appended to the inventory panchnama in all 4 cases before me is not is accordance with Form 5 readwith Rule 8 and Rule 18(1) of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 and also Section 52A(3) of the NDPS Act.

27. Therefore I deem it appropriate to issue the above directions so that the statutory procedure for issuing the certificate under Section 52A (3) is followed as per Form 5 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 by all prosecuting agencies under the NDPS Act which will eliminate any ambiguity of procedure as transgression such as the one observed in the present case.

28. In paragraph Nos. 15 to 21 of the decision in the case of ***Narcotics Control Bureau Vs. Kashif***[20]***,*** the Supreme Court has explained the prevalent position with respect to the procedural issues

20 *(2024 INSC 1045)*

prevalent prior to enactment of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 which was based upon the Standing Instructions 1/88 and 1/89 and Gazette Notification of 2007 etc. However after coming into effect of the Rules in 2022, the statutory Rules not only apply but are also required to be scrupulously followed by the prosecution strictly without any deviation whatsoever. If Rules prescribe issuance of certificate under Section 52A in Form 5, it has to be so and not in any other format devised by the prosecution. If Statutory Rules are not followed, it amounts to clear transgression of the provisions of Section 52A.

29. Form 5 precisely prescribes that the Application and the certificate to be appended together and in continuity with each other and they both are inextricably linked if they are read together. In the present case at hand the Application is missing and the Magistrate's certificate is merely printed below and not as per Form 5. Hence the aforesaid directions are given for uniformity in procedure to be adopted by the Prosecution Agencies.

30. We as a system also need to invest our resources on educating our statutory officers so as to enable them to discharge their wide powers with legal prudence and in accordance with the statute / Rules as prescribed. This pursuit is what has motivated me to take up this exercise and go to the root of the issue raised by Mr. Khan to

eliminate procedural hazards which enure to the benefit of accused persons indulging in drug trade. To a certain extent it may help us all in achieving a drug free society if the laws and Rules are strictly implemented and followed leaving no room for doubt or vitiation of procedure.

31. In view of the foregoing, present Applications are allowed in the following terms:-

(i) All 4 Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or two sureties in the like amount;

(ii) Applicants shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for three months or as and when called;

(iii) Applicants shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;

(iv) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(v) Applicants shall not influence with any of the witnesses

or tamper with the evidence in any manner;

(vi) Applicants shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail the prosecution to apply for cancellation of this order.

32. It is reiterated with emphasis that the findings recorded herein is *prima facie* in nature and the Trial Court in *seisin* shall proceed uninfluenced and in accordance with the evidence and strictly in accordance with law.

33. All four Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar