RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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S.B. Criminal Misc.Bail Application No. 3462/2026

CNR: RJHC010260042026 | URN: CRLMB / 7935U / 2026

Gurditta Singh @ Gora @ Karan S/o Beyant Singh, aged about 41 Years, resident of Ward No. 2, Baja Road, Bariwala, Police Station Bariwala, District Mukhtsar Sahib Punjab. At present Crown City, Malot Road, Near Gurudwara, Mandi Dubwali, Police Chowki Kileyawali, Police Station Lamba, District Mukhtsar Sahib, Punjab.
(At Present Lodged In Dist. Jail Hanumangarh)

----Petitioner

Versus

State of Rajasthan

----Respondent

Connected With

S.B. Criminal Misc. Bail Application No. 2376/2026

CNR: RJHC010147692026 | URN: CRLMB / 5336U / 2026

Jagraj Singh S/o Jeet Singh, aged about 47 Years, resident of Bhai Matidas Nagar, Street No 15A Main House 419 Bathinda, Police Station Civil Lines, District Bathinda.
(At present lodged in District Jail Hanumangarh)

----Petitioner

Versus

State of Rajasthan, through PP

----Respondent

S.B. Criminal Misc. Bail Application No. 7074/2026

CNR: RJHC010514722026 | URN: CRLMB / 15658U / 2026

Amandeep Kumar S/o Ramesh Kumar, aged about 30 Years, R/o Jhajjal Tehsil Talwandi Sabo, Police Station Rama Mandi, District Bathinda (Punjab), Hall Silver City Colony, Gali No 02 Najdik Kalgidhar Gurudwara Bathinda Police Station Bardhaman, District Bathinda (Punjab).
(At present lodged at District Jail Hanumangarh)

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----Petitioner

Versus

State of Rajasthan

----Respondent

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For Petitioner(s)	:	Mr. Amit Kumar, Adv. Mr. Bhagirath Ray Bishnoi, Adv. Mr. Ravinder Kumar, Adv.
For Respondent(s)	:	Mr. Rajesh Bhati, PP

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

Reportable

DATE OF CONCLUSION OF ARGUMENTS: 04/11/2026
DATE ON WHICH ORDER IS RESERVED : 04/11/2026
FULL ORDER OR OPERATIVE PART: FULL ORDER
DATE OF PRONOUNCEMENT: 06/11/2026

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1) All three bail applications are taken up for common disposal, as they arise out of the same FIR.

2) The sum and substance of the prosecution case is that on 06.07.2025, at about 6:00 a.m., the police personnel while conducting *nakabandi* on the Bharatmala Road near the Jamnagar–Amritsar Expressway, they found a Scorpio vehicle bearing registration No. UP-23 P 4444 ahead of Canter vehicle bearing registration No. PB-03 BQ 0487 and they were stopped at some distance away to them. On noticing the nakabandi, the drivers of both vehicles attempted to take U-turn. The police responded immediately and caught hold of two vehicles and found

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Amandeep was driving the Scorpio, whereas Jagraj Singh was driving the Canter. Upon searching the Scorpio which was escorting the Canter, no incriminating material was found. However, upon searching the Canter, the police recovered 501.50 kg of poppy straw. The poppy straw was seized in accordance with the prescribed procedure, and the accused persons were arrested and remanded to judicial custody. During interrogation, they disclosed that the contraband was intended to be delivered to Gurditta Singh @ Gora @ Karan. Further investigation revealed that Gurditta Singh @ Gora @ Karan had transferred the sale price of contraband into the bank account of Amandeep. He was also arrested and remanded to judicial custody. Upon completion of the investigation, the police filed the charge-sheet.

3) The learned counsels appearing for the petitioners Amandeep and Gurditta Singh have contended that no contraband was recovered from the possession of Amandeep, who was driving the Scorpio vehicle. The contraband, which was of commercial quantity, was allegedly recovered only from the Canter vehicle. It is further contended that Amandeep and Gurditta Singh have been implicated in the case solely on the basis of their confessional statements. It is also contended that the amount transferred by Gurditta Singh to Amandeep was towards the sale price of the Scorpio vehicle and not towards the purchase of the contraband allegedly intended to be supplied to Gurditta Singh.

4) It is further submitted that the process of drawing samples and sending them to the Laboratory were not carried out in

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accordance with the applicable Rules and the relevant Standing Orders. The learned counsels have also contended that there was an inordinate delay in sending the samples to the Laboratory, in contravention of Standing Order No. 1/1988 issued by the Government of India. Therefore, they prayed that the bail applications may be allowed and the petitioners may be enlarged on bail.

5) Per contra, the learned Public Prosecutor appearing for the State submitted that Jagraj Singh was caught red-handedly while transporting the contraband in the Canter vehicle, whereas Amandeep was escorting the Canter in the Scorpio vehicle. Their subsequent conduct in attempting to take a U-turn upon noticing the police nakabandi clearly demonstrates that the drivers of the Canter and the Scorpio were acting in connivance with each other and were jointly transporting the contraband.

6) It is further submitted that during the course of investigation, financial transactions between Amandeep and Gurditta Singh came to light. Gurditta Singh was the person to whom the contraband was intended to be delivered, and he had transferred the amount in advance. There is no material on record to establish that the Scorpio vehicle was owned by Amandeep so as to lend credence to his plea that the amount transferred was towards the sale consideration of the vehicle. No documents in support of such a claim have been placed on record.

7) Learned Public Prosecutor also contended that all the prescribed procedures for drawing samples and sending them to

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the Laboratory were duly followed in accordance with the applicable Rules, and no procedural violation had occurred. Therefore, the learned Public Prosecutor prayed for dismissal of the bail applications.

8) Before adverting to the entitlement of the petitioners to bail, this Court considers it appropriate to examine the procedure prescribed for drawing samples of the seized contraband, which are required to be sent to the Laboratory to ascertain whether the seized substance is, in fact, the contraband allegedly seized by the prosecution. It is also necessary to examine the distinction between the procedure and purpose of drawing samples under Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(hereinafter referred to as "the NDPS Act")* and the general procedure prescribed for drawing samples. The procedure for drawing samples, including the procedure contemplated under Section 52A of the NDPS Act, is now governed by the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (hereinafter referred to as "the Rules of 2022").

9) Prior to the framing of the said Rules, the general procedure for drawing samples of the seized contraband, which are required to be sent to the Laboratory for chemical examination, was prescribed for the first time under Standing Order No. 1/1988. Additionally, for the purpose of disposal of seized narcotic drugs and psychotropic substances under Section 52A of the NDPS Act, Standing Order No. 3/89 dated 29th May,

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1989, and Standing Order No. 1/89 dated 13th June, 1989, were issued.

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10) The relevant clauses, namely Clauses 1.5 to 1.7 of Standing Order No. 1/1988, prescribing the manner in which samples are to be drawn, read as under:–

> "**1.5 Place and time of drawal of sample-**
> Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.
>
> **1.6 Qauntity of different drugs required in the sample-**
> The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.
>
> **1.7 Number of samples to be drawn in each seizure case.**
> a) In the case of a single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.
>
> b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages/containers. In case of seizure of Ganja

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and Hashish, the packages/containers may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

c) Whereafter after making such lots, in the case of Hashish and Ganja, less than 20 packages/ containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/containers.

e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

11) The general samples, which are required to be sent to the Laboratories for chemical examination, were directed to be drawn at the spot in the presence of the accused and witnesses. Clauses 1.6 & 1.7 also specifies the quantity of the sample to be drawn in respect of different types of contraband. It further prescribes the procedure for forming lots in cases where the packages are identical in size, weight and bear identical marks and contents. The manner of drawing samples from such lots in respect of different types of contraband is also prescribed therein. Clause 1.13 of the said Standing Order requires that the samples must be sent to the Laboratory within 72 hours from the date of seizure so as to avoid any legal objection.

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12) Subsequently, Standing Order No. 381(E) was issued for the purposes of sub-section (1) of Section 52A of the NDPS Act. The said Standing Orders specify the narcotic drugs and psychotropic substances that are authorised to be destroyed by following the procedure prescribed under Section 52A of the NDPS Act.

13) To elaborate further on the procedure for drawing samples pursuant to Standing Order No. 381(E), the Government subsequently issued Standing Order No. 1/1989, which also prescribes the procedure for drawing samples and the procedure to be followed for the disposal and destruction of contraband in terms of Section 52A of the NDPS Act. There were subsequent clarifications on various aspects of drawing samples, either generally or specifically for the purposes of Section 52A of the NDPS Act. The Rules of 2022 repeal the earlier Standing Orders while protecting actions taken thereunder.

14) It is also relevant to refer to Section 52A of the NDPS Act, which is reproduced hereinbelow:-

> **"52A. Disposal of seized narcotic drugs and psychotropic substances.-** (1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled

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substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as the 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, psychotopic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

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

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every

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> 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."

15) The object of sub-section (1) of Section 52A of the NDPS Act is to ensure the expeditious disposal of the seized contraband/ conveyance, having regard to its hazardous nature, vulnerability to theft or substitution, constraints of proper storage and availability of space, or any other relevant consideration, in such manner as may be determined by the Government from time to time, after following the procedure prescribed under sub-section (2) of Section 52A. Sub-section (2) of Section 52A prescribes the procedure to be followed before undertaking the destruction of the aforesaid contraband and conveyances. The purpose of following the procedure prescribed under sub-section (2) is further elaborated in sub-section (4). From reading of sub-section (4), it is clear that the object of following the procedure prescribed under Section 52A(2) is to obviate the necessity of physically production of seized contraband before the Court during the trial, which would otherwise require actual production contraband/conveyance to constitute primary evidence of the seizure. In lieu of such physical production, the certified inventory or photographs duly certified by the Magistrate, or representative samples drawn in the presence of the Magistrate and certified by him shall be treated as primary evidence.

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16) The officer referred to in Section 52A of the NDPS Act has various options, as enumerated in clauses (a), (b) and (c) of sub-section (2). These options are alternative modes for the purpose of Section 52A(4) of the NDPS Act. Such options include obtaining certification from the Magistrate regarding the correctness of the inventory so prepared; or taking photographs of the contraband in the presence of the Magistrate and obtaining certification that such photographs are true; or drawing representative samples of the contraband in the presence of the Magistrate and obtaining certification regarding the correctness of the list of samples so drawn. These are three alternative modes of preserving primary evidence. This means that the officer has the option to adopt any one of the aforesaid modes for the purpose of establishing primary evidence.

17) The question that now arises is as to what procedure is required to be followed for drawing samples for the purpose of sending them to the Laboratory. The object of sending samples to the Laboratory is to establish, by scientific examination, that the contraband seized is of the nature and description claimed by the Investigating Agency. When the Investigating Agency claims during the course of investigation that it has seized contraband of a particular nature, it is required to establish two essential aspects to substantiate such a claim. Firstly, the factum of seizure of the contraband must be established. Secondly, it must be established that the contraband produced before the Court during the trial is the very same contraband that was seized, which is of same

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nature and description as claimed by the Investigating Agency. The latter requirement is established through scientific evidence obtained from the concerned Laboratory. All such things are part of investigation. Such requirement is necessary in terms of Sections 101 to 103 of the Indian Evidence Act and Section 457 of Cr.P.C. 1973 (corresponding to Section 503 of the Bharatiya Nagarik Suraksha Sanhita, 2023). In this regard, it would be appropriate to extract the said provisions, which are hereunder:-

> "**101. Burden of proof.-** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
>
> **102. On whom burden of proof lies.-** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
>
> **103. Burden of proof as to particular fact.-** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."
>
> xxx xxx xxx
>
> "**457. Procedure by police upon seizure of property.-** (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Sanhita, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to

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> the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.
> (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

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18) From a reading of Sections 101 to 103 of the Indian Evidence Act, it is clear that the burden of proof always lies upon the person who desires the Court to give judgment as to any legal right or liability dependent upon the existence of facts which he asserts, and such person must prove the existence of those facts. The burden of proof also lies upon the person who would fail if no evidence were adduced by either side in the proceedings. The burden of proving any particular fact lies upon the person who wishes the Court to believe in its existence, unless the law provides otherwise by way of a presumption.

19) When the prosecution asserts that contraband was seized from the possession of the accused, the burden of proving such facts rest upon the prosecution itself. For this purpose, the prosecution is required to establish the factum of seizure by producing the seized contraband before the Court in accordance with the applicable provisions governing its production and custody, including Section 457 of the Cr.P.C. (corresponding to Section 503 of the BNSS), and lead the evidence in the manner

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prescribed under the Indian Evidence Act. This initial burden can be discharged by establishing, through scientific evidence, the nature of the contraband seized and the quantity thereof. In this process, the Investigating Officer, during the course of investigation, is required to draw samples from the seized contraband in accordance with the generally prescribed procedure. Such sampling is distinct from the drawing of representative samples in compliance with Section 52A of the NDPS Act and serves an entirely different purpose. In this regard, Rules 8 to 15 of the Rules of 2022 are also relevant and are reproduced hereunder:

> "**8. Application to Magistrate.–** After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.
>
> **9. Samples to be drawn in the presence of Magistrate.–** After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.
>
> **10. Drawing the samples.–** (1) One sample, in duplicate, shall be drawn from each package and container seized.
> (2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package

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give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than fourty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

11. Quantity to be drawn for sampling.– (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.

12. Storage of samples.- (1) Each sample shall be kept in heat-sealed plastic bags or heat-resistant glass bottle or apparatus, which shall be kept in a paper envelope, sealed properly and marked as original or duplicate, as the case may be.

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(2) The paper envelope shall also bear the respective serial number of the package or container from which the sample had been drawn.

(3) The envelope containing the duplicate sample shall also have reference of the test memo and shall be kept in another envelope, sealed and marked 'Secret-drug sample / Test memo', to be sent to the designated laboratory for chemical analysis.

13. Despatch of sample for testing.– (1) The samples after being certified by the Magistrate shall be sent directly to any one of the jurisdictional laboratories of Central Revenue Control Laboratory, Central Forensic Science Laboratory or State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay.

(2) The samples of seized drugs or substances shall be despatched to the jurisdictional laboratories under the cover of the Test Memo, which shall be prepared in triplicate, in Form-6.

(3) The original and duplicate of the Test Memo shall be sent to the jurisdictional laboratory alongwith the samples and the triplicate shall be retained in the case file of the seizing officer.

14. Expeditious Test.- The chemical laboratory shall submit its report to the court of Magistrate with a copy to the investigating officer within fifteen days from the date of receipt of the sample.

Provided that where quantitative analysis requires longer time, the results of the qualitative test shall be dispatched to the court of Magistrate with a copy to investigating officer within the said time limit on the original copy of the Test Memo and in the next fifteen days the result of quantitative test shall also be indicated on the duplicate Test Memo and sent to the court of Magistrate with a copy to the investigating officer.

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> **15. Duplicate Sample and Remnants of Samples.–** (1) Remnants of samples shall be returned with reference to the Test Memo to the office from which they were received within three months after the analysis by the laboratory.
>
> (2) Immediately after the acceptance of the test report by the court of Magistrate, the duplicate sample held by the Inquiry Officer shall be deposited in the godown referred to in rule 5 along with the remnants of the sample."

20) From a reading of Rules 8 and 9, it is clear that the requirement of drawing samples in the presence of a Magistrate is confined for the purposes of Section 52A of the NDPS Act and does not extend to any other purpose. As adverted to hereinbefore, the object of Section 52A is to obviate the necessity of producing the seized contraband before the Court as primary evidence by permitting its substitution with the inventory duly certified by the Magistrate or by photographs taken in the presence of the Magistrate and certified by him as true, or representative samples drawn in the presence of the Magistrate and duly certified by him. This position is clearly reflected in Section 52A(4) of the NDPS Act.

21) Rules 10, 11 and 12 of the Rules of 2022 prescribe the manner of drawing samples, the quantity of samples to be drawn and the manner of their storage. However, particular emphasis is required to be laid on Rule 13, which appears to run contrary to the very object and scheme of Section 52A of the NDPS Act. A reading of Rule 13 gives the impression that the samples required to be drawn for the purpose of sending them to the Laboratory

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must necessarily be samples certified by the Magistrate. However, certification of samples by the Magistrate is contemplated for the purposes of Section 52A alone, as is evident from Rules 8 and 9 of the Rules of 2022. Thus, Rule 13 is insisting a requirement which is inconsistent with Rules 8 and 9 and the underlying object of Section 52A of the NDPS Act.

22) A perusal of the earlier procedural framework governing the drawing of samples, both generally and for the specific purposes of Section 52A, as prescribed under the repealed Standing Orders Nos. 1/1988 and 1/1989, reveals that a clear distinction was maintained between the general procedure for drawing samples and the procedure for drawing representative samples under Section 52A of the NDPS Act. This distinction was maintained keeping in view the different objects served by two procedures.

23) There is statutory requirement obligating the officers designated under Section 52A(1) of the NDPS Act to invariably resort to drawing representative samples for certification by the Magistrate, so as to use such samples as primary evidence in substitution for the physical production of the seized contraband during the course of trial.

24) The requirement under Section 52A can be satisfied by adopting any one of the alternative modes prescribed therein. Such modes include obtaining certification from the Magistrate regarding the inventory prepared by the proper officer, or taking

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photographs of the contraband in the presence of the Magistrate and obtaining certification from him that such photographs are true, or drawing representative samples in the presence of the Magistrate and obtaining certification regarding their correctness. These alternatives are evident from the use of the expression "or" in clauses (a), (b) and (c) of sub-section (2) of Section 52A of the NDPS Act.

25) The question that now arises is: where is the occasion for drawing samples in the presence of a Magistrate, in the manner prescribed under Rule 13 of the Rules of 2022, if the officer designated under Section 52A(2) opts for either of two alternatives contained in clause (a) or clause (b) thereof? The requirement of certification of samples, as contemplated under Rule 13, would arise only when the officer resorts to the procedure prescribed under Section 52A(2)(c) of the NDPS Act. Even then, the purpose of drawing such samples is entirely different and is not for the purpose of sending the samples to the Laboratory for chemical examination. The object of Section 52A(2)(c) is to provide certified representative samples as primary evidence before the Trial Court during the course of trial, in substitution for the physical production of the seized contraband, which would be otherwise the normal requirement in the absence of the statutory dispensation provided under Section 52A of the NDPS Act. Such a statutory dispensation permit the use of alternative forms of primary evidence which was introduced keeping in view the hazardous nature of the contraband seized and the circumstances

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in which the Statute permits its destruction without awaiting the conclusion of the trial.

26) The entire confusion appears to have arisen on account of Rule 13 of the Rules of 2022, which is preceded by Rules 8 and 9. Rules 8 and 9 deal exclusively with the procedure contemplated under Section 52A of the NDPS Act and do not relate to the general procedure for drawing samples for chemical examination. However, the distinction between general sampling and the drawing of representative samples for the specific purposes of Section 52A, which was expressly maintained under the earlier Standing Orders, has not been clearly brought out in the Rules of 2022. Ordinarily, general samples are required to be drawn at the spot, in the presence of the accused, immediately after the seizure, in accordance with the prescribed procedure. The object of drawing such samples is to establish the prosecution case, through scientific evidence obtained from the examination of those samples, that the seized contraband is of the particular nature and description alleged by the prosecution. Such sampling serves an entirely different purpose than that served by the drawing of representative samples in the presence of a Magistrate under Section 52A of the NDPS Act, which is intended to provide primary evidence in substitution for the physical production of the seized contraband during the trial. Thus, Rule 13, if interpreted as making certification by the Magistrate mandatory for all samples drawn for chemical examination, fails to maintain the distinction between these two distinct procedures and defeats the very

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purpose underlying the separate requirements for general sampling and sampling under Section 52A of the NDPS Act. Further, Rule 13 is silent with regard to the place where the sample is required to be drawn for certification. It is also not clear whether the samples required to be drawn under Rules 8 and 9 are required to be sent to the Forensic Science Laboratory for chemical analysis.

27) The contention of learned counsel for the petitioner that the samples drawn in the presence of the Magistrate were not immediately sent to the Laboratory in compliance with Clause 13 of Standing Order No. 1/1988 is unsustainable, particularly in view of the fact that Rule 29 of the Rules of 2022 repeals all the previous Standing Orders. Upon a close scrutiny of the aforesaid distinction between the two procedures, I am of the opinion that the samples required to be sent to the Laboratory for chemical examination need not invariably be drawn in the presence of a Magistrate, as contemplated under Rule 13 of the Rules of 2022. There is no statutory requirement to draw samples in the presence of a Magistrate except for the specific purpose contemplated under Section 52A of the NDPS Act. The Rule-Making Authority is not borne in mind the aforesaid distinction between drawing samples for the purpose of sending them to the Laboratory for chemical examination and drawing representative samples for the purpose of producing them as primary evidence in terms of sub-section (4) of Section 52A of the NDPS Act.

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28) Now, adverting to the merits of the case, a commercial quantity of contraband has been seized. A close examination of the prosecution case reveals that the Scorpio vehicle, driven by accused Amandeep, was escorting the Canter vehicle, which was being driven by accused Jagraj Singh. Indisputably, no contraband was recovered from the Scorpio vehicle; rather, the contraband was recovered from the Canter vehicle. The conduct of accused Amandeep in stopping his vehicle well ahead of the checkpoint and attempting to take a U-turn to flee from the spot provides a prima facie basis for the Investigating Agency to allege that he was escorting the Canter vehicle, in which the alleged contraband was being transported. Apart from this, the Investigating Agency has also collected material indicating that the contraband seized was to be delivered to Gurditta Singh and that Gurditta Singh had transferred an amount to Amandeep. According to the prosecution, the said amount was paid as consideration for the contraband seized. However, the accused has claimed that the amount was paid towards the sale consideration of the Scorpio vehicle, which he had agreed to sell. Such defence cannot be accepted at this stage, particularly when the twin conditions prescribed under Section 37 of the NDPS Act have not been satisfied.

29) In the result, the bail applications being devoid of merit, are hereby dismissed. However, the petitioners shall be at liberty to renew their prayer for bail after the examination of the relevant witnesses before the trial court, if the evidence so recorded is

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favourable to them. In the event of any such application being filed, the same shall be considered on its own merits and in accordance with law.

(MUNNURI LAXMAN), J

Crt_4 (2022)
Narendra

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