



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 3023/2025
CNR: RJHC020411002025 | URN: CRLMP / 7181U / 2025

Aniket S/o Sudhir Jain, Aged About 39 Years, R/o 153, Shanti
Kunj, Alwar (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Represented Through Public
Prosecutor.
2. Kishanlal Son Of Kajodram, Presently SI P.S. Malakhera,
District Alwar, Rajasthan.

-----Respondents

For Petitioner(s)	:	Mr. AK Gupta, Sr. Adv. assisted by Mr. S.P. Singh, Adv. Mr. Gourav Agarwal, Adv. Mr. Sarwat Alam, Adv. Mr. Ashutosh Singh Naruka, Adv.
For Respondent(s)	:	Mr. Amit Gupta, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE

23/07/2026

1. Instant Cr. Misc. Petition under Section 528 of BNSS has been filed on behalf of the petitioner assailing the order dated 30.01.2025, passed by learned Sessions Judge, Alwar, Rajasthan in Criminal Revision No.333/2024 whereby learned Revisional Court dismissed the revision petition filed by the petitioner and affirmed the order dated 21.09.2024, passed by learned Civil Judge cum Judicial Magistrate, Malakhera, District Alwar, whereby learned trial Judge framed the charge against the petitioner for offence punishable under Section 8/25 of NDPS Act.



2. Brief facts of the case are that the accused-petitioner is serving as a Vice President (Technical) in Airtel Company at Gurgaon. As per the prosecution case, on 31.01.2022, an FIR was lodged by one Kishanlal, SI, Police Station Malakhera, District Alwar, which was registered as FIR No.86/2022 for offence punishable under Section 8/20 of NDPS Act against two accused persons namely Ramanand Meena and Rajesh Balai. In the said FIR, it was alleged by the complainant that during blockade, at about 2:30 PM, he stopped a motorcycle bearing No.RJ14-HS-1289 on which two persons were sitting who disclosed their names as Ramanand Meena and Rajesh Balai. During search, 300 grams ganja from the possession of Ramanand Meena and 200 grams ganja from the possession of Rajesh Balai was recovered.

3. After thorough investigation, Police filed charge-sheet against the accused persons including the present petitioner. The petitioner was implicated in this case by the Investigating Agency only on the basis that earlier he was the registered owner of the motorcycle, which was used by the aforesaid accused persons. After filing of the charge-sheet, learned trial Court framed the charge against the petitioner for offence under Section 8/25 of NDPS Act vide order dated 21.09.2024. The said order was challenged by the petitioner by filing of the revision petition, which was dismissed by the Revisional Court vide order dated 30.01.2025 and affirmed the order of charge. Aggrieved thereby, the present Cr. Misc. Petition has been preferred by the petitioner.

4. Assailing the charge order dated 21.09.2024 of the learned trial Court, which is confirmed by the order dated 30.01.2025 of the learned Revisional Court, learned Senior Counsel Shri A.K.



Gupta, assisted by Shri S.P. Singh and others, argues that there is not even a bit of evidence on record to prosecute the petitioner under Section 8/25 of the NDPS Act. He further contends that the prosecution witness Naveen's statement recorded under Section 161 Cr.P.C. clearly shows that the petitioner had sold his vehicle to the co-accused well before the alleged recovery of contraband article Ganja and that the co-accused was in possession of that vehicle. It is further submitted that the said statement also establishes that the witness Naveen is engaged in the business of sale and purchase of vehicles. Counsel submits that the witness, in very clear terms stated that vehicle (motor cycle) in question was sold on 02.12.2019 through him to co-accused Ramanand Meena and since then, the said vehicle is being used by Ramanand Meena. Learned Senior Counsel submits that in these facts and circumstances, the petitioner cannot be charged for the offence punishable under Section 8/25 of the NDPS Act merely on the ground that he is the registered owner of the vehicle on which the co-accused persons were travelling when they were found in possession of the contraband article i.e., Ganja weighing 500 grams, concealed in the pockets of their clothing.

5. Learned State Counsel has opposed the submissions advanced on behalf of the petitioner. He submits that the petitioner is the registered owner of the vehicle and therefore, he is responsible for the offence punishable under Section 8/25 of the NDPS Act. He has supported the impugned orders passed by both the Courts and has further submitted that the present petition is, in substance, a second revision preferred in the garb of a petition



under Section 482 Cr.P.C. Finally he prays dismissal of this petition.

6. I have considered the submissions advanced at the bar by both the parties and have scanned the material available on record, including the charge-sheet as well as the impugned orders.

7. Section 25 of the NDPS Act reads as under:

"25. Punishment for allowing premises, etc., to be used for commission of an offence. —Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence."

8. A perusal of the above quoted section shows why the phrase "knowingly permits it to be used for" was included. If a house, room, enclosure, space, place, animal or conveyance, is used to commit an offence, the person who owns the same is not chargeable with the offence under Section 25 of NDPS Act simply because he is the owner of the same.

9. Therefore, the expression "knowingly" assumes paramount significance in the context of Section 25 of the NDPS Act. Unless it can be established, at least prima facie, that the accused had conscious knowledge that his house, vehicle, premises, or any other property was being used for the storage, concealment, or transportation of contraband, no offence under Section 25 can be said to be made out. The essential ingredient of knowledge cannot



be presumed merely from ownership of the property. The ownership of the vehicle by the petitioner does not, in itself, create any ground whatsoever to prosecute the petitioner under Section 25 of the NDPS Act. It is the responsibility of the prosecution to prove, at least prima facie, that the owner knew that his vehicle was being used for committing an offence under the NDPS Act. Lack of any material that may prove the knowledge, complicity, or participation of the owner in using the vehicle in the commission of the offence under NDPS Act would result in non-compliance of the ingredients of Section 25 of the Act. Ownership of the vehicle without any material linking the petitioner to the transportation and possession of the contraband goods cannot make him criminally liable and filing of charge-sheet against the owner on the ground of mere registration of the vehicle is, therefore, legally unsustainable. Knowledge or conscious permission forms the sine-qua-non for invocation of Section 25 of NDPS Act.

10. This Court may also gainfully refer to judgment of the Hon'ble Supreme Court in the case of **Balwinder Singh versus Asstt. Commissioner, Customs and Central Excise**, reported in **2005 (4) SCC 146**, wherein, it was observed in para-3 as follows:

"3. The present Appellant has been found guilty on the ground that he was the registered owner of the vehicle P.J.A. 8677. Counsel for the Appellant contends that he purchased this lorry in 1982, along with one Kesar Singh but in 1986 he transferred the vehicle to a third party and the Investigating Officer, P.W. 13, who was examined, deposed that during the course of his investigation he came to know that though the present Appellant was the original owner of vehicle bearing Registration No. P.J.A. 8677, he had sold the vehicle to



one Sucha Singh in 1986, however, the registration was not changed in his name. This Appellant was convicted solely for the reason that he was the registered owner of the vehicle P.J.A. 8677. There is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There is also no evidence to prove the conspiracy set up by the prosecution. Therefore, it is clear that though the articles were recovered from the lorry, there is no evidence to show that the Appellant had any control over the vehicle nor was he in possession of these drugs. In the result, we allow the appeal and acquit the Appellant Balwinder Singh of all charges framed against him."



11. According to this Court, the Police cannot blindly rely upon Section 35 of the NDPS Act and rope in the owner of the vehicle for the offence under Section 25 of the NDPS Act on the basis of statutory presumption. It is the solemn duty of the prosecuting agency to bring on record cogent material or evidence to discharge the preliminary burden in order to invoke statutory presumption and this presumption cannot be pressed into service or operated in vacuum.

12. The NDPS Act is a special penal statute enacted to combat the grave societal menace of narcotic drugs and psychotropic substances while, at the same time, ensuring that the constitutional guarantee of personal liberty is not sacrificed at the altar of stringent enforcement. The legislative scheme of the Act seeks to maintain a delicate balance between the individual's right to liberty and the compelling public interest in preventing and curbing drug-related offences. Given that the Act prescribes severe punishments and imposes stringent conditions even for the grant of bail, it becomes all the more imperative for the prosecution to strictly discharge its burden of establishing the



requisite mental element or culpable knowledge wherever the statute so requires.

13. While the provisions of the NDPS Act undoubtedly deserve strict construction and rigorous enforcement, such strictness cannot be carried to an extent that undermines the fundamental principles of criminal jurisprudence, which are founded upon the concept of mens rea or mental culpability. This assumes even greater significance in cases where criminal liability is sought to be fastened upon the registered owner of a vehicle for the alleged acts of the driver or any other person found in possession of or transporting contraband. Unless the prosecution is able to prima facie establish that the owner had conscious knowledge of, consented to, or was otherwise complicit in the use of the vehicle for the commission of the offence, criminal liability cannot be inferred merely on the basis of ownership.

14. The Hon'ble Supreme Court in **Harbhajan Singh Vs. State of Haryana**, reported in **2023 SCC OnLine SC 490**, held in Paras 7, 8, 11, 12 and 13 as follows:

"7. In the case in hand, the prosecution has failed to produce any material on record to show that the vehicle in question, if was used for any illegal activity, was used with the knowledge and consent of the Appellant. Even presumption as provided for under Section 35 of the NDPS Act will not be available for the reason that the prosecution had failed to discharge initial burden on it to prove the foundational facts. In the absence thereof, the onus will not shift on the accused.

8. The issue was considered by this Court in **Bhola Singh's** case (supra). It was opined that unless the vehicle is used with the knowledge and consent of the owner thereof, which is sine qua non for applicability of Section 25 of the NDPS Act, conviction thereunder cannot be legally sustained. Relevant paragraphs thereof are extracted below:



"8. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh, the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out."

9. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below:

"35.Presumption of culpable mental state.—

(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

10. While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab (2008) 16 SCC 417 while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play. 11. Applying the facts of the present case to the case cited above, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lays on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established





by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidences which the prosecution seeks to rely on is the Appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana and that the Appellant had taken the truck on superdari. Registration of the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others.

11. The appellant in his statement recorded under Section 313 CrPC denied all the suggestions. In the entire evidence led by the prosecution, no material was produced against the Appellant to discharge initial burden to prove the foundational facts that the offence was committed with the knowledge and consent of the Appellant. It is a case in which he was not with the vehicle nor was he arrested from the spot when the accident occurred or when truck and contraband were taken into custody. He has been convicted merely on the ground that he was the registered owner of the truck. The Trial Court had put entire burden of defence on the Appellant being the registered owner of the vehicle. The Court held that the driver and cleaner of the vehicle being poor will not take risk of smuggling such huge quantity of contraband without the connivance of the owner and it was for the appellant to clear his stand. The judgment of the Trial Court was upheld by the High Court.

12. In the case in hand, the primary error committed by the Courts below while convicting the Appellant is that the onus is sought to be shifted on him to prove his innocence without the foundational facts having been proved by the prosecution. Hence, the conviction of the Appellant cannot be legally sustained.

13. For the aforementioned reasons, the appeal is allowed. The judgments passed by the Courts below are set aside. The bail bonds of the Appellant stand discharge."

15. Now, advertent to the facts and evidence of the present case, this Court is of the opinion that other than the fact that the petitioner is the registered owner of the motorcycle on which the co-accused persons were travelling when they were found in





possession of the contraband article i.e., Ganja concealed in the pockets of their clothing, no other evidence is available on record linking the petitioner to the contraband found in the possession of the co-accused. On the contrary, it is evident from the material collected by the Investigating Agency that the vehicle in question had been sold by the petitioner nearly two years prior to the date of recovery. A careful scrutiny of the statement of the witness Naveen shows that the vehicle in question was sold, through him, to the co-accused on 02.12.2019, and that the co-accused has, ever since, been in power and possession of the said vehicle. The said witness has also stated that on account of certain technicalities, the registration was not transferred in the name of the co-accused. This Court further finds that co-accused, Ramanand Meena, filed an application before the learned trial Court seeking interim custody of the motorcycle on supurdagi, claiming himself to be the owner thereof by virtue of an agreement to sell. The said application was allowed by the learned trial Magistrate and the motorcycle was accordingly handed over to co-accused Ramanand Meena on supurdagi.

16. In view of the foregoing discussion, this Court finds that sufficient material was not available on record against the petitioner to prosecute him for the offence punishable under Section 8/25 of the NDPS Act, inasmuch as mere registration of the vehicle in the name of an accused is not enough to infer that he knowingly permitted the vehicle to be used in the commission of an offence under Section 8/25 of the NDPS Act.

17. Consequently, this Cr. Misc. Petition is allowed. Both the impugned orders being the charge order dated 21.09.2024 passed



by the learned trial Court and the order dated 30.01.2025 passed by the learned Revisional Court are hereby quashed and set aside and the petitioner stands discharged of the offence under Section 8/25 of the NDPS Act.

18. Stay application and pending application(s), if any, also stand disposed of.

(ANIL KUMAR UPMAN),J

15/GAUTAM JAIN