



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5484/2024

Irfan S/o Sh. Taaj Mohd., Aged About 19 Years, R/o Devaldi, Ps
Arnod, Dist. Pratapgarh, Raj.

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Ravi Panwar
For Respondent(s) : Mr. Vikram Rajpurohit, Dy.G.A
Mr. R.S.Bhati, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

29/01/2025

1. By way of filing this instant Criminal Misc. Petition under Section 482 CrPC, the petitioner has challenged the order dated 11.12.2023 passed by the learned Special Judge, NDPS Cases, Pratapgarh in Criminal Case No. 11/2023, whereby the learned Judge has rejected the application filed by the petitioner.
2. The gist of the present case is that the petitioner has been arraigned as an accused and arrested in a case under the NDPS Act for the offence under sections 8/22, 25 for having possession of 400 grams MDMA wherein trial had commenced before the learned Special Judge, NDPS Cases, Pratapgarh (for short, "the trial Court"). After seizure the samples were taken from the recovered contraband and sent



to the FSL. During the pendency of the trial, the petitioner had moved applications on 28.04.2023 and 27.07.2023, seeking direction for taking sample from the original article lying in maalkhana for forensic examination to bring the true facts on record. However, the learned trial Court, vide order dated 11.12.2023, rejected the said applications and declined to take sample from the remainder article for the purpose of sending the same for forensic analysis. Aggrieved thereby, the petitioner had preferred the present misc. petition.

3. Heard learned counsels present for the parties and gone through the material available on record.
4. As per Standing Order No. 1/89 issued by the Government of India, Ministry of Finance, the seizure process of narcotic drugs and psychotropic substances must follow stringent guidelines to ensure proper handling, disposal, and prevention of theft or substitution. The Standing Order specifically addresses the safe disposal of narcotic substances, including ensuring that substances are not improperly handled or substituted. In the present case, the seizure of the contraband did not adhere to these protocols as outlined in Standing Order No. 1/89.
5. By way of filing the instant Misc. Petition, the petitioner made a prayer that the narcotic substance marked as "Article A" was not properly handled and that the sample sent for chemical examination could have been substituted or



improperly stored, therefore, in line with the requirements of Standing Order No. 1/89 and to ensure the integrity of the trial, it is essential that a fresh sample from the remaining 380 grams of the substance be drawn under judicial oversight and sent for forensic analysis to ascertain the authenticity of the recovered contraband.

6. At this stage, it is pertinent to reproduce Section 52A of the NDPS Act, which lays down the procedure for inventory, certification, and disposal of seized narcotic substances. Section 52A states as follows -

52A. Disposal of seized narcotic drugs and psychotropic substances.—

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

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

*(a)certifying the correctness of the inventory so prepared; or
(b)taking, in the presence of such Magistrate, photographs of such drugs,substances or conveyances and certifying such photographs as true; or*

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

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

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

7. The purpose of Section 52A of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) is to sanctify the seizure and ensure the proper disposal of narcotic drugs, psychotropic substances, controlled substances, and conveyances involved in such cases. Previously, when law enforcement agencies seized large quantities of contraband, the challenge of storing and preserving such substances at police stations arose. The sheer volume of seized substances, often running into quintals or even 50 kg or more, made storage and maintenance a cumbersome task.
8. Moreover, during prosecution, it was necessary to produce the entire quantity before the Court to establish the case,



which further complicated the handling of such contraband. The prolonged storage of these substances also increased the risk of pilferage, burglary, accidental decay due to environmental factors such as rain, or even damage caused by rodents or by any other means. These challenges not only posed logistical difficulties but also raised concerns regarding the integrity and security of the seized substances.

9. To overcome these issues, Section 52A was introduced, providing a structured mechanism for inventory preparation, certification, and disposal of seized substances. The provision allows the authorized officer to prepare a detailed inventory, take certified photographs, and draw representative samples in the presence of a magistrate, ensuring that the prosecution's case remains intact without the need to physically store and present the entire bulk before the Court. Furthermore, the law expressly states that such certified inventory, photographs, and samples shall be treated as primary evidence, thereby facilitating the prosecution while mitigating the risks associated with prolonged storage of large quantities of narcotic substances.

10. A key objective of this provision is to ensure that the entire recovery process is verified and authenticated by a Judicial Magistrate. The magistrate is tasked with checking and recording critical details such as the weight, physical appearance, type of container, and other relevant identifying particulars of the seized contraband. The verification of the



seizure memo before the magistrate further strengthens the credibility of the police action, ensuring transparency and legal compliance. This judicial oversight serves as a safeguard against any potential tampering, substitution, or procedural irregularities, thereby reinforcing the integrity of the evidence.

11. Furthermore, Section 52A alleviates the necessity of producing the entire bulk of seized contraband before the Court during the trial. Instead, an inventory prepared under the supervision of the magistrate, accompanied by certified photographs and representative samples, is deemed sufficient for evidentiary purposes. This procedural framework significantly reduces the logistical and security challenges associated with transporting and storing large volumes of seized substances within Court premises. By expressly treating such inventory, photographs, and samples as primary evidence, the provision ensures that the prosecution's case remains legally sound without requiring the physical presence of the entire contraband in the courtroom.

12. Once the inventory is duly certified by the magistrate under Section 52A, it serves as admissible evidence regarding the seized contraband, facilitating its lawful disposal. This mechanism effectively mitigates the risks of theft, deterioration, or substitution of the seized substances, ensuring their secure handling. Additionally, by allowing for



the preservation of certified inventory and samples, Section 52A upholds the evidentiary requirements of the trial while streamlining the judicial process. The provision thus strikes a balance between efficient case management and the practical challenges associated with handling large quantities of contraband, ensuring that the enforcement of the NDPS Act remains both effective and legally robust.

13. It is a settled principle of criminal jurisprudence that every accused is entitled to a fair trial, which necessarily includes the right to present a legitimate defense and seek verification of material evidence that forms the foundation of the prosecution's case. The petitioner, in the instant matter, has raised a cogent and legitimate plea, contending that out of the 400 grams of substance that was said to be recovered, the police collected 20 grams from the spot and sent it to FSL. As per the defence taken, the sample sent for forensic examination does not represent the alleged contraband recovered from him, but rather pertains to some other case and as such an aspersion is made that the sample sent was not taken from the original article 380 gram lying in the maalkhana. Such a contention, if substantiated, would render the entire prosecution case fallacious, thereby leading to an irreversible miscarriage of justice.

14. The petitioner asserts that the sample sent to FSL and its report would be a fallacy since that sample was not the same which claimed to be taken from the entire article. In



such scenario, the fundamental question that arises is—what prejudice would be caused to the prosecution if a fresh sample of 10 grams is drawn from the remaining substance in the presence of a judicial officer and sent for forensic analysis? The essence of criminal law lies in separating truth from falsehood—***Fiat justitia ruat cælum*** (let justice be done though the heavens fall).

15. It is trite that in judicial proceedings, considerations of time and financial expenditure, though relevant, must yield to the paramount objective of securing justice. The potential drawbacks of additional forensic examination are limited to procedural delay and financial implications, both of which can be effectively mitigated. Given that the trial remains at a nascent stage, with multiple witnesses yet to be examined, any loss of time can be compensated within the natural progression of the proceedings. Further, to expedite the process, the Court deems it appropriate to direct the Director, Forensic Science Laboratory (FSL), to ensure the swift dispatch and analysis of the fresh sample, thereby minimizing any undue delay.

16. As regards the financial burden, it is pertinent to note that the prosecution's expenses in criminal trials are borne by the State exchequer, in furtherance of the public interest. In such circumstances, if the State can justifiably incur expenditure to establish the guilt of an accused, it follows by necessary implication that reasonable costs towards



establishing his defense should not be viewed as an undue burden. It is well within the discretion of the Court to direct an accused to bear a portion of such expenses in cases where the application for forensic verification is found to be delayed or frivolous. However, in the present matter, since the trial is still at its inception, no such direction is warranted at this stage. The interests of justice, therefore, demand that the petitioner's request be allowed without imposing any financial condition upon him.

17. If the accused's assertion proves to be false, the fresh forensic report would validate the prosecution's case, further strengthening its evidentiary value. On the contrary, if the analysis of the 10 gram sample sent under court monitoring, reveals that the retained contraband is not a narcotic substance as defined under the NDPS Act, the accused would be exonerated from wrongful prosecution. This process, therefore, serves the dual purpose of upholding the integrity of the prosecution's case while simultaneously safeguarding an innocent person from an unwarranted conviction. The criminal justice system mandates that no individual should be subjected to penal consequences unless the allegations are proved beyond reasonable doubt.

18. This approach aligns with the legislative intent behind Section 52A of the NDPS Act, which emphasizes transparency, judicial oversight, and procedural fairness in handling seized contraband. Once the new sample is



analyzed, and if it indeed turns out to be a narcotic substance, the prosecution would be fortified with irrefutable scientific evidence, thereby eliminating any scope for procedural infirmities that could be exploited by the defense at a later stage. Conversely, if the substance is found to be innocuous, it would prevent an unjust conviction.

19. Furthermore, it is a cardinal principle of criminal jurisprudence that a court of law must weigh both aspects—the prosecution’s case and the defense plea—on the scales of fairness and reasonableness. The judicial process cannot afford to be one-sided or prejudiced against either party. It is imperative that the court scrutinizes the veracity of the prosecution’s case while simultaneously ensuring that the accused is not subjected to malicious prosecution or false implication, as alleged in the defense plea.

20. The crux of the petitioner’s contention is that the sample sent for forensic examination may not have been drawn from the recovered contraband, thereby raising serious doubts regarding the integrity of the investigation. If the defense’s claim holds merit, it would expose a grave procedural lapse, potentially amounting to malfeasance in prosecution and warranting judicial intervention to uphold the sacrosanct principles of criminal justice. Conversely, if the forensic analysis confirms the presence of a narcotic substance in the remainder contraband, it would reinforce the prosecution’s case, lending it unimpeachable credibility.



21. The court is duty-bound to balance the scales of justice by granting due consideration to both the prosecution's claim and the accused's defense. Denying the petitioner's request for a fresh forensic examination would amount to a dereliction of judicial duty, potentially leading to an irreversible miscarriage of justice. The law does not countenance conviction based on questionable evidence, nor does it countenance undue indulgence to the accused at the cost of the prosecution's legitimate case. Therefore, ensuring that the forensic verification is conducted afresh under judicial supervision serves the twin objectives of preserving the sanctity of criminal trials and safeguarding against wrongful prosecution.

22. At this juncture, it is imperative to clarify that allowing the petitioner's request for fresh forensic verification does not, in any manner, confer undue primacy upon the defense over the prosecution's case, nor does it grant the accused an opportunity to adduce evidence in his defense prematurely. The procedural framework of criminal trials, as enshrined in the Code of Criminal Procedure, 1973, delineates specific stages wherein an accused is permitted to lead defense evidence—most notably, after the completion of prosecution evidence, the recording of the accused's statement under Section 313 CrPC, and the optional statement under Section 315 CrPC. Thereafter, as per the mandate of Section 233 CrPC, the accused is afforded an opportunity to present his



defense. However, the present order does not fall within the purview of such a defense exercise; rather, it is predicated upon the fundamental principle of ensuring the sanctity and credibility of the prosecution's own case.

23. The jurisprudential bedrock of criminal trials rests upon the premise that the veracity of the prosecution's case must withstand judicial scrutiny. To this end, the legal framework provides ample provisions for cross-examination and re-examination, ensuring that the testimony of prosecution witnesses can be tested, their credibility examined, and any infirmities in the prosecution's version exposed. The present direction for fresh forensic examination is not intended to supplant this process but to fortify the prosecution's evidentiary foundation by dispelling any lingering doubts regarding the integrity of the seized contraband.

24. Moreover, deferring such an exercise until the post-Section 313 CrPC stage would not only be procedurally inconvenient but also detrimentally prolong the trial, given that additional time would inevitably be consumed in drawing fresh samples, dispatching them for forensic analysis, and awaiting the subsequent report. It is therefore both prudent and expeditious to undertake this exercise simultaneously with the ongoing prosecution evidence, thereby ensuring judicial economy without causing any undue delay in the trial process. Justice delayed is justice denied—hence, preemptive



verification at this juncture would serve the dual objective of truth-seeking and procedural efficiency.

25. In light of the foregoing, it is evident that the petitioner's request for forensic verification is neither frivolous nor intended to protract the proceedings but rather a necessary step to uphold the fundamental tenets of justice. The prosecution, instead of opposing such verification, should welcome it as an opportunity to dispel any lingering doubts regarding the credibility of the recovered contraband. It is well settled that the burden of proving the guilt of the accused beyond reasonable doubt lies squarely upon the prosecution (***onus probandi incumbit ei qui dicit, non ei qui negat***), and any step that fortifies the evidentiary foundation of the case ought to be viewed as a measure ensuring procedural integrity rather than an undue concession to the defense. The judicial conscience cannot remain impervious to the imperative of securing unimpeachable evidence, for justice must not only be done but must manifestly be seen to be done (***fiat justitia ruat caelum***). In ensuring a fresh forensic examination, the prosecution's burden to establish guilt beyond reasonable doubt is more effectively discharged, thereby reinforcing the legitimacy of the trial process.

26. This Court, therefore, finds no plausible reason to reject the petitioner's application, as granting the relief sought would ensure that the ultimate adjudication of the



case is grounded in incontrovertible scientific evidence rather than assumptions or conjectures.

27. Accordingly, the instant Criminal Misc. Petition is allowed. The impugned order dated 11.12.2023, passed by the learned Special Judge, NDPS Cases, Pratapgarh, in Criminal Case No. 11/2023, is hereby quashed and set aside. Consequently, it is directed that a fresh sample of 10 grams be drawn from the remaining 380 grams of seized contraband under the direct supervision of the Chief Judicial Magistrate (CJM) or Judicial Magistrate (JM), as the case may be. The concerned Magistrate shall personally oversee the sampling process from the maalkhana, ensuring that the sample is sealed with his official seal and signature, thereby affixing his *padnaam* (designation seal) on the same. The sample shall be forwarded to the Forensic Science Laboratory (FSL) under the Magistrate's official forwarding letter, which shall also bear a seal impression. The said seal impression shall be sent along with the sample to enable the forensic laboratory to verify and tally the authenticity of the forwarded contraband, eliminating any scope for substitution, contamination, or procedural irregularities.

28. Furthermore, the FSL is directed to expedite the forensic analysis and submit its report within a period of 30 days from the date of receipt of the sample. The said report shall be duly placed on record and shall form an integral part of the evidence. Both the prosecution and the defense shall





be at liberty to rely upon the forensic report by tendering it into evidence, ensuring that the trial proceeds with unimpeachable forensic corroboration.

29. This Court deems it imperative that these directions be strictly adhered to, ensuring that the process remains transparent, credible, and beyond the realm of reasonable doubt, in furtherance of the fundamental tenets of criminal justice.

30. The stay petition stands disposed of.

(FARJAND ALI),J

52-Mamta/-