



CNR: KAHC010096372025

NC: 2026:KHC:53490
CRL.P No. 2234 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 2234 OF 2025

BETWEEN:

SRI NEEL KISHORILAL RAM JI SHAH,
S/O. KISHOAL SHA @KISHORI SHA,
AGED ABOUT 35 YEARS,
R/O. 7TH TALBOAT COURT, KINGS BURY,
POSCODE: NW985B, LONDON.

PASSPORT ADDRESS

P.O BOX 98100, CODE 80100,
MOMBASA, KENYA.

PRESENT ADDRESS

NO.B-44, 4TH FLOOR, B-WING
MENDIS PLAZA, BANTS HOSPITAL ROAD
MANGALURU 575 001

...PETITIONER

(BY SRI HARISH N.R, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY POLICE INSPECTOR,
MANGALURU EAST POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
AMBEDKAR BEEDI, BENGALURU-560 001.
2. SUB INSPECTOR OF POLICE,
CITY CRIME BRANCH, MANGALURU CITY,
REP. BY STATE PUBLIC PROSECUTOR,



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HIGH COURT BUILDING, AMBEDKAR BEEDI,
BENGALURU-560 001.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R-1 & R-2)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) PRAYING TO QUASH THE CHARGE SHEET FILED AGAINST THE PETITIONER / ACCUSED NO.1 BY RESPONDENT / POLICE INSPECTOR, MANGALURU EAST POLICE STATION IN CR.NO.2/2023 FOR THE OFFENCE P/U/S 8(c), 20(b)(ii)(A)(B), 27(b) OF NDPS ACT, 1985 SET ASIDE THE ORDER OF TAKING COGNIZANCE DATED 28.12.2023 AND CONSEQUENTLY QUASH THE PROCEEDINGS AGAINST THE PETITIONER / ACCUSED NO.1 IN SPL.C.NO.5/2024 PENDING ON THE FILE OF PRL. DIST. JUDGE, MANGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs:-

"THEREFORE, it is respectfully prayed that this Hon'ble Court may kindly be pleased to quash the chargesheet filed against the petitioner/Accused No.1 by Respondent/ Police Inspector, Mangaluru East Police Station in Crime No.2/2023 for the offence punishable under Section 8(c), 20(b)(ii) (A) (B), 27(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 set-aside the order of taking cognizance dated 28.12.2023 and the consequently quash the proceedings against the petitioner/accused No.1 in Spl.C.No.5/2024 pending on the file of Prl. District Judge, Mangaluru, in the interest of justice and equity."



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2. The Petitioner is aggrieved by the charge sheet laid by the Respondent-Police in Spl.C.No.5/2024, pending on the file of the learned Principal District and Sessions Judge, Mangaluru, arising out of Crime No.2/2023 registered by the Mangaluru East Police Station for the offences punishable under Sections 8(c), 20(b)(ii)(A) and (B), and 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, for the sake of convenience, brevity and identification, referred to as the "**NDPS Act**").
3. The case of the prosecution, in brief, is that on 06.01.2023, upon receipt of credible information, Crime No.2/2023 came to be registered by Respondent No.1-Police. It is alleged that at about 6.00 a.m., the Sub-Inspector of the City Crime Division, Bengaluru City, received information to the effect that a person residing in Apartment No.B-44, Mendis Plaza Apartment, B-Wing, 4th Floor, was storing and selling ganja from the said premises to college students and members of the general public.
4. Based on the said information, the police officer is stated to have obtained a search warrant from the Deputy Commissioner of Police and thereafter proceeded to the spot along with the panch



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witnesses and other police officials and conducted a raid. Upon entering the premises and showing the search warrant, the occupants are stated to have expressed shock. During the course of the search, the police allegedly found 50 grams of ganja containing leaves and branches and two small packets containing ganja weighing approximately 900 grams, with the total quantity allegedly being 2 kilograms and 100 grams and valued at approximately Rs.50,000/-. It is in the aforesaid circumstances that the Petitioner was arrested and, subsequently, Crime No.2/2023 came to be registered at about 12.00 noon on the very same day.

5. It is further the case of the prosecution that, during the course of the raid and subsequent investigation, it was revealed that several other persons had allegedly purchased and consumed the said ganja. Consequently, those persons were also arrayed as accused in the aforesaid proceedings.
6. Sri.Harish.N.R., learned counsel for the petitioner, submission is twofold;

6.1. Firstly, that there is a violation of the procedure prescribed under Section 42 NDPS Act



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inasmuch as the petitioner was arrested before the seizure was made; and

6.2. Secondly, that the other accused was stated to have been consumers, who had approached this Court in various petitions; those proceedings have been quashed against the said other co-accused.

6.3. On both grounds, he submits that the above petition is required to be allowed.

7. The learned HCGP, however, would submit that there is no violation of the provisions of Section 42 of the NDPS Act. It is contended that, before conducting the raid at the premises of Respondent No.2, prior permission had been obtained from the Deputy Commissioner of Police and a search warrant had been duly secured. Upon entering the premises, the said search warrant was shown to the Petitioner, and thereafter the search was conducted, during which ganja was allegedly found, resulting in the Petitioner's arrest. Thus, the learned HCGP submits that the procedure contemplated under Section 42 of the NDPS Act has been duly complied with and that there has been no breach of the statutory requirements. Accordingly, she contends that the



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Petitioner's contention is wholly misconceived and untenable, warranting dismissal of the petition.

8. Heard Sri. Harish N.R., learned counsel for the petitioner and Smt. Rashmi Patel., learned HCGP for respondents No.1 and 2. Perused papers.
9. Section 42(1) of the NDPS Act, which is reproduced hereunder for easy reference;

42(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--(a)enter into and search any such building, conveyance or place;(b)in case of resistance, break open any door and remove any obstacle to such entry;(c)seize such drug or substance



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and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

10. A perusal of sub-section (1) of Section 42 of the NDPS Act would indicate that the provision confers the power of entry, search, seizure, detention and arrest upon an officer of the specified departments who is superior in rank to a peon, sepoy or constable and who has been duly empowered in that behalf by a general or special order of the Central Government or the State Government, as the case may be.



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11. The exercise of such power is predicated upon the officer having reason to believe, either from personal knowledge or from information furnished by any person and reduced into writing, that a narcotic drug, psychotropic substance or controlled substance, in respect of which an offence punishable under the Act has been committed, or any document or article furnishing evidence of such offence, is kept or concealed in any building, conveyance or enclosed place. Ordinarily, such entry and search is contemplated between sunrise and sunset. The second proviso, however, permits such a search between sunset and sunrise where the authorised officer has reason to believe that obtaining a search warrant or authorisation would afford an opportunity for the concealment of evidence or the escape of the offender, subject to the statutory requirement to record the grounds for such belief.
12. In the present case, the search was conducted after 6.00 a.m. on 06.01.2023, and the material on record indicates that the search was conducted after sunrise. There is no allegation of any resistance or obstruction to the entry of the police officials into the premises and, therefore, clause (b) of sub-section (1) of Section 42 of the NDPS Act is not attracted.



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Upon conducting the search, the authorised officer, on allegedly finding narcotic substance in the premises, was empowered under clause (c) of sub-section (1) to seize such substance and the other articles specified therein.

13. In the present case, Respondent No.1 is stated to have seized four small packets containing 50 grams of ganja and two small packets containing 900 grams of ganja, allegedly weighing a total of 2 kilograms and 100 grams. Since the said ganja was allegedly found in the premises of Accused No.1, Respondent No.1 proceeded to arrest Accused No.1 on the basis of the belief that he had committed an offence punishable under the NDPS Act.
14. Thus, insofar as the requirements of sub-section (1) of Section 42 of the NDPS Act are concerned, the material on record indicates that
 - 14.1. the officer concerned was a Police Inspector, being superior in rank to a peon, sepoy or constable, and was duly empowered to exercise the powers under the said provision.



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- 14.2. The officer had received information regarding the alleged commission of an offence under the NDPS Act,
- 14.3. entered the premises after sunrise and before sunset,
- 14.4. conducted the search, allegedly found narcotic substance, seized the same and
- 14.5. thereafter arrested Accused No.1 on the basis of his belief that an offence punishable under the NDPS Act had been committed.
15. In the circumstances, the essential requirements for exercise of power under Section 42(1) of the NDPS Act having been satisfied, the contention that there has been a violation of the said provision cannot be accepted.
16. As regards the proceedings against the other accused having been quashed, it is the contention of the Petitioner himself that those accused were consumers of the contraband. The Petitioner, on the other hand, is alleged to have been dealing in ganja and to have been in possession of a commercial quantity. The circumstances attributed to the Petitioner are, therefore, materially different from



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those attributed to the other accused. The principle of parity cannot be invoked where the factual circumstances and the nature of the allegations against the accused are distinct. Consequently, the fact that the proceedings against the other accused have been quashed, by itself, would not entitle the Petitioner to seek the same relief on the ground of parity.

17. In view of the above, this Court passes the following;

ORDER

- i. Criminal petition is **dismissed**.
- ii. All defenses available to the petitioner are left open to be agitated before the trial Court.
- iii. In view of disposal of the main petition, pending IA's does not survive for consideration. Hence, IA stands disposed of.



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(SURAJ GOVINDARAJ)
JUDGE