



CNR: KAHC010384512025

NC: 2026:KHC:41935
CRL.P No. 8291 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 8291 OF 2025

BETWEEN:

ASWIN SAMUEL JOHN
S/O BABY JOHN
AGED 24 YEARS
R/AT MAROTTIPARAMBIL
KANJIRAM PO, THIRUVARPU
KOTTAYAM, KERALA-686 020

...PETITIONER

(BY SRI: SIJI MALAYIL, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
SOLADEVANAHALLI POLICE STATION
REPRESENTED BY THE SPP
HIGH COURT BUILDING
BENGALURU-560 001
2. SHIVARAJ M.J
S/O OF NOT KNOWN
AGED 36 YEARS
POLICE SUB INSPECTOR
SOLADEVANAHALLI POLICE STATION
BANGALORE-560 090

...RESPONDENTS

Digitally
signed by
PADMAVATHI
B K

Location:
High Court of
Karnataka



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(BY SMT: DEEPTHI ALVA, HCGP FOR R1)

THIS CRL.P IS FILED UNDER SECTION 482 CR.PC (FILED UNDER SECTION 528 BNSS) PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS AGAINST THE PETITIONER WHO IS ARRAYED AS ACCUSED NO.2 IN SPL.CC.NO.162/2023 FOR ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 20(b), 20(b)(i) AND 22(c) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985, NOW PENDING BEFORE THE VIII ADDL. DISTRICT AND SESSIONS JUDGE (NDPS SPL.COURT), BENGALURU RURAL DISTRICT, BENGALURU.

THIS CRL.P, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner - accused No.2 is before the Court seeking the following prayer:

"WHEREFORE, it is humbly prayed that this Hon'ble Court be pleased to quash the entire criminal proceedings against the petitioner who is arrayed as Accused No.2 in Spl.C.C.No.162/2023 for the alleged offences punishable under Sections 20(b), 20(b)(i) and 22(c) of Narcotic Drugs & Psychotropic Substances Act, 1985, now pending before the VIII Additional District and Sessions Judge (NDPS Spl. Court), Bengaluru Rural District, Bengaluru, in the interest of justice."

2. Heard Sri. Siji Malayil, learned counsel appearing for the petitioner and Smt. Deepthi Alva, learned High Court Government Pleader appearing for the respondent No.1.



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3. Learned counsel appearing for the petitioner submits that the petitioner is drawn into the dragnet of crime only on the voluntary statement of accused No.1 recorded under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short). Therefore, this Court had directed the learned High Court Government Pleader to secure instructions with regard to any corroboration, recovery or otherwise from the hands of the petitioner or any other kind of corroboration that would entail dismissal of the petition.

4. Learned High Court Government Pleader, on instructions, and verification of the records submits that there is no corroboration, except the voluntary statement of accused No.1.

5. In that light, the issue stands completely answered by the judgment rendered by this Court in the case of **JUNAID HUSSAIN HAVERI v. UNION OF INDIA**¹, wherein this Court held as follows:

¹ 2026 SCC OnLine Kar 53



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"....

9. The Apex Court in the case of *TOFAN SINGH v. STATE OF TAMIL NADU*², has held as follows:

"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(Emphasis supplied)

This judgment is followed and the principles are reiterated in the case of *AJAY KUMAR GUPTA v. UNION OF INDIA*³, wherein it is held as follows:

"....

13. We may note that the trial court and High Court have relied upon the appellant's statement under Section 67 of the NDPS Act. In para 158 of the decision of this Court in Tofan Singh [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246], this Court held thus : (SCC p. 141)

"158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the



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Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(emphasis supplied)

14. Therefore, the appellant's statement recorded under Section 67 of the NDPS Act is not admissible in evidence and cannot be read in evidence."

(Emphasis supplied)

Again, the Apex Court in the case of *KARAN TALWAR v. STATE OF TAMIL NADU*⁴, has held as follows:

"....

10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. **The contention of the appellant is that he has been arraigned as accused No. 13 based on the confession statement of co-accused viz., accused No. 1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in Suresh Budharmal Kalani v. State of Maharashtra³, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him.** The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No. 23, he smelt the accused. The less said the better and we do not think it necessary to



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comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. **As regards the confession statement of the appellant in view of Section 25 of the Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in Ram Singh v. Central Bureau of Narcotics⁴. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No. 1 there is absolutely no material available on record against the appellant.**

11. When this be the position, the question is whether the two Courts were justified in holding that there is *prima facie* case against the appellant to proceed against him. In this contextual situation, it is relevant to refer to the decision of this Court in *Dipakbhai Jagadishchandra Patel v. State of Gujarat*⁵ Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:—

*"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. **All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a***



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strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge.”

(underline supplied)



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12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No. 1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a *prima facie* case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial."

(Emphasis supplied)

The judgment of the Apex Court rendered in *TOFAN SINGH's case* (supra) is followed by this Court in identical offences and proceedings against the accused therein and quashed the same, in the case of *PARITOSH CHANDRASHEKAR KULKARNI v. STATE OF KARNATAKA*⁵, wherein this Court has held as follows:

"....

9. The petitioner is dragged into the crime as accused No. 3 and in the charge sheet as absconder only on the confessional statements made by accused Nos. 1 and 2. There is no corroboration of any of the fact that became attachable to the petitioner. Therefore, it becomes an admitted fact that the petitioner is got into the web of crime only on the confessional statements of the co-accused without any spec of corroboration. In such circumstances, whether further proceedings should be permitted against the petitioner is required to be answered. The answer need not detain this Court for long or delve deep into the matter.

10. The Apex Court in the case of *Tofan Singh v. State of Tamil Nadu* has held as follows:

....

158. We answer the reference by stating:



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158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(Emphasis supplied)

The Apex Court in the case of *State v. Pallulabid Ahmad Arimutta* has held as follows:

....

11. Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the petitioner NCB and on carefully perusing the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], [Abu Thahir v. State, 2019 SCC OnLine Kar 3517], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294], [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] passed in each case, **it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking.** It has not been denied by the prosecution that except for the respondent in SLP (CrI.) No. 1569 of 2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.



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12. *It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246], that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], [Abu Thahir v. State, 2019 SCC OnLine Kar 3517], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294], [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16-9-2019 [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], 14-1-2020 [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], 16-1-2020 [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], 19-12-2019 [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] and 20-1-2020 [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] passed in SLP (Crl.) No. arising out of Diary No. 22702 of 2020, SLP (Crl.) No. 1454 of 2021, SLP (Crl.) No. 1465 of 2021, SLPs (Crl.) Nos. 1773-74 of 2021 and SLP (Crl.) No. 2080 of 2021 respectively. The impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], [Abu Thahir v. State, 2019 SCC OnLine Kar 3517], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294], [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] are, accordingly, upheld and the special leave petitions filed by the*



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petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

(Emphasis supplied)

The Judgment in the case of *Tofan Singh* is reiterated in *Balwinder Singh v. Narcotics Control Bureau* where the Apex Court holds as follows:

... ..

26. Now that it has been declared in *Tofan Singh's* case (*supra*) that the judgments in the case of *Kanhaiyalal (supra)* and *Raj Kumar Karwal (supra)* did not state the correct legal position and they stand overruled, the entire case set up by the prosecution against *Balwinder Singh*, collapses like a House of cards. It is not in dispute that *Balwinder Singh* was not apprehended by the NCB officials from the spot where the naka was laid and that *Satnam Singh* alone was apprehended in the Indica car. **The version of the prosecution is that after *Satnam Singh* was arrested, his statement was recorded under Section 67 of the NDPS Act wherein he ascribed a specific role to the co-accused - *Balwinder Singh* and the Sarpanch. The NCB officers claimed that they were on the lookout for both of them since they had managed to run away from the spot. While Sarpanch could not be apprehended, the NCB officers learnt from reports in the newspaper that *Balwinder* had been arrested by the Amritsar Police in an NDPS case and was lodged in the Central Jail, Amritsar. Permission was taken from the concerned Court to take *Balwinder Singh* into custody in the instant case and he was arrested. A notice was served on him under Section 67 of the NDPS Act and his statement was recorded. Treating his statement as a confessional statement, *Balwinder Singh* was arrested.**

27. Once the confessional statement of the co-accused, *Satnam Singh* recorded by the NCB officers under Section 67 of the NDPS Act, who had attributed a role to *Balwinder Singh* and the subsequently recorded statement of *Balwinder Singh* himself under Section 67 of



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the NDPS Act are rejected in the light of the law laid down in Tofan Singh (supra), there is no other independent incriminating evidence that has been brought to the fore by the prosecution for convicting Balwinder Singh under the NDPS Act. On ignoring the said confessional statements & recorded before the officers of the NCB in the course of the investigation, the vital link between Balwinder Singh³ and the offence for which he has been charged snaps conclusively and his conviction order cannot be sustained.

28. *As a result of the above discussion, we are of the opinion that Balwinder Singh deserves to be acquitted of the charge of being in conscious possession of commercial quantity of heroin under the NDPS Act. Ordered accordingly.*

....

31. *Thus, it can be seen that the initial burden is cast on the prosecution to establish the essential factors on which its case is premised. After the prosecution discharges the said burden, the onus shifts to the accused to prove his innocence. However, the standard of proof required for the accused to prove his innocence, is not pegged as high as expected of the prosecution. In the words of Justice Sinha, who speaking for the Bench in Noor Aga (supra), had observed that:*

"58. *..... Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."*

32. *The essence of the discussion in the captioned case was that for attracting the provisions of Section 54 of the NDPS Act, it is essential for the prosecution to establish the element of possession of contraband by the accused for the burden to shift to the accused to prove his innocence. This aspect of possession*



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of the contraband has to be proved by the prosecution beyond reasonable doubt."

(Emphasis supplied)

These judgments are again reiterated by the Apex Court in *Firdoskhan Khurshidkhan v. State of Gujarat* holding as follows:

....

"23. Now, coming to the case of appellant *Firdoskhan (A-2)* in Criminal Appeal No. 2044 of 2010.

24. It is not in dispute that the appellant *Firdoskhan (A-2)* was not apprehended on the spot or at the time of seizure. On a perusal of the panchnama (*Exhibit-30*), it is evident that *Firdoskhan* is not named therein. We find that even though *Anwarkhan (A-1)* was present with the raiding team from 4.30 p.m. onwards, no effort was made by any of the NCB officials to make an inquiry from him regarding the identity of his companion who allegedly fled away from the spot.

25. The name of *Firdoskhan (A-2)* cropped up for the first time in the statement of *Anwarkhan (A-1)* recorded under Section 67 of the NDPS Act. However, we are duly satisfied that the sequence in which the said statement came to be recorded completely discredits the reliability thereof. *Anwarkhan (A-1)* was apprehended at the bus stand with the packet of narcotic drug at around 4 : 30 p.m. His signatures had been taken on the panchnama (*Exhibit-30*) prepared at 9 : 00 p.m. and thus, it does not stand to reason that the Intelligence Officer would defer arresting *Anwarkhan (A-1)* to a later point of time because, as per the arrest memo (*Exhibit-43*) his arrest is shown at 11 : 45 p.m. It seems that this deferment in formal arrest of *Anwarkhan (A-1)* was only shown in papers so that the Intelligence Officer could record the statement of *Anwarkhan (A-1)* under Section 67 of the NDPS Act and avoid the



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same being hit by the rigours of Article 20(3) of the Constitution of India.

26. The admissibility of a confessional statement of the accused recorded under Section 67 of the NDPS Act was examined by this Court in the case of Tofan Singh (*supra*) and it was laid down that such confessional statements are not admissible in evidence.

27. Hence, the statement (Exhibit-42) of Anwarkhan (A-1) wherein he allegedly identified the appellant Firdoskhan (A-2) as the person who had escaped from the spot cannot be read in evidence against the appellant Firdoskhan (A-2) because the manner in which the said statement was recorded leaves much to be desired and creates a grave doubt on the sanctity thereof, in addition to the same having rendered inadmissible by virtue of Tofan Singh (*supra*).

28. The prosecution witness Deepak Pareek (PW-2) claimed that Firdoskhan (A-2) was apprehended from Shah Jahan Pur Police Station, Madhya Pradesh. However, no document pertaining to the apprehension/detention of appellant Firdoskhan (A-2) at the Shah Jahan Pur Police Station was placed on record by the prosecution. **Thus, the very manner in which the said accused was apprehended and brought to the NCB Office at Ahmedabad in the purported exercise of recording his statement under Section 67 of the NDPS Act is full of doubt and creates grave suspicion. Even otherwise, the confession of the accused recorded under Section 67 of the NDPS Act cannot be admitted in evidence as a confession as had been held in the case of Tofan Singh (*supra*). Hence the confessional statement (Exhibit-42) does not lend any succour to the prosecution in its quest to prove the charges against the accused Firdoskhan (A-2)."**

(Emphasis supplied)



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11. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, what would unmistakably emerge is that, the proceedings against the petitioner cannot be permitted to be continued, as there is not an iota of corroboration that would pin the petitioner to the offences, except the voluntary/confessional statements of the co-accused i.e., accused Nos. 1 and 2, recorded under Section 67 of the Act, which is clearly hit by Section 25 of the Evidence Act, as is considered by the Apex Court on an interplay between Section 25 of the Evidence Act and Section 67 of the Act. Permitting further proceedings against the petitioner who at any point in time was not alleged to be involved in any crime except in the aforesaid statements, would become an abuse of the process of law and result in patent injustice. The petitioner, who is a student pursuing his Masters elsewhere, beyond the shores of the nation, should not be made to suffer for the voluntary/confessional statements of the co-accused."

(Emphasis supplied)

On a blend of the judgments rendered by the Apex Court as quoted hereinabove, which also bear consideration in the order passed by this Court as afore-quoted and the unequivocal fact that the petitioner/accused No. 3 is drawn into the web of proceedings only on the voluntary/confession statement of the accused, further proceedings if permitted to continue would become an abuse of the process of law and result in miscarriage of justice. In that light I deem it appropriate to obliterate the proceedings against the petitioner."

(Emphasis supplied)

This Court in the afore-quoted judgment quashed proceedings against the accused petitioner therein by referring to various



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judgments of the Apex Court right from **TOFAN SINGH v. STATE OF T.N.** reported in **(2021) 4 SCC 1** on the ground that the accused was drawn into the web of proceedings solely on the basis of voluntary statements of the co-accused recorded under Section 67 of the Act.

6. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is **allowed**.
- (ii) Proceedings pending in Spl.CC No.162 of 2023 on the filed of the VIII Additional District and Sessions Judge (NDPS Spl. Court), Bengaluru Rural District, Bengaluru, *qua* the petitioner stands quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BGN
List No.: 2 Sl No.: 116