



CNR: KAHC010444242026

NC: 2026:KHC:51698
CRL.P No. 9472 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 9472 OF 2026

BETWEEN:

RAHAN M
S/O SUBRAMANIYAN,
AGED ABOUT 35 YEARS,
R/AT MANGATTIL, EZHUVATHIRUTHY,
PONNANI TALUK, MALAPURAM
KERALA - 979 577

...PETITIONER

(BY SRI. AKASH RAJU, ADVOCATE)

AND:

STATE OF KARNATAKA
BY HEBBAGODI POLICE STATION,
BENGALURU.

REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU - 560 001

...RESPONDENT

(BY SRI. RAHUL RAI K., HCGP)

THIS CRL.P IS FILED U/S 439 CR.P.C. (FILED U/S 483 BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO ENLARGE HIM ON BAIL, IN CR.NO.446/2025, SPL.C.C.NO.23/2026, WHICH WAS REGISTERED BY THE RESPONDENT HEBBAGODI POLICE ON 03/09/2025 UNDER SECTION 8(c), 22(a),22(b) AND 22(C) OF THE NDPS ACT, 1985, WHICH IS PENDING BEFORE THE HONBLE VIII ADDL. DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT AND SPECIAL JUDGE FOR NDPS, BENGALURU.

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by NANDINI M
S
Location: HIGH
COURT OF
KARNATAKA





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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused No.1 in Spl.C.C.No.23/2026, pending before the Court of VIII Addl. District and Sessions Judge & Spl. Judge (NDPS), Bengaluru Rural District, Bengaluru, arising out of Crime No.446/2025, registered by Hebbagodi Police Station, Bengaluru, for offences punishable under Section 22(c) of NDPS Act, is before this Court in this petition filed under Section 483 of BNSS, 2023, seeking regular bail.

2. Heard the learned counsel appearing for the parties.

3. FIR in Crime No.446/2025 was registered by Hebbagodi Police Station, Bengaluru for the offences punishable under Sections 8(c), 22(b), 22(a) and 22(C) of NDPS Act, 1985 against the petitioner herein, based on



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first information dated 03.09.2025 received from Sri Manjappa C.M., Inspector of Police ANW, CCB, Bengaluru. During the course of investigation of the case, petitioner was arrested on 03.09.2025 and remanded to judicial custody. After completing the investigation, charge sheet is filed against him and another for the aforesaid offences arraying him as accused No.1. His bail application filed before the trial Court was rejected. Therefore, he is before this Court.

4. Learned counsel for the petitioner submits that first informant who had received the credible information, has not reduced the said information in writing and has not forwarded the same to his higher officers as required under Section 42 of the NDPS Act. He submits that petitioner is in custody for more than one year. In support of his arguments, he has placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Kashmir Ram @ Pappi v. State of Punjab*** in ***Criminal Appeal No.3897/2025*** disposed of on 12.08.2026.



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5. Per contra, learned High Court Government Pleader has opposed the petition and submits that commercial quantity of contraband article is recovered from the possession of the petitioner, and therefore, in view of the rigor under Section 37(1)(b) of the NDPS Act, prays to dismiss the petition.

6. A reading of the first information submitted by the Police Officer attached to CCB police, Bengaluru, reveals that, on receipt of credible information on 03.09.2025 to the effect that the petitioner was making attempts to sell contraband articles to the students within jurisdiction of the Hebbagodi Police station, he had reported to the police station and based on his first information, FIR was registered against the petitioner and thereafter, a raid was conducted and the petitioner was found in possession of contraband article allegedly MDMA crystals, totally weighing 110.82 grams. The said contraband article was seized under a panchanama and thereafter, the accused was brought to the police station



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and arrested. Investigation of the case is now completed and charge sheet is filed.

7. A reading of Section 42 of the NDPS Act makes it very clear that, an empowered officer who receives the credible information, is necessarily required to take note and accordingly, reduce the same into writing in the prescribed Register and thereafter, forward such information to his higher officers before proceeding further. The question whether the FIR registered based on the credible information would suffice the requirements of Section 42 of the Act, was considered by the Hon'ble Supreme Court in the case of ***Darshan Singh v State of Haryana*** reported in **(2016)14 SCC 358**.

8. In the case of ***Kashmir Ram @ Pappi v. State of Punjab***, reported in **2026 INSC 854**, the Hon'ble Supreme Court, after referring to the judgment in ***Darshan Singh's case (supra)***, at paragraph Nos.25 to 29 has observed as follows :



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"25. The first issue that falls for our consideration, and that upon which the appeal principally turns, is the compliance with Section 42 of the NDPS Act, 1985. For the said purpose, an analysis of the bare text of the provision is undertaken hereinafter. Section 42, insofar as it is material, is worded as follows:

"42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(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 para-military 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 personal 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 ... 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 and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason*



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*to believe to be liable to confiscation under 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 ... 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.

- (2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."*

26. From the perusal of the provision it is evident that where the empowered officer proceeds upon prior information given by any person, that information is necessarily to be taken down in writing, whereas where he proceeds upon his personal knowledge no recording of the reasons of his belief is exacted, save that under the proviso the grounds of belief must be recorded if the search is to be conducted between sunset and sunrise; and that sub-section (2) obliges the officer, wherever he has taken down information in writing or recorded grounds of belief under the proviso, to send a copy thereof to his immediate official superior within seventy-two hours. To the extent so indicated the provisions are mandatory, and their contravention would affect the prosecution case and vitiate the trial, as was held by a



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three-Judge Bench of this Court in paragraph 25(2-C) of *Balbir Singh* case (supra), relied upon by the Appellant:

"Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial."

27. The content of the obligation so cast, and the consequences of a departure from it, were thereafter settled by the Constitution Bench in *Karnail Singh* case (supra), which considered *Abdul Rashid Ibrahim Mansuri* case (supra) and *Sajan Abraham* case (supra) and stated the resulting position in paragraph 35 in the following terms:

"35. (a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the



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move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42 ... Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

28. The submission of the Appellant, put at its highest, is that the present case answers to the concluding limb of clause (d) above, being that of an officer who does not record the information at all and does not inform his official superior at all, and that the concurrent finding of substantial compliance is therefore not merely erroneous



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but one which no Court could reasonably have reached upon the material. In support of that construction reliance was placed, before the Special Court, upon *Darshan Singh* case (supra), wherein this Court held in paragraph 13 that the mandate of Section 42(1) requiring the recording in writing of the details pertaining to the receipt of secret information, as also the communication of the same to the superior officer, is separate and distinct from the procedure stipulated under the provisions of the Code of Criminal Procedure; that the two procedures are exclusive of one another; that compliance with one would not infer compliance with the other; and that compliance with Section 42 —

"... will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code."

29. The proposition so laid down in *Darshan Singh* case (supra) is unexceptionable and we respectfully affirm it. The registration of an FIR and its onward transmission through the ordinary channels of the Code of Criminal Procedure are no substitute for the distinct obligation which Section 42 casts, and compliance with the latter is not to be assumed from the former. It is nevertheless necessary to notice the precise vice at which that proposition is directed. It is directed against an assumption, and against the practice of treating the registration of an FIR, without more, as discharging an



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obligation which the statute casts separately and independently. It does not enact a rule of exclusion, whereby the circumstance that an FIR came to be registered upon a writing emanating from the empowered officer himself is to be shut out from consideration altogether when the Court comes to determine, upon the totality of the material, whether the statutory purpose has in fact been served. The distinction is one between assuming compliance from a single circumstance and weighing that circumstance along with others, and it is a distinction which the Courts below did not overlook."

8. From the aforesaid, it is very clear that registration of FIR based on credible information received would not substitute the aforesaid compliance of Section 42 of NDPS Act. It is trite that non-compliance of Section 42 of NDPS Act would vitiate the very recovery of contraband article. Since there is no proper compliance of Section 42 of NDPS Act in the present case, the rigor under Section 37(1)(b) of NDPS Act cannot be made strictly applicable against the petitioner in the case on hand. Petitioner is in custody in the present case for more than one year.



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9. Under the circumstances, I am of the opinion that the prayer made by the petitioner for grant of regular bail needs to be answered affirmatively, subject to appropriate conditions. Accordingly, the following:

ORDER

The Criminal Petition is ***allowed***. The petitioner is directed to be enlarged on bail in Spl.C.C.No.23/2026 pending before the Court of VIII Additional District and Sessions Judge & Spl. Judge (NDPS), Bengaluru Rural District, Bengaluru, arising out of crime No.446/2025 registered by Hebbagodi Police Station, Bengalur for the offences punishable under Section 8(c), 22(b), 22(a) and 22(c) of NDPS Act, subject to the following conditions:

- a) The petitioner shall execute personal bond for a sum of Rs.1,00,000/- with two sureties, out of which, one shall be local surety, for the likesum, to the satisfaction of the jurisdictional Court;



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- b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;
- c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- d) The petitioner shall not involve in similar offences in future;
- e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

**Sd/-
(S VISHWAJITH SHETTY)
JUDGE**

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