GAHC010151912026

2026:GAU-AS:16711

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2064/2026

MD. MUJAFER HUSSAIN AND ANR
S/O - ABDUL HAKIM R/O - MOIJANG LAMKHAI, PS THOUBAL, DISTRICT THOUBAL, MANIPUR

2: MD ACHOUBA
S/O - KAYAM UDDIN R/O - KEIRAO MAKTING MAKHA LEIKAI
PS IRILBONG
DISTRICT - IMPHAL EAST
MANIPU

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM, GUWAHATI.

Advocate for the Petitioner : S KAUR, N NEOG,L BANIK

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

13.11.2026

Heard Mr. N.J. Dutta, learned counsel for the petitioners. Also heard Mr. M.P. Goswami, learned Addl. PP for the State.

2. This is an application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for grant of bail in respect of the accused/petitioners namely i) Md. Mujafer Hussain and ii) Md. Achouba in connection with NDPS Case No. 104/2025 vide Dillai P.S. Case No. 40/2025 and punishable under Sections 21(c)/25/29 of NDPS Act, 1985 pending before the learned Sessions Special Judge, Karbi Anglong, Diphu.

3. The two earlier bail applications, being Bail Application No. 2718 of 2025 and Bail Application No. 3667 of 2025, were rejected by this Court by orders dated 17.10.2025 and 11.12.2025, respectively.

4. The case of the petitioners is that on 31.07.2025, Munmi Chutia lodged a written FIR at Dillai PS to the effect that on 30.07.2025, while conducting routine Naka checking at NH 29 DillaiTiniali at about 10 P.M, one white Swift vehicle bearing registration No. WB02AG 9632 which was moving towards Manja from Dimapur side was signalled to stop. Accordingly, the driver of the vehicle stopped for checking and while checking, it was suspected that there might be some narcotics concealed inside the vehicle. Then, the matter was informed to SSP, Karbi Anglong and SDPO Bokajan gave authorization to WSI (P) Munmi Chutia for conducting search and seizure of narcotic psychotropic's substances if found. After sometime, DYSP (P) Shri Arup Baishya, APS and staff arrived at the Naka checking and in the presence of DYSP and Independent witnesses, the vehicle was searched thoroughly. During the search, two packets of muddy colour powdery substance suspected to be morphine were recovered weighting total of 2.127 Kg which was kept concealed in between the fuel tank and upper body inside one torn tube. The recovered substances were tested with the help of DDT kit and found positive for morphine. After that recovered substances

were seized, packed and sealed in the presence of independent witnesses and the driver and accompanied persons were apprehended namely 1. Achouba, son of Kayam Uddin, resident of KeitaoMakhtingLeikai, P.S. Irilbung, District Imphal East, Manipur and 2. Md. Mujafer Hussain, son of Abdul Hakim, resident of Moijing Lamkhai, P.S. and District Thoubal, Manipur.

5. The petitioners were produced before the Court of Judicial Magistrate First Class, Bokajan, Assam on 31.07.2025 and forwarded to judicial custody and since that day, they are in judicial custody.

6. Mr. N.J. Dutta, learned counsel for the petitioner, submits that the instant bail application has been preferred after rejection of the earlier two applications on two additional grounds i.e., violation of Section 42 and Section 50 of the NDPS Act.

7. With reference to Section 42 of the NDPS Act, learned counsel for the petitioners, by filing an additional affidavit, has referred to the search and seizure list annexed thereto, wherein the date and time of seizure has been shown as 30.07.2025 at 11:22 PM. However, referring to the Authorization Letter under Section 41(2) of the NDPS Act issued by the Sub-Divisional Police Officer, Balijan Sub-Division, Karbi Anglong, Assam, it has been pointed out that the same was issued on 31.07.2025. This itself shows that the search of the vehicle was carried out without any prior authorization, and therefore, the provisions of Section 42 of the NDPS Act have been violated, which entitles the petitioners to bail.

8. In support of his aforesaid contention, learned counsel for the petitioner

has relied upon a decision of a Coordinate Bench of this Court in **Abdul Khalique v. State of Assam [GHHC010276042023]** in connection with Bail Appln./4465/2023, wherein by order dated 04.04.2024, the petitioner therein was granted bail on the ground of violation of Section 42 by holding due compliance with the same to be mandatory. In this regard, the learned Coordinate Bench had relied upon the decision of the Apex Court in the case of **Sarija Banu Alias Janarthani Alias Janani &Anr. v. State through Inspector of Police**, reported in **(2004) 12 SCC 266**, wherein it was held as follows:

> "*7. It is pertinent to note that in the bail application of the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance with Section 42 is mandatory and t hat is a relevant fact which should have engaged the attention of the Court while considering the bail application.*"

9. It is further submitted by the learned counsel that since the search was carried out between sunset and sunrise, it was required of the police officer to record the grounds of his belief for proceeding without authorisation or search warrant and to communicate the same to his superior officer as per Proviso to Section 42(2) of the ND&PS act, which he failed to do. In this regard, learned counsel has relied upon **Karnail Singh vs. State of Haryana** reported in **(2009) 8 SCC 539**.

10. As regards compliance with Section 50 of the NDPS Act is concerned, learned counsel has drawn the attention of the Court to the FIR wherein it has been stated that for conducting personal search of the petitioners, option was

given whether they would like to be taken before a Magistrate or a Gazetted Officer for conducting their personal search, or whether they would allow the police to conduct their personal search on the spot; and that the personal search of the petitioners was conducted in the presence of Shri Arup Baishya, APS, Deputy Superintendent of Police, through H.G. Raju Timung, and during their personal search, some mobile handsets, driving license, etc., were recovered. Although no recovery of drugs was made upon such personal search, the same having been recovered from their vehicle, it was nevertheless incumbent upon the police to have strictly complied with the provisions of Section 50 of the NDPS Act once the police proceed to conduct a personal search of the accused.

11. It is contended that the petitioners, besides being given the option to be searched in the presence of a Magistrate or a Gazetted Officer, they were also given a third option to be searched before the police, which has been held to be illegal and not in accordance with Section 50 of the NDPS Act.

12. In support of his aforesaid contentions, learned counsel has relied upon the decision of the Apex Court in **State of Rajasthan v. Parmanand &Anr., (2014) 5 SCC 345**, as well as **State of Himachal Pradesh v. Surat Singh, 2026 INSC 240**. The sum and substance of the decision in Parmanand (supra) is that regardless of the fact that no recovery of any contraband is made upon personal search of the accused and the alleged recovery is made from any bag being carried by the accused, compliance with Section 50 NDPS Act was mandatory.

13. Finally, it has been urged that the petitioner has spent more than a year

behind bars, and although the trial is underway since the last two months, no witnesses have turned up, and therefore, also the petitioner is entitled to be granted bail because of long incarceration.

14. *Per contra*, the learned Additional Public Prosecutor submits that Section 42 of the NDPS Act would not be attracted in the facts of the present case *inasmuch* as this is a case of chance recovery. As is evident from the FIR itself, there was no prior information available with the informant and the recovery was made in the course of routine naka checking. Therefore, since the recovery was made while it was in transit, it is Section 43 of the NDPS Act that would be applicable, and therefore, alleged non-compliance with Section 42 of the NDPS Act is of no consequence.

15. In support of his aforesaid contention, learned Additional Public Prosecutor has referred to a decision of a Coordinate Bench of this Court in **Kumarjit Deb v. State of Assam [GHHC010194222024]** in connection with Bail Appln. 1737/2024 wherein the learned Coordinate Bench in the aforesaid decision has held as follows:

"20. Though, in view of the observations made by the Apex Court in the case of "Boota Singh and Ors –Vs- State of Haryana" (supra), this Court is of the opinion that a private (Wagon-R) car may not be regarded as a "public place" within the meaning of section 43 of the NDPS Act, 1985. However, the submissions made by the learned Additional Public Prosecutor to the effect that the seizure was made while the contraband was in transit is relevant and if the seizure is made in transit, the seizure would be regarded as a seizure made under Section 43 of the NDPS Act, 1985 and in that event, in light of the observations of the Apex Court in the case of "State of Haryana –Vs- Jarnail Singh and Ors.", the procedural requirement contemplated by the proviso to

Section 42 of the NDPS Act, need not to be followed.

21. Regarding the submission of the learned senior counsel for the petitioner that the word "transit" appearing in Section 43 of the NDPS Act, 1985 cannot be read on a standalone basis and it has to be read along with the word "any public place", I am unable to persuade myself. In the Section 43 of the NDPS Act, 1985, the legislature has used the word "or" in between the word "any public place" and "in transit". It has not used the word "and" between said phrases. The word "or" is a disjunctive word and where a statutory provision is clear and unambiguous the word "or" cannot be read as "and" by applying the principle of reading down.

22. The word "transit" has been defined in the Black Laws Dictionary (11th edition) as "the transportation of goods or person from one place to another". If we take that meaning of the word transit in this case, it would appear that in the instant case, the contraband was carried from Badarpur to Patharkhandi and it was seized at Karimganj Bypass Road at National Highway near Karimganj Bypass Road while the contraband was "in transit".

23. Thus, even if the seizure from a Maruti Wagon-R car in the instant case may not be regarded as a seizure at "a public place", however, as the contraband was seized while it was in transit, this Court is of the considered opinion that the seizure in this case appears to have been made under Section 43 of the NDPS Act, 1985. Hence, as per the observations made by the Apex Court in the case of "State of Haryana –Vs- Jarnail Singh and Ors."(supra), there may not be any requirement of complying with the procedural safeguards as provided in Section 42 of the NDPS Act, 1985."

16. Learned Additional Public Prosecutor has also contended that even if for the sake of argument Section 42 of the NDPS Act is assumed to be attracted, that is a question to be decided at the time of trial; and in this regard, reliance has been placed on the decision of the three-Judge Bench of the Apex Court in **Union of India through Narcotic Control Bureau Versus Md. Nawaz Khan in Criminal Appeal No. 1043 of 2021**, decided on **22.09.2021**,

wherein it has been held as follows:

"28. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in Karnail Singh (supra) was recently followed by this Court in Boota Singh v. State of Haryana 2021 SCC OnLine SC 32429.

17. It was further observed that in the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial."

18. It is submitted that the decision in Md. Nawaz Khan (Supra), being that of a three-Judge Bench, would override the decision in Sarija Banu (supra), which was a decision of a two-Judge Bench.

19. As regards violation of Section 50 of the NDPS Act, it is submitted that Section 50 clearly provides the options of the accused being searched before a Magistrate or a Gazetted Officer, and if the accused so prefers, before the police officer himself, and therefore there is no violation of the said provision and moreover, since no recovery was made from the person of the petitioners, Section 50 NDPS Act, is clearly inapplicable. Furthermore, the trial of the case is proceeding satisfactorily and there is no inordinate delay warranting the release of the petitioners on bail, particularly having regard to the fact that a huge

quantity of contraband was recovered from the petitioners and no satisfaction as required under Section 37 of the NDPS Act can be said to be warranted.

20. I have given my anxious consideration to the rival submissions.

21. As per allegation, the recovery of the commercial quantity of contraband was made from the private vehicle of the petitioners who were travelling therein. Although it has been held by the Apex Court in Boota Singh (supra) that a private vehicle cannot be regarded as a public conveyance for the purpose of Section 43, as explained by the learned Coordinate Bench of this Court in Kumarjit Deb (supra), the recovery having been made upon search of the private vehicle while in transit, Section 43 of the NDPS Act must be held to be applicable, and in this regard, I am in complete agreement with the view of the learned Coordinate Bench. Further to that, I also find sufficient force in the submission of learned Additional Public Prosecutor that since the recovery was not made on the basis of any prior information or personal knowledge of the informant, the provisions of Section 42 would not be attracted as it is a case of chance recovery. The Hon'ble Apex Court in **Karnail Singh** (Supra) has held:

> "*26.The material difference between the provisions of Sections 42 and 43 of the NDPS Act is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article, etc. and arrest of a person who is found to be in possession of any narcotic drug or*

psychotropic substance in a public place where such possession appears to him to be unlawful."

22. As already discussed, even if the vehicle in transit was a private one, Section 43 would be attracted when the recovery is made while the vehicle is in transit and **Karnail Singh** (Supra) does not hold to the contrary.

23. In **State of Punjab vs. Balbir Singh**, the Apex Court held:

> "*25. The question considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows :*
>
> *(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise.*
>
> *If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.*
>
> *(2-A)*
>
> *(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the*

person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

24. The same principle would be applicable to Section 42 of the ND&PS Act as well.

25. It is also to be noticed that although the written authorization is dated 31.07.2025, it is stated in the FIR that authorization over phone was given to the informant on 30.07.2025 itself and a perusal of Section 41(2) of the NDPS Act does not seem to insist on written authorization. Be that as it may, in view of the aforesaid finding regarding non-applicability of Section 42 of the NDPS Act to the facts of the present case, I do not find force in the submission of learned counsel for the petitioners in this regard.

26. We may now take up the contention regarding violation of Section 50 of the NDPS Act. It is not in dispute that no recovery was made from the personal search of the petitioners and the alleged recovery was made from the vehicle in which they were travelling. The law in this regard as laid down by the Hon'ble Apex Court may therefore be discussed at length.

27. In **Ranjan Kumar Chadha vs. State of Himachal Pradesh** reported in **2023 SCC OnLine SC 1262**, reference was made to the three-Judge Bench decision of the Apex Court in **State of Himachal Pradesh vs. Pawan Kumar** reported in **(2005) 4 SCC 350**, and it was observed as follows:

"96. What is most important to note in Pawan Kumar (supra) is that the search was not only of the bag, but also of the person of the accused, however, the contraband was recovered only from the bag and not from the person of the accused therein. What we are trying to highlight is that although in Pawan Kumar (supra) the search was of the accused as well as the bag, yet since the recovery of the contraband was only from the bag, this Court took the view that Section 50 would have no application.

101. Pawan Kumar (supra) was also relied upon in Jarnail Singh v. State of Punjab reported in (2011) 3 SCC 521. In the said case, opium was recovered from a bag which the accused was carrying. Section 50 was held to be not applicable as accused was not searched. It was held that:-

> "16. This apart, it is accepted that the narcotic/opium, i.e., 1 kg. and 750 grams was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be applicable. The aforesaid Section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted."

102. In Suresh v. State of Madhya Pradesh reported in (2013) 1 SCC 550, illicit articles were recovered from the polythene bags placed in a vehicle found to be in the possession of the accused person upon their personal search. This Court held that though the requirement of

Section 50 was not complied with qua the personal search of the accused, yet the provision was inapplicable qua the recovery made from the vehicle. Therefore, this Court gave a restricted interpretation to Section 50 and held as under:-

"19. Though a portion of the contraband (opium) was recovered from the vehicle for which Section 50 is not applicable, if we exclude the quantity recovered from the vehicle, the remaining would not come within the mischief of "commercial quantity" for imposition of such conviction and sentence. Taking note of the length of period in prison and continuing as on date and in view of non-compliance with sub-section (1) of Section 50 in respect of recovery of contraband from the appellants, we set aside the conviction and sentence imposed on them by the trial court and confirmed by the High Court."

105. However, in Dilip v. State of M.P. reported in (2007) 1 SCC 450, a contrary view was taken to that of Pawan Kumar (supra). In the said case, Section 50 was not complied with while conducting the search of the person and drugs were recovered from the accused's scooter. This Court while acquitting the accused held that the recovery made from the scooter ought to be inadmissible. It is pertinent to note that in this case the judgement in Pawan Kumar (supra) was not looked into. The Court held as under:-

"12. Before seizure of the contraband from the scooter, personal search of appellants had been carried out and, admittedly, even at

that time the provisions of Section 50 of the Act, although required in law, had not been complied with.

x x x x

15. Indisputably, however, effect of a search carried out in violation of the provisions of law would have a bearing on the credibility of the evidence of the official witnesses, which would of course be considered on the facts and circumstances of each case.

16. In this case, the provisions of Section 50 might not have been required to be complied with so far as the search of scooter is concerned, but, keeping in view the fact that the persons of the appellants were also searched, it was obligatory on the part of PW 10 to comply with the said provisions. It was not done."

106. The decision of Dilip (supra) was relied upon in Union of India v. Shah Alam reported in (2009) 16 SCC 644, wherein packets of heroin were recovered from the accused's shoulder bag. This Court rejected the argument of the State that Section 50 was not applicable as no further recoveries were made from the person of the accused after the recovery from the bag. Accordingly, the recovery was held to be in violation of Section 50 and the accused's acquittal was upheld. It was held that:-

"15. The legal proposition advanced by Mr. Terdal, based on the distinction between search of someone's person and the baggage carried by him/her is unexceptionable but his submission is not

supported by the facts of this case. We have carefully gone through the records of this case. From the evidence of the complainant, PW 1 and the seizure memo (fard baramdegi) Ext Ka-2 it is evident that the two respondents were subjected to a body search in course of which packets of heroin were found in the shoulder bags carried by them and were recovered from there.

16. The facts of the case in hand are very close to another decision of this Court in Dilip and Anr. v. State of M.P. where it was observed in paragraphs 12, 15 and 16 as under: …

> 17. On the facts of the case we find that the alleged recovery of heroin from the respondents was made in complete violation of the provisions of Section 50 of the Act."

107. A similar view was taken by a Division Bench of this Court in Parmanand (supra). This Court was called upon to consider whether Section 50 ought to apply when the search of the person and his bag is carried out. This Court held that if the bag is searched without searching the accused, then Section 50 would have no application. However, as a corollary it was held that if the bag carried by the accused is searched along with his search, then Section 50 would be applicable. The relevant portion is as under:-

"15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is

also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

108. Parmanand (supra) was relied upon by a threeJudge Bench in SK. Raju (supra).

109. Thus, one view which originated from Dilip (supra) and relied upon in SK. Raju (supra) implied that if a person is searched and along with him or her, his or her bag is also searched, then the benefit of Section 50 should be extended while conducting the personal search of the accused.

110. However, it is pertinent to note that although Pawan Kumar (supra) has been referred to and considered in SK. Raju (supra) yet, the Court in SK. Raju (supra) overlooked the fact that in Pawan Kumar (supra) also the search was not only of the person of the accused but also of his bag. Even in such circumstances, the larger Bench in Pawan Kumar (supra) took the view that Section 50 would not apply if nothing incriminating is recovered from the person of the accused. Thus, there is an apparent conflict between the two decisions. Section 50 not applicable when recovery made from bag, conveyance, etc.

111. A three-Judge Bench in the State of Punjab v. Baljinder Singh

reported in (2019) 10 SCC 473 considered the question:-

"8. … If a person found to be in possession of a vehicle containing contraband is subjected to personal search, which may not be in conformity with the requirements under Section 50 of the Act; but the search of the vehicle results in recovery of contraband material, which stands proved independently; would the accused be entitled to benefit of acquittal on the ground of non-compliance of Section 50 of the Act even in respect of material found in the search of the vehicle?"

113. The Court went on to hold that Section 50 would be applicable only to the personal searches and not to the searches of vehicles or bags. This was in line with the ratio laid down in Pawan Kumar (supra) and Baldev Singh (supra). This Court held that:-

"15. As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

16. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

114. It is pertinent to note here that in Baljinder Singh (supra) the decision of SK. Raju (supra) was not looked into, however, the decision in the case of Dilip (supra) was considered and held to be not

laying down the correct law on the ground that it did not consider the decision of Baldev Singh (supra). This Court held that:-

"18. The decision of this Court in Dilip's case, however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh and other judgments."

118. In Than Kunwar v. State of Haryana reported in (2020) 5 SCC 260, this Court took a different view. In the said case, the personal search of the accused did not lead to any recovery. However, upon conducting the search of the bag, opium was recovered. This Court acknowledged the divergent views and noted that the decision of SK. Raju (supra) was not considered while deciding Baljinder Singh (supra). However, the latter was applied and was read to be in line with Baldev Singh (supra). It was held that:-

"22. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in Dilip (supra) reliance placed by the appellant on para 16 may not be available. As already noticed, we are not oblivious of the observation which has been made in the other three-Judge Bench judgment of this Court in SK. Raju (supra), which it appears, was not brought to the notice to the Bench which decided the case later in Baljinder Singh (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in Baldev Singh (supra). We

also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag for which it is settled law that compliance with Section 50 of the Act is not required."

119. Baljinder Singh (supra) was followed by this Court in Kallu Khan v. State of Rajasthan reported in 2021 SCC OnLine 1223, wherein the search and seizure was made from the accused's motorcycle. This Court while holding that the search cannot be said to be vitiated on account of noncompliance of Section 50 as the same only applies to a search of a person, held as under:-

"15. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this case, the argument of noncompliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled."

120. Similarly, in a recent judgement, this Court in Dayalu Kashyap v. State of Chhattisgarh reported in (2022) 12 SCC 398, held that an extended view of Section 50 cannot be given to include a polythene bag containing narcotics being carried by the accused. This Court

rejected the argument that as three options were given to the accused to get himself searched from the officer which was in violation of Section 50, the search conducted, even of the polythene bag, ought to be vitiated. It was held as under:-

"4. The learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-section (1) of Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said section to the accused. To support his contention, he has relied upon the judgment of State of Rajasthan v. Parmanand [State of Rajasthan v. Parmanand, (2014) 5 SCC 345], more specifically, SCC para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172] to conclude that if a search is made by an empowered officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery from him is vitiated.

5. In the conspectus of the facts of the case, we find that the recovery was in a polythene bag which was being carried on a kanwad. The recovery was

not in person. The learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by the learned counsel for the appellant."

124. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See : Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., (2000) 5 SCC 515). The legislative casus omissus should not be supplied by judicial interpretative process. The language of Section 50 of the NDPS Act is plain and unambiguous. There is no scope of reading something into it as was done in many decisions of this Court which we have referred to in our judgment.

126. As such, there is no direct conflict between SK. Raju (supra) and Baljinder Singh (supra). It is pertinent to note that in SK. Raju (supra) the contraband was recovered from the bag which the accused was carrying, whereas in Baljinder Singh (supra) the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being "inextricably linked to the person". Parmanand (supra) relied upon the judgment in Dilip (supra) while taking the view that if both, the person of the accused as well as the bag is searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that Dilip (supra) has not

taken into consideration Pawan Kumar (supra) which is of a larger Bench. It is also pertinent to note that although in Parmanand (supra) the Court looked into Pawan Kumar (supra), yet ultimately it followed Dilip (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the large Bench in Pawan Kumar (supra). Baljinder Singh (supra), on the other hand, says that Dilip (supra) does not lay down a good law."

28. It is also to be noted that the decision of the three-Judge Bench in **Pawan Kumar** (supra) was rendered prior in point of time of the decision of the three-Judge Bench in **SK Raju** (supra) and, as observed in **Than Kunwar** (supra), the decision in **Baljinder Singh** (supra) draws inspiration from the unanimous five-Judge Bench decision in **Baldev Singh** (supra).

29. In the light of the above exposition of the law, I am of the view that the provisions of Section 50 of the NDPS Act are not attracted in a situation where a search is carried out of the person of the accused as well as of any bag carried by him or found in his possession, and the recovery of any contraband is made only from the bag. Accordingly, there is no necessity for compliance with the provisions of Section 50 of the NDPS Act.

30. At this stage, it would be apt to note that in the earlier two bail applications preferred by the petitioners, the aforesaid two grounds, though could have been taken, were not pleaded or canvassed. Sections 42 and 50 of the NDPS Act are statutory safeguards but do not enjoy the status of fundamental rights or even constitutional rights. A fundamental/constitutional

right may be enshrined in the statute, for example, Article 22(1) of the Constitution of India finding reflection in Section 47 of the BNSS. There is, of course, no gainsaying the fact that all statutory provisions must conform to the constitutional provisions, but it would be quite different to suggest that all statutory safeguards are to be equated with one constitutional right or the other. Therefore, it appears that it is otherwise also not open for the petitioners to take up pleas of the present nature by submitting consecutive bail applications when the same could have been taken up in the earlier applications. This is necessary to note as multiplicity of litigation is against public policy.

31. As regards the contention regarding prolonged incarceration, it appears that the petitioners have spent about 1 year 3 months behind bars, but from the record, it appears that the trial is progressing satisfactorily. Out of eight charge-sheet listed witnesses, four witnesses have already been examined, the last having been examined on 09.09.2026. There are bound to be days when for various reasons, witnesses do not appear, which is why perhaps no witnesses have been examined for the last two months, but in the facts and circumstances, there does not appear to be any inordinate delay in the progress of the trial warranting consideration of release of the petitioners on that ground alone. In other words, there does not appear to be sufficient reason to form a view that the right of the petitioners to a speedy trial has been violated.

32. In view of the above discussion, the prayer for bail stands rejected and the petition stands dismissed.

JUDGE

Comparing Assistant