



Crl.OP(MD)No.22581 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22581 of 2025

and

Crl.M.P.(MD)Nos.19516 and 19517 of 2025

Pradeep Rajan

... Petitioner/Accused No

Vs.

1. State of Tamilnadu Rep by
Inspector of Police,
Kalaiyarkoil Police Station,
Sivagangai District,
(Crime No.346 of 2023).

.... Respondent / Complainant

2. Ganeshamoorthy

.... Respondent /
De-facto Complainant,

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the Charge Sheet in S.T.C.No.1488 of 2025 pending on the file of the learned Judicial Magistrate, No.1, Sivagangai and quash the same as against the petitioner.

For Petitioner : Mr.G.Karuppasampandiyan

For R-1 : Mr.B.Thanga Aravindh,
Government Advocate (Crl. Side)



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ORDER

Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (inherent jurisdiction), to call for the records relating to the charge sheet in S.T.C.No.1488 of 2025 on the file of the learned Judicial Magistrate No.I, Sivagangai, arising out of Crime No. 346 of 2023, for the offences under Sections 8(c) and 20(b)(II)(A) of the NDPS Act, and to quash the same insofar as the petitioner is concerned, and consequently to dispense with the personal appearance of the petitioner.

Preface:

2. This petition invokes the inherent jurisdiction of this Court to prevent abuse of process and to secure the ends of justice. Though the NDPS Act is a special statute with stringent provisions, the foundational safeguards embedded in the Act are equally stringent because the statute, while combating narcotics, also demands procedural fairness at every step.

3. The petitioner is a young law student, stated to have no antecedents. The allegation against him is of possession of 10 grams



of ganja found in his shirt pocket. The prosecution is built substantially upon a “personal search” and the consequential recovery. The petitioner contends that the prosecution is vitiated by (i) non-compliance of Section 50 NDPS Act, (ii) non-compliance of Section 42 NDPS Act in respect of secret information, (iii) limitation under Section 468 Cr.P.C., 1973 / Section 514 BNSS, 2023 and (iv) other attendant infirmities.

Case of the prosecution:

4. The case of the prosecution, as reflected in the FIR and the final report, is that on 02.09.2023 at about 11.30 a.m., the *defacto* complainant/police officer received secret information that certain persons were in possession of ganja at the place of occurrence. Pursuant thereto, the *defacto* complainant along with other police personnel proceeded to the spot, found three persons, and conducted search. It is alleged that each of them was found in possession of ganja of 10 grams, stated to have been kept in their shirt pockets.

5. It is further stated that confession was recorded from the first accused, who was a juvenile; the case against him was split up



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and sent to the Juvenile Justice Board. In the split-up final report, the remaining accused were shown as A1 and A2, and the petitioner, originally shown as A3 in the FIR, is now arrayed as A2 in the S.T.C.

Grounds urged by the petitioner:

6. The petitioner would urge, *inter alia*, the following:

The prosecution is barred by limitation under Section 468(2)(b) Cr.P.C., 1973 / Section 514(2)(b) BNSS, 2023, as the offence alleged carries maximum punishment of one year, and the final report/cognizance is beyond the limitation period without recourse to Section 473 Cr.P.C., 1973 / Section 515 BNSS, 2023. The search is a personal search (recovery from shirt pocket), and Section 50 NDPS Act is mandatory. There is no proper individual intimation and consent and no compliance with Section 50(5) & 50(6), if the officer claims emergent search.

7. The alleged “secret information” procedure under Section 42 NDPS Act is not demonstrated to have been complied with. The confession of the juvenile/A1 in F.I.R cannot be used against the petitioner, since the case of the juvenile is split up to be conducted



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before the juvenile board concerned in terms of the mandate of Section 30 of the Indian Evidence Act. The informant and the investigating officer being the same person, coupled with the above infirmities, aggravates prejudice. The petitioner is at best a “consumer/customer” (personal use), and the case as projected does not disclose trafficking/commerciality. Hence, the continuation of prosecution on such tainted foundation is an abuse of process.

8. The learned Government Advocate (Crl. side) would submit that the contraband involved is ganja and the offence is made out. Whether it is small quantity or lesser quantity goes only to bail/quantum, not to quashment. There is recovery from the petitioner supported by mahazar and confession is not the sole material. Compliance with Section 50 is a matter of evidence. Any alleged violation can be tested only in trial. At best it would affect conviction, not the maintainability of prosecution at inception. On limitation, there are divergent views. Moreover, if cognizance is taken, the petitioner must challenge the cognizance order or establish prejudice in trial. Chemical analysis is stated to have been done and “formalities” complied with.



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9. Heard the learned counsels on either side and carefully perused the materials available on record.

Points for consideration:

10. The following points arise:

(i) Whether, on the face of the record, the alleged recovery from the petitioner (from his person) is vitiated by non-compliance of Section 50 NDPS Act, warranting interference under Section 528 BNSS?

(ii) Whether the prosecution is liable to be interdicted on the ground of limitation under Section 468 CrPC / Section 514 BNSS in the facts of this case?

(iii) Whether the cumulative infirmities make the continuation of proceedings an abuse of process?

Analysis:

11. The prosecution case is not of recovery from a bag, vehicle, premises, or a concealed location independent of the body of the accused. The allegation is explicit. The contraband was found in the shirt pocket of the petitioner. A shirt pocket is inseparable from the



clothing worn on the body at the relevant moment. On the prosecution's own showing, the recovery is from the person of the accused. When recovery is from the person, Section 50 NDPS Act is not a ritual. It is a statutory safeguard meant to assure transparency and to instill confidence in the fairness of the search. The constitutional bench line of authority has repeatedly emphasized that the suspect must be made aware of the existence of the right to be searched before a Gazetted Officer or a Magistrate, and the search must then conform to the option exercised.

12. In the present case, what is projected is a joint consent/common form. The petitioner's specific contention is that there was no individualised communication of the right, no individual waiver, and no contemporaneous record demonstrating conscious relinquishment of the right by the petitioner. This Court is not persuaded that a joint, omnibus paper without demonstrable individual intimation, answers the statutory command, especially when the prosecution rests on the personal search itself.



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13. Importantly, if the officer's stand is that immediate search was necessary without taking the person to the nearest Gazetted Officer/Magistrate, then the statute itself provides a narrow window under Section 50(5), but it is coupled with a mandatory duty under Section 50(6) to record reasons and forward them within the stipulated time. The petitioner's grievance is that such statutory record is absent. At this stage, the Court is not expected to embark upon a roving enquiry. However, where the case is founded on personal search and the record placed does not *prima facie* exhibit compliance with the heart of Section 50, the prosecution cannot insist that the accused must undergo a full-fledged trial merely to demonstrate an omission apparent at inception.

14. The Hon' ble Apex Court in the case of ***State of Punjab vs Baldev Singh***¹ has dealt with the obligation of the empowered officer and his duty before conducting the search of the person of a suspect and has held as follows:

"32. However, the question whether the provisions of Section 50 are mandatory or directory and if mandatory to what extent and the consequences of non-compliance with it does not

¹ (1999) SCC (Cri) 1080



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strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, we hold that the provisions of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty on the Investigating Officer (empowered officer) to ensure that search of the concerned person (suspect) is conducted in the manner prescribed by Section 50, by intimating to the concerned person about the existence of his right, that if he so requires, he shall be searched before a Gazetted Officer or a Magistrate and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, would cause prejudice to an accused and render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered during a search conducted in violation of the provisions of Section 50 of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable. The protection provided in the section to an accused to be intimated that he has the right to have his personal search conducted before a Gazetted Officer



or a Magistrate, if he so requires, is sacrosanct and indefeasible - it cannot be disregarded by the prosecution except at its own peril.

57. On the basis of the reasoning and discussion above, the following conclusions arise :

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the concerned person of his right under Sub-section (1) of Section 50 of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing;

(2) That failure to inform the concerned person about the existence of his right to be searched before a Gazetted Officer or a Magistrate would cause prejudice to an accused;

(3) That a search made, by an empowered officer, on prior information, without informing the person of his right that, if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during



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a search conducted in violation of the provisions of Section 50 of the Act;

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be



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determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut- short a criminal trial;

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but, hold that failure to inform the concerned person of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law;

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search;

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused



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was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act

(9) That the judgment in Pooran Mal's case cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search;

(10) That the judgment in Ali Mustaffa's case correctly interprets and distinguishes the judgment in Pooran Mal's case and the broad observations made in Pirthi Chand's case and Jasbir Singh's case are not in tune with the correct exposition of law as laid down in Pooran Mal's case.”

15. A holistic reading of the conclusions arrived at by the Hon’ble Apex Court in ***State of Punjab vs Baldev Singh***² would make it clear that failure to comply the mandate under Section 50(1) of NDPS Act would render the recovery of the contraband suspect bad and unsustainable in law.

² Supra 1



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16. This Court is conscious of the prosecutorial argument that non-compliance may affect conviction rather than the trial. That proposition cannot be applied as a blanket rule to every fact situation. Where the prosecution is substantially and singularly anchored in a personal search recovery, and the record does not *prima facie* show the statutory safeguards, compelling the accused to face trial would itself become the prejudice.

17. The petitioner is charged under Section 20(b)(ii)(A) NDPS Act (small quantity), which carries maximum imprisonment up to one year. Therefore, the limitation contemplated under Section 468(2)(b) Cr.P.C., 1973 / Section 514(2)(b) BNSS, 2023, is one year.

18. In the present case, the occurrence is 02.09.2023. The final report is stated to have been filed and cognizance taken only on 29.09.2025. The record, as placed, does not disclose that the prosecution moved for extension/condonation by invoking Section 473 Cr.P.C., 1973, (or its corresponding provision under BNSS) nor does it show a reasoned order condoning delay.



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19. This Court is mindful that issues on computation of limitation in police cases have been a subject of judicial debate. However, even on the most conservative application, a Court cannot take cognizance after lapse of the limitation period unless the delay is explained and condoned in the manner known to law. The absence of a demonstrated exercise under Section 473/515 assumes significance in a prosecution of this nature, where the alleged contraband is minimal and where the case is otherwise founded on a personal search recovery whose statutory compliance is itself under serious cloud. Therefore, on the facts of this case, the bar of limitation constitutes an additional ground strengthening the petitioner's plea of abuse of process.

20. The petitioner asserts that he is at best a “customer/consumer” and not part of any trafficking chain. This Court is not adjudicating moral culpability here. The focus is on legal sustainability. Where the allegation is of 10 grams in a pocket and the prosecution foundation suffers from serious statutory non-compliance as discussed supra, the continuation of proceedings would not advance the purpose of the NDPS Act, rather it would



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dilute the credibility of enforcement by tolerating avoidable procedural breaches.

21. Though Section 30 of the Indian Evidence Act, 1872, permits the Court to take into consideration the confession of an accused against a co-accused, such admissibility is circumscribed by a mandatory pre-condition, namely, that both the maker of the confession and the co-accused must be jointly tried for the very same offence. In the case on hand, the accused who is stated to have made the confession is a juvenile in conflict with law, and the case against him has already been split up and committed to the jurisdiction of the Juvenile Justice Board for a separate trial. Consequently, there is no joint trial between the juvenile and the present petitioner.

22. In the absence of a joint trial, the confession recorded in the split-up proceedings before the Juvenile Justice Board cannot, in law, be relied upon or used against the petitioner, who is arrayed as the second accused in the case taken cognizance by the learned Judicial Magistrate No.I, Sivagangai. Any reliance on such confession



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would be wholly impermissible and contrary to the settled legal position governing Section 30 of the Indian Evidence Act, 1872.

23. NDPS prosecutions are not ordinary prosecutions. The statute is stringent because the menace is grave. Precisely for that reason, the safeguards under Sections 42 and 50 are not empty formalities, they are the minimum assurance that the extraordinary power of search and seizure is exercised with responsibility and legality. Compliance is the backbone of credibility.

24. Inherent jurisdiction is exercised sparingly. Yet, where (i) the alleged recovery is from personal search, (ii) Section 50 compliance is not *prima facie* demonstrated in the manner required, and (iii) the case also carries a substantial limitation objection with no shown condonation exercise, the Court is satisfied that allowing the prosecution to continue would amount to abuse of process, warranting interference

25. In the result, this Criminal Original Petition is allowed. The proceedings in S.T.C.No.1488 of 2025 on the file of the learned



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Judicial Magistrate No.I, Sivagangai, arising out of Crime No.346 of 2023, for offences under Sections 8(c) and 20(b)(ii)(A) of the NDPS Act, are quashed insofar as the petitioner is concerned. Consequently, the connected miscellaneous petitions stand closed. If any coercive process is pending against the petitioner in the said S.T.C., the same shall stand recalled insofar as the petitioner is concerned.

02.01.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

- 1.The Judicial Magistrate No.1,
Sivagangai.
- 2.The Inspector of Police,
Kalaiyarkoil Police Station,
Sivagangai District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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