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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.02.2026

Pronounced on: 19.03.2026

Uploaded on: 19.03.2026

+ **BAIL APPLN. 4206/2025**

MANJAY KUMARPetitioner

Through: Mr. Aditya Aggarwal and Mr.
Naveen Panwar, Advocates.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Tarang Srivastava, APP with
ASI Yashpal Singh.

+ **BAIL APPLN. 4207/2025**

VIKAS KUMARPetitioner

Through: Mr. Aditya Aggarwal and Mr.
Naveen Panwar, Advocates.

versus

STATE GNCT OF DELHIRespondent

Through: Mr. Tarang Srivastava, APP with
ASI Yashpal Singh.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The petitioners seek regular bail in connection with FIR No.133/2025 dated 05.03.2025, registered at Police Station Civil Lines, District North, New Delhi, for offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].



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A. PROSECUTION CASE

2. The case of the prosecution is as follows:
 - a. Upon receipt of information, three persons, including the petitioners herein and co-accused Kushindra Kumar, were apprehended on 04.03.2025 at 06:40 PM. Notices under Section 50 of the NDPS Act were served upon them. They refused to undergo personal search before the nearest Gazetted Officer or Magistrate.
 - b. During their personal search, a total of 1,955 grams of *ganja* was recovered – 677.9 grams [inclusive of weight of a white opaque polythene] was recovered from accused Manjay Kumar [petitioner in BAIL APPLN. 4206/2025], and 1,277.1 grams [inclusive of weight of a transparent polythene] was recovered from accused Vikas Kumar [petitioner in BAIL APPLN. 4207/2025]. A seizure memo dated 04.03.2025 was prepared.
 - c. During the course of further investigation, the accused persons disclosed that a large quantity of *ganja* was kept at their rented house in Andha Mughal, Pratap Nagar, Delhi. The petitioners herein further revealed that two parcels containing *ganja* were lying at Mark Express Courier Company, Jhandewalan, Delhi, and that they had procured the recovered *ganja* from one Manoj Pradhan, who is a resident of Odisha.
 - d. The search of House No. 62, Ground Floor, J-Block, Katra Khema No. 4, Andha Mughal, Kishanganj, Delhi, was conducted at the instance of the petitioners and co-accused Kushindra Kumar. Five packets and one polythene containing a total of 12,882.8 grams of *ganja* were recovered, and a seizure memo dated 04.03.2025 was



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prepared. One Nokia mobile phone and five Aadhaar cards, belonging to four different persons, were also recovered. Two of the Aadhaar cards were in the name of Ankit Kumar Singh, but contained photographs of different individuals, including one photograph of accused Vikas Kumar.

- e. Thereafter, a raid was conducted at Mark Express Private Limited, 2E/10, Jhandewalan Extension, Delhi, and two parcels, each containing nine packets, with 18.700 kilograms and 18.450 kilograms of *ganja* respectively, were recovered in two separate boxes, described as “*Khaki Gatta Petis*”. The slips on the parcels bore the same mobile number as recovered from the rented accommodation. They listed a fake name “*Deepak Kumar*”, used by accused Manjay Kumar, as the consignee. A seizure memo dated 05.03.2025 was prepared.
- f. The mobile phones of the petitioners herein and co-accused Kushindra Kumar were seized during investigation, and the Call Detail Records of their mobile numbers were obtained. These records showed that the locations of their mobile phones corresponded to both the spot of the initial seizure, and the rented accommodation.
- g. It was further revealed that the petitioners were in regular contact with one Manoj Pradhan. The bank statements of the petitioners, co-accused Kushindra Kumar, and Manoj Pradhan were obtained, which revealed that sums of Rs. 1,00,000/- from each of the petitioners, were transferred on 24.11.2024 to the account of Manoj Pradhan, and a further amount of Rs. 1,00,000/- was transferred



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from the account of accused Vikas Kumar on 03.12.2024 to the same account.

- h. A raid was conducted at the house of co-accused Manoj Pradhan, who was found absconding and failed to join the investigation, despite service of notices under Section 67 of the NDPS Act. Accordingly, non-bailable warrants have been issued against him.
- i. On 18.03.2025, all the sealed parcels of the recovered contraband were produced before the learned Magistrate's Court for sampling proceedings under Section 52A of the NDPS Act. Samples were drawn from each packet/polythene, and were sent to the Forensic Science Laboratory ["FSL"]. As per the FSL report dated 13.02.2026, which was handed up in Court during the hearing on 23.02.2026, all five exhibits tested positive for the presence of *ganja*. Mr. Tarang Srivastava, learned Additional Public Prosecutor, stated that the FSL report will be filed before the Special Court alongwith a supplementary chargesheet.
- j. The original rent agreement/lease deed of the rented house in which the petitioners were residing was taken into police custody, and the owner of the house was examined. She informed that accused Vikas Kumar and Manjay Kumar had introduced themselves as Ankit Kumar Singh and Deepak Kumar, respectively.
- k. The chargesheet was filed before the Special Court on 18.08.2025, but investigation regarding the source of the recovered contraband is still ongoing.
- l. The present case thus involves 51.937 kilograms of *ganja*, which



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amounts to a commercial quantity.

3. On this basis, it is contended that the petitioners were involved in illicit drug trafficking. They were both arrested on 05.03.2025.

B. SUBMISSIONS BY LEARNED COUNSEL FOR THE PARTIES

4. I have heard Mr. Aditya Aggarwal, learned counsel for the petitioners, and Mr. Tarang Srivastava, learned Additional Public Prosecutor.

5. Although several contentions have been raised in the bail applications, Mr. Aggarwal pressed only two of them at this stage:

- a. He submitted that the sampling procedure adopted by the prosecution was not in consonance with the provisions of Section 52A of the NDPS Act, thereby rendering the recovery doubtful.
- b. He submitted that the recovered substance does not constitute *ganja* at all, in terms of the definition contained in Section 2(iii)(b) of the NDPS Act.

6. With regard to the first submission, Mr. Aggarwal submitted as follows:

- a. The present prosecution is based upon three distinct recoveries: [i] spot recovery of 677 grams from accused Manjay Kumar, and 1,277 grams from accused Vikas Kumar; [ii] 12.882 kilograms in six packets, recovered from the flat allegedly rented by the petitioners; and [iii] 18.700 kilograms and 18.450 kilograms allegedly recovered from nine packets each, contained in two courier parcels.
- b. The seizure memo in respect of the recovery from the flat rented by the petitioners shows that the substance was in a blue-coloured bag



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and five packets, all of which were packed in a khaki-coloured pasting polythene. Each of the aforesaid bags/packets were separately weighed, and then kept in a white-coloured plastic bag marked as “Mark D”.

- c. The seizure memo in respect of the recovery from the courier similarly reveals that there were two cardboard boxes which, alongwith their contents, weighed 20.40 kilograms and 20.70 kilograms respectively. The first box contained nine plastic packets. The nine packets were kept together in a single container, weighing 18.700 kilograms, and marked as “Mark P1”. Similarly, nine packets were found in the second cardboard box, which were collectively weighed at 18.450 kilograms. These packets were thereafter placed in a single container, and marked as “Mark P2”.
 - d. The samples were drawn on 18.03.2025 in proceedings conducted before the learned Magistrate.
 - e. As far as the recoveries from the flat and the courier parcels are concerned, Rule 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 [“Sampling Rules”], required that, two samples of 100 grams each be drawn from each of the packets/bags. In violation of this requirement, samples of 200 grams each were, in fact, drawn collectively from Marks D, P1, and P2.
 - f. Violation of the aforesaid Rule renders the sampling process defective, and casts serious doubt upon the consequent testing of the samples.
7. In support of the second argument, Mr. Aggarwal submitted as



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follows:

- a. Section 2(iii)(b) of the NDPS Act, defines “ganja” as “*the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops)*”.
 - b. In the present case, however, the FIR and the seizure memos contain reference to the substances comprising of dried branches, grass-like substances and leaves, but not to “*flowering or fruiting tops*”, which is essential to satisfy the requirement of the definition itself.
 - c. The identification of the seized substance as “ganja” is, therefore, seriously disputed.
8. As far as Mr. Aggarwal’s first argument is concerned, Mr. Srivastava submitted that, under Rule 10(2) of the Sampling Rules, drawing of one sample from multiple packages may be permissible in certain factual circumstances. In any event, he argued that the question of violation of Section 52A of the NDPS Act is not a relevant consideration at the stage of grant of bail.
9. Regarding the second aspect, Mr. Srivastava submitted that the FSL report dated 13.02.2026, received during the pendency of the captioned bail applications, a copy of which was handed up in Court during the hearing on 23.02.2026, clearly referred to each packet as containing “*Dried brownish green colour vegetative material having flowering and fruiting tops*”.
10. Learned counsel on both sides referred to several judgments of the Supreme Court and this Court in support of their respective contentions, to which I shall refer at the appropriate stage in this judgment.



C. ANALYSIS REGARDING SAMPLING PROCEDURE

11. Rules 9 to 11 of the Sampling Rules, relied upon by Mr. Aggarwal, are relevant for the purposes of the present judgment. They read as follows:

*“9. **Samples to be drawn in the presence of Magistrate.** – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.*

*10. **Drawing the samples.** – (1) One sample, in duplicate, shall be drawn from each package and container seized.*

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

*11. **Quantity to be drawn for sampling.** – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.*

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.”¹

¹ Emphasis supplied.



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12. The factual position, with regard to the recoveries and sampling in the present case, is largely undisputed. Details regarding the number of packets in each recovered parcel, and the manner in which sampling was carried out, emerge from the seizure memos and the proceedings before the learned Magistrate on 18.03.2025. Mr. Srivastava has also handed up a tabular statement identifying the quantity of sample taken from each packet, which is reproduced below:

Parcel	Wt. Before Sampling	Wt. After Sampling	Difference
A	1274.6 Grams	1074 Grams	200.1 Grams
B	701.5 Grams	501.2 Grams	200.3 Grams
D (1)	5932.3 grams	5927.4 Grams	4.9 Grams
D(2)	2047 Grams	2001.8 Grams	45.2 Grams
D(3)	2178.4 Grams	2118.2 Grams	60.2 Grams
D(4)	1127.1 Grams	1085.4 Grams	41.7 Grams
D(5)	975.3 Grams	972.8 Grams	2.5 Grams
D(6)	512.2 Grams	463.2 Grams	49 Grams
P1(7)	2074.6 Grams	2035.2 Grams	39.4 Grams
P1(8)	2069.9 Grams	2052.6 Grams	17.3 Grams
P1(9)	2046.4 Grams	2030.7 Grams	15.7 Grams
P1(10)	2060.8 Grams	2032.9 Grams	27.9 Grams
P1(11)	2062.6 Grams	2046.8 Grams	15.8 Grams
P1(12)	2029.2 Grams	2007.2 Grams	22 Grams
P1(13)	2081.7 Grams	2061.9 Grams	19.8 Grams
P1(14)	2066.4 Grams	2039.4 Grams	27 Grams
P1(15)	2053.9 Grams	2026.1 Grams	27.8 Grams
P2(16)	2010.7 Grams	1987.5 Grams	23.2 Grams
P2(17)	2015.8 Grams	1987.8 Grams	28 Grams
P2(18)	2069.8 Grams	2046.9 Grams	22.9 Grams
P2(19)	2048.4 Grams	2039.6 Grams	8.8 Grams
P2(20)	2003.4 Grams	1977.5 Grams	25.9 Grams
P2(21)	2060.4 Grams	2032.2 Grams	28.2 Grams
P2(22)	2071.7 Grams	2043.4 Grams	28.3 Grams
P2(23)	2046.1 Grams	2024 Grams	22.1 Grams
P2(24)	2014.6 Grams	1993.1 Grams	48.5 Grams



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13. Mr. Aggarwal contended that Rules 10 and 11 of the Sampling Rules, read together, require two samples to be drawn from “*each package and container seized*”. The only exception provided under Rule 10(2) of the Sampling Rules arises when the packages and containers are of identical size and weight, bearing identical marks, and the contents of each package yield identical results on the colour test using the drug identification kit. This factual position is admittedly not satisfied in the present case.

14. Proceeding on the basis of the tabular statement reproduced above, which was handed up by the prosecution itself, it is clear that samples of approximately 200 grams each were taken from Parcel A and Parcel B, which were the spot recoveries from the two petitioners. No ground under Section 52A has been raised in respect of these samples. It may be noted, however, that these samples by themselves constitute far less than 20 kilograms, which is the commercial quantity of *ganja* under the NDPS Act. Taken by themselves, therefore, these samples would not attract the rigours of Section 37 of the NDPS Act.

15. We, therefore, turn to the sampling in respect of parcels marked D, P1, and P2, which were the recoveries from the petitioners’ flat and the two courier parcels. Each of these contained multiple smaller parcels – six in the case of Mark D, and nine each in the case of Marks P1 and P2. The tabular statement shows that the total quantity drawn from each of the three parcels was collectively in the region of 200 grams, which is corroborated by the sampling order.

16. The table also shows that, while drawing samples from each of the constituent packets, the quantities drawn were fairly random. For



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example, 4.9 grams was drawn from parcel D1, which weighed 5932.3 grams, whereas 49 grams was drawn from parcel D6, which weighed only 512.2 grams. Similarly, although each of the packets in parcels P1 and P2 weighed approximately the same, the samples drawn ranged from 15.7 grams to 39.4 grams in parcel P1, and from 8.8 grams to 48.5 grams in parcel P2.

17. It *prima facie* appears that this method of sampling does not conform to the requirements of the Sampling Rules. Samples were to be drawn from each packet or container, but appear to have been drawn collectively from several packets, which were recovered in a single larger container or package.

18. In several orders of this Court, relied upon by Mr. Aggarwal, bail has been granted, despite the application of Section 37 of the NDPS Act, on similar grounds. Reference has been made in those orders to Standing Order No. 1/1988, which laid down the sampling procedure prior to framing of the Sampling Rules. Some of the said orders are as follows:

- a. In *Gopal Das v. NCB*², mixing of contents of packets was held to be contrary to the procedure, thereby entitling the accused to bail.
- b. In *Ahmad Hassan Muhammed v. The Customs*³ also, a coordinate Bench of this Court specifically held that mixing of packets for the purposes of sampling is not permissible.
- c. In *Laxman Thakur v. State (Govt. of NCT of Delhi)*⁴, the Standing Order was held to be a requirement of law, and it was held that mixing of various packets into one, and drawing a sample from the

² BAIL APPLN. 3491/2020, decided on 04.02.2021; paragraph 8.

³ BAIL APPLN. 3076/2020, decided on 11.02.2021.



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mixture, was not permissible.

- d. In *Sarvan v. State Govt. of NCT of Delhi*⁵, samples were taken from some of the packets in the parcel, but not from others, which was held to constitute a violation of the sampling procedure.
- e. In *Sachin Kumar v. State (Govt. of NCT of Delhi)*⁶, samples were taken from each “*katta*”, but not from each of the parcels therein.
- f. In *Aas Mohammad v. State Govt. of NCT of Delhi*⁷ also, the recovery consisted of 43 *kattas* containing 281 bundles. Samples were not drawn from each bundle, but only from 43 *kattas* as a whole.

19. Mr. Srivastava sought to distinguish these judgments, on the basis that the sampling in the present case, was conducted from separate packets, and the contents of the packets were never mixed prior to drawing the sample. This factual submission also aligns with the order of the Magistrate and the fact that separate sample weights from each packet have been identified. Nonetheless, I do not find any significant difference between the aforesaid cases and the present case on this basis. The requirement that samples be drawn from each packet is intended to ensure that the packets containing the narcotics or contraband can be specifically identified. By mixing the contents prior to sampling, this objective is defeated. However, the case is no different if random samples are drawn from each packet separately and mixed before testing, as has occurred in the present case. Such a procedure also results in the prosecution’s

⁴ BAIL APPLN. 3233/2022, decided on 14.12.2022; paragraphs 8 to 11.

⁵ BAIL APPLN 2781/2022, decided on 18.01.2023.

⁶ BAIL APPLN. 557/2023, decided on 26.04.2023.

⁷ BAIL APPLN 2334/2023, decided on 20.03.2024.



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inability to quantify the contraband substance with precision. It may be argued that some of the individual smaller packets contained the contraband substance, while others did not, but the mixing of the samples has led to the entire quantity being misidentified as *ganja*.

20. In this factual background, learned counsel on both sides drew my attention to certain recent judgments of the Supreme Court, which consider the effect of non-compliance with Section 52A of the NDPS Act.

21. The judgments, cited in chronological order, are discussed below:

- a. In *Narcotics Control Bureau v. Kashif*⁸, the Supreme Court held that delay or non-compliance with Section 52A cannot be treated as an illegality entitling the accused to be released on bail or claim acquittal. Relying upon a purposive interpretation of the statute and the provisions of Section 37 of the NDPS Act, the Court observed that Section 52A was intended to ensure the early disposal of seized contraband, drugs, and substances, but a lapse or delay in compliance would constitute a procedural irregularity, rather than vitiating the trial or entitling the accused to bail. The Court noted that other circumstances and evidence would have to be considered in order to determine the issue.
- b. The judgment in *Bharat Aambale v. State of Chhattisgarh*⁹ also involved the alleged mixing of the contents of various packets prior to sampling, which led the accused to appeal against his conviction. While upholding the conviction, the Supreme Court

⁸ (2024) 11 SCC 372, decided on 20.12.2024 [hereinafter, "*Kashif*"].

⁹ (2025) 8 SCC 452, decided on 06.01.2025 [hereinafter, "*Bharat Aambale*"].



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considered several judgments, including *Kashif*, and observed as follows:

“33. Thus, from above it is clear that **the procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer in charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.**

33.1. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-versa where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52-A or its allied Rules/Orders, nor can a straitjacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case.

33.2. Thus, **what is actually required is only a substantial compliance of the procedure laid down under Section 52-A of the NDPS Act and the Standing Order(s)/Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case.**

34. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52-A may be fatal only in cases where such non-compliance goes to the heart or root of the matter.

34.1. In other words, **the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report** as was the case in *Noor Aga* [*Noor Aga v. State of Punjab*, (2008) 16 SCC 417; (2010) 3 SCC (Cri)



748], or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in *Mohd. Khalid* [*Mohd. Khalid v. State of Telangana*, (2024) 5 SCC 393: (2024) 2 SCC (Cri) 650], or where the recovery itself is suspicious and uncorroborated by any witnesses such as in *Mangilal* [*Mangilal v. State of M.P.*, (2023) 19 SCC 364], or where the bulk material seized in contravention of Section 52-A was not produced before the court despite being directed to be preserved, etc.

34.2. These illustrations are only for the purposes of bringing clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced.

34.3. At the same time, we may caution the courts, not to be hypertechnical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample, etc. The court may not discard the entire prosecution case looking into such discrepancies as more often than not ordinarily an officer in a public place would not be carrying a good scale with him, as held in *Noor Aga*.

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37. Thus, the prosecution sans the compliance of the procedure under Section 52-A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in *Noor Aga*.

38. Even in cases where there is non-compliance with the procedural requirements of Section 52-A, it does not necessarily



vitiating the trial or warrant an automatic acquittal. The courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52-A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

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40. What this provision entails is that, **where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules/Standing Order(s), and the same is also duly certified by a Magistrate, then such certified inventory, photographs and samples have to mandatorily be treated as primary evidence.** The use of the word “shall” indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being: (i) that the inventory, photographs and samples drawn are certified by the Magistrate, **AND** (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s).

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56. We summarise our final conclusion as under:

56.1. Although Section 52-A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a Magistrate. Mere drawing of samples in the presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52-A sub-section (2) of the NDPS Act.

56.2. Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal [Union of India v. Mohanlal, (2016) 3 SCC 379; (2016) 1 SCC (Cri) 864], yet we are of the opinion that the process of inventorying, photographing and drawing samples of



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the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

56.3. **Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52-A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence** as per Section 52-A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

56.4. The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in charge of the investigation, and as such **what is required is substantial compliance of the procedure laid therein.**

56.5. **Mere non-compliance of the procedure under Section 52-A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful,** which may not have been there had such compliance been done. **Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.**

56.6. If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52-A of the NDPS Act.

56.7. **Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution,** however no hard-and-fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

56.8. **Where there has been lapse on the part of the police in either following the procedure laid down in Section 52-A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such**



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material from the accused persons from the other material on record.

56.9. The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52-A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

56.10. **Once the foundational facts laid indicate non-compliance of Section 52-A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either: (i) there was substantial compliance with the mandate of Section 52-A of the NDPS Act, OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.**¹⁰

- c. *Nadeem Ahamed v. The State of West Bengal*¹¹ was also a case of appeal against conviction. Although the Supreme Court found that Section 52A is not mandatory, it held that where samples were not drawn in the presence of a Magistrate, the FSL Report lost all significance, and the accused was acquitted.
- d. In *Jothi alias Nagajothi v. State, Rep. by the Inspector of Police*¹², the conviction was upheld on the finding that there was no foundational material to suggest that the sampling process was unreliable or that the integrity of the samples was compromised. The Supreme Court relied upon a clear chain of custody to reject an argument with regard to possible tampering, substitution, or mishandling. It was held that, in these circumstances, a possible violation of Section 52A would not go to the root of the matter.
- e. The latest order of the Supreme Court cited before me was an order

¹⁰ Emphasis supplied.

¹¹ 2025 INSC 993, decided on 05.08.2025 [hereinafter, "*Nadeem Ahamed*"].

¹² 2025 SCC OnLine SC 2774, decided on 11.12.2025.



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dated 09.02.2026 in *Wajid Ali @ Tinku v. State of Rajasthan*¹³. The Court reversed the view of the High Court, which had denied bail, observing as follows:

“4. *The argument is that the petitioners were arrested on 28.03.2023 and that they have been in jail for more than two years and ten months. **The sample was sent to the Forensic Science Laboratory(‘FSL’) after 21 days for which there is no appropriate explanation.***

5. *In view of the aforesaid facts and circumstances, we consider it proper to enlarge the petitioners on bail.*”¹⁴

22. The aforesaid judgments of the Supreme Court require a careful examination of the facts and circumstances of each case in which non-compliance of Section 52A is alleged. The judgment in *Kashif* has been specifically considered in *Bharat Aambale*, wherein the Supreme Court has distilled the principles extracted above. It is evident from these principles that *prima facie* non-compliance with Section 52A may lead to an adverse inference against the prosecution. It is evident that even in *Nadeem Ahamed* and *Wajid Ali*, which were subsequent to *Kashif* and *Bharat Aambale*, the Supreme Court regarded a violation of Section 52A as a significant ground for the grant of bail.

23. Mr. Srivastava also drew my attention to the judgment of the Supreme Court in *Sumit Tomar v. the State of Punjab*¹⁵, which rejected the submission that sampling was required to be undertaken without mixing the contents of two bags of alleged contraband. The Supreme Court held, in an appeal against conviction, that no prejudice had been caused to the accused.

¹³ SLP (CRL.) 7049/2025 [hereinafter, “*Wajid Ali*”].

¹⁴ Emphasis supplied.

¹⁵ Criminal Appeal Nos. 1690-1691 of 2012, decided on 19.10.2012.



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24. Applying these principles to the facts of the present case, I have observed above that the sampling procedure under Section 52A has *prima facie* been violated. The mixing of samples drawn from various packets and testing of the mixed samples is not a trivial irregularity, but affects the question of substantial compliance. I am *prima facie* of the view that, on such facts, it is possible that the petitioners could discharge the initial factual burden with regard to non-compliance of Section 52A. It may or may not ultimately vitiate the trial, having regard to other discrepancies and physical evidence produced, but provides a basis upon which an adverse inference against the prosecution is certainly plausible. As held in *Bharat Aambale*, in such circumstances, the statutory presumption of commission of an offence would also be discharged.

D. ANALYSIS REGARDING IDENTIFICATION OF THE RECOVERED SUBSTANCE AS “GANJA”

25. Mr. Aggarwal contended that, both in the FIR and the three seizure memos, the description of the seized goods, does not correspond to the statutory definition of “ganja”. Section 2(iii)(b) of the NDPS Act defines “ganja” as follows:

“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”

26. In this connection, Mr. Aggarwal submitted that in the FIR, the goods seized in the spot recovery from both petitioners was described as “सूखी टहनियां, पत्ते और घासनुमा पदार्थ जो देखने, सूंघने और भौतिक गुणों के आधार पर गांजा लग रहा है”, which may be translated as ‘*dried branches, leaves, and grass-like materials which appear to be ganja on the basis of sight, smell, and physical properties*’. Similar phraseology has been used in three seizure



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memos as well. The order of the learned Magistrate under Section 52A of the NDPS Act also refers generally to a “greenish brown grassy substance”. The definition, on the other hand, requires the presence of flowering or fruiting tops of the cannabis plant.

27. Relying upon the judgment of this Court in *Ravina Kumari v. The State (NCT of Delhi)*¹⁶, Mr. Aggarwal submitted that, in the absence of any material whatsoever to show the presence of flowering or fruiting tops of the plant, the presence of *ganja* is not even *prima facie* established. Although the FSL report in that case confirmed that the exhibits were *ganja*, the Court held that the weight of the seeds, stalks, and stems should have been excluded while calculating the quantity of the seized goods, and therefore granted bail on the following reasoning:

19. Thus, the intention of the Legislature appears to be clear that in case of *Ganja*, if it is merely **Category A** i.e. a homogenous mixture of flowering buds and fruiting tops, then the same would fall within the meaning of “Cannabis”, however, if it is merely **Category B** i.e. a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.

20. Though the position with respect to homogenous mixtures i.e. **Category A & B** is clear, there is often a conundrum surrounding the quantification of **Category C**, i.e. the overlap between Category A and Category B constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/ leaves and seed.

21. **From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.**

22. Similar observations have been made in the cases of *Kunal Dattu*

¹⁶ BAIL APPLN. 1256/2024, decided on 20.09.2024 [hereinafter, “*Ravina Kumari*”].



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*Kadu (Supra) and Shri Sandip Ashok Raut (Supra) and it was held that to ascertain whether the material seized was Ganja, **it will have to be ultimately ascertained whether the flowering and fruiting are accompanied by the seeds and leaves as the weight of these seeds/leaves/stems, has to be excluded.***

*23. **Axiomatically, the weight of seeds/stalks and stems (Category B) should be excluded while calculating the actual quantity (Only Category A) recovered.***

*24. Evidently, the present case is of a recovery falling within Category C. The Chargesheet records that when the Petitioner/Ravina was apprehended, blue coloured plastic polythene bag was recovered from her which contained **grass-like flowery-leafy material along with its stems, which appeared to be "Ganja" and was seized vide the seizure memo. On weighing, the recovered Ganja on the electronic weighing machine, the total weight of the quantity recovered, was about 24.145 Kg.***

*25. **The FSL Report confirmed that on physical, Chemical, Microscopic and TLC examination, exhibits 'SA-1' and 'SB-1' were found to be "Ganja".***

*26. Pertinently, the recovered quantity of about 24.145 Kg was just 4.145 kgs more than the commercial quantity. **Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the Applicant may be less than commercial quantity so as to attract Section 20 of the NDPS Act. The weight of actual Ganja recovered is a matter of trial.***

*27. It has been consistently held that **if there is a prima facie discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed (Supra).***

*28. In the case of Suresh Kumar (Supra), the Coordinate Bench of this Court gave benefit to the accused under Section 20 (b) (C) to 20 (b)(ii)(B) by observing that **the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops.** Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.*

29. Similar observations have been made in the case of Rajesh Sharma (Supra), Bettanayaka (Supra), Ratanlal (Supra) and Ratnesh (Supra).

30. In light of the above discussion, it is settled that if there is the



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*discrepancy in weight, as in the present case, the same would be a matter of trial.*¹⁷

28. A similar analysis is also found in *Govind v. State Govt. of NCT of Delhi*¹⁸ and *Irshad Sheikh v. State Govt. of NCT of Delhi*¹⁹. In *Irshad Sheikh*, this Court held as follows:

“20. However, a perusal of the **Seizure Memo** describes the recovered substance as containing “green grassy seeds type smelly leaves substance”.

21. **Section 2(iii)(b)** of the NDPS Act defines Ganja as: “ganja, that is, the flowering or fruiting tops of the cannabis plant (**excluding the seeds and leaves when not accompanied by the tops**), by whatever name they may be known or designated”.

22. It is a settled legal position, affirmed by various High Courts including the Bombay High Court in *Mohammad Jakir Nawab Ali v. The State of Maharashtra*, decided on 20.09.2024 in Crl. Applic. (BA) No. 602/2024 and the Delhi High Court in *Basant Rai v. State*, decided on 02.07.2012 in Crl. Appeal No.909/2005, that if the seized substance contains seeds and leaves mixed with flowering tops, the investigating agency must segregate the non-prohibited parts i.e. seeds and leaves, before weighing to determine the quantity of the “contraband”.”

29. In the present case, the total seizure amounts to approximately 51 kilograms, whereas the commercial quantity of ganja is 20 kilograms and above. The FSL report, which was handed up in Court, has analysed each of the exhibits and described them as “Dried brownish green colour vegetative material having flowering and fruiting tops weighing [XXXX] (net weight without plastic box)”. The report concluded that the exhibits “gave positive tests for the presence of Ganja”. It may also be noted that, while no reference was made specifically to the flowering or fruiting tops in the FIR and seizure memos, it was stated that the substance was found

¹⁷ Emphasis supplied.

¹⁸ BAIL APPLN. 1090/2024, decided on 23.09.2024.

¹⁹ BAIL APPLN. 3450/2025 and connected matter, decided on 21.11.2025 [hereinafter, “*Irshad Sheikh*”].



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to be *ganja* on the basis of size, smell, and physical properties. I am, therefore, not inclined, at this stage, to accept the contention of the petitioners that the material does not satisfy the definition of *ganja* at all.

30. However, the question remains as to whether the weight of the flowering and fruiting tops, exclusive of the branches, leaves, and grass, was in excess of 20 kilograms, so as to fall within the range of commercial quantity. As far as this aspect is concerned, the judgment in *Ravina Kumari*, extracted above, clearly holds that only the actual content and weight of the narcotic drug, exclusive of seeds, stalks, and stems, is relevant for determining the weight of the drug. In the present case, it is evident that the weight of the parcels was on the basis of the entire seized goods. Although there is a considerable margin between the minimum commercial quantity of 20 kilograms and the total weight of 51 kilograms seized in the present case, it is not possible, without any material on record, to speculate as to whether the weight of the flowering and fruiting tops alone would cross the threshold of commercial quantity.

31. On the basis of the aforesaid binding judgments of coordinate Benches of this Court, I find that the quantity of contraband in the present case, cannot be precisely determined at this stage, as the seized goods were weighed alongwith dried branches, leaves, and grass-like substances, which may not fall within the statutory definition of “*ganja*”.

E. APPLICATION OF THESE FINDINGS

32. The aforesaid findings must now be applied to a consideration of the petitioners’ entitlement for bail. As noted above, there is some *prima facie* uncertainty as to whether the quantity of contraband seized in the present case exceeds 20 kilograms. That is a matter which would



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ultimately be determined at trial, but raises a significant factor in favour of the petitioners, as it casts a doubt on the applicability of the twin conditions for bail, set out in Section 37 of the NDPS Act.

33. Even assuming Section 37 of the NDPS Act is applicable, I am of the view that the petitioners are entitled to bail in the facts of this case. The observations of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)*²⁰, make it clear that the requirements of Section 37 of the NDPS Act are to be adjudged on the basis of a *prima facie* case, and not on a literal reading which would require the Court, at the stage of bail, to be satisfied beyond reasonable doubt, that the accused had not committed the offence with which they are charged. Quite apart from the question of mixing of dried branches, leaves, and grass-like substances, the petitioners have also cast *prima facie* doubt on the sampling procedure. While the judgment in *Kashif* mandates against the grant of bail or acquittal merely on the finding of a procedural violation of Section 52A, it has been clarified in *Bharat Aambale*, that significant discrepancies in the procedure adopted are relevant. The failure to draw samples from each packet separately is, in my view, a significant departure from the procedure of Section 52A of the NDPS Act and the Sampling Rules. In the absence of sampling in terms of the Sampling Rules, the value of the FSL Report itself may require consideration. Although the prosecution may ultimately be able to overcome this with other evidence at trial, in my view, the benefit of doubt must be given to the accused at this stage.

34. I reiterate that both these issues, with regard to the sampling procedure, and the satisfaction of the statutory definition of “ganja”, are



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ultimately matters for trial. However, a *prima facie* analysis, in line with *Md. Muslim*, leads me to a determination in favour of the petitioners, that they ought not to be deprived of liberty during the course of trial.

35. It may also be noted that the petitioners have no prior criminal antecedents, and that the matter is at the stage of filing of the supplementary chargesheet with the FSL report. 31 witnesses have been cited by the prosecution in the main chargesheet, which makes it clear that there is likely to be a significant delay in completion of the trial.

F. CONCLUSION

36. For the aforesaid reasons, it is directed that the petitioners be released on bail in connection with FIR No. 133/2025 dated 05.03.2025, registered at Police Station Civil Lines, District North, New Delhi, for offences punishable under Sections 20 and 29 of the NDPS Act, subject to furnishing a bail bond in the sum of Rs. 50,000/- each, with one surety each of the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and further subject to the following conditions:

- a. The petitioners shall appear before the learned Special Court on each and every date of hearing.
- b. If the petitioners have passports, they shall surrender the same to the concerned Trial Court, and shall not leave the country without the prior permission of the concerned Trial Court.
- c. The petitioners shall ordinarily reside at the address as per prison records, and shall not change the addresses without informing the concerned IO/ Station House Officer [“SHO”].

²⁰ (2023) 18 SCC 166 [hereinafter, “*Md. Muslim*”].



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- d. The petitioners shall furnish their mobile numbers to the concerned IO/SHO, and shall ensure that the said mobile numbers remain operational and switched on at all times. The mobile numbers shall not be changed, nor shall the phones be switched off, without prior intimation to the IO/SHO.
 - e. The petitioners shall not contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.
 - f. The petitioners shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
 - g. The petitioners shall not commit any offence during the pendency of the proceedings.
37. The applications stand disposed of in the above terms.
38. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail applications, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.
39. A copy of this judgment be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

MARCH 19, 2026/ 'SS/PV/Khushi'