



2026:AHC:202889-DB

A.F.R.

Orders Reserved On:-22.09.2026.

Orders Delivered On:-28.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 582 of 2026

Amit Singh And Another

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Aditya Krishnatreya, Ajay Mishra, Mihir Ghosh Roy, Raghav Dev Garg, Varad Nath
Counsel for Respondent(s)	: A.S.G.I., Ashish Pandey, G.A., Shiv Kumar Pal

With

HABEAS CORPUS WRIT PETITION No. - 686 of 2026

Naveen Mann

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Aditya Krishnatreya, Mihir Ghosh Roy
Counsel for Respondent(s)	: A.S.G.I., Ashish Pandey, G.A.

Court No. - 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Sri Vinay Saran, learned Senior Counsel assisted by Sri Raghav Dev Garg, learned counsel for the petitioner and Sri Shiv Kumar Pal learned Deputy Solicitor General of India assisted by Sri Prem Shankar Prasad, for respondent No.1, Sri Ashish Pandey for respondent No.2 and learned AGA for respondent No.3. in **HABEAS CORPUS WRIT PETITION No. - 582 of 2026.**

2. Heard Sri Amit Krishna, learned Senior Coand eight daysunsel assisted by

Sri Aditya Krishnatreya and Sri Mihir Ghosh Roy, learned counsel for the petitioner and Sri Shiv Kumar Pal learned Deputy Solicitor General of India assisted by Sri Prem Shankar Prasad, for respondent No.1, learned A.G.A. for respondent No.2 and Mr. Ashish Pandey for respondent No.3. in **HABEAS CORPUS WRIT PETITION No. - 686 of 2026.**

3. The above noted petitions have been filed praying for release of the petitioners from illegal detention.

4. The brief facts of the petition are that on 25.10.2024 the Narcotics Control Bureau(hereinafter referred to as NCB) conducted a raid at J-36, Site V UPSIDC, Kasna Industrial Area, Gautam Budh Nagar and found 95.501 kg Mathamphatine @ ICE (Prohibited contraband) which was seized and *Panchnama* was prepared. Case was registered as Crime No. VIII/35/DZU/2024.

5. Petitioners were arrested and taken to NCB office on 26.10.2024 and notice was given to them u/s 67 of **Narcotics Drugs and Psychotropic Substances Act, 1985**(hereinafter referred to as NDPS Act). Arrest memo was prepared. Petitioners were given "grounds of arrest" by NCB which they claim are in fact "reasons for arrest." Petitioners and other accused were produced before Remand Magistrate seeking their remand on the same day. Remand of petitioners were allowed by Remand Magistrate, Juvenile Court/Judicial Magistrate, Ist, Gautam Budh Nagar on 27.10.2024.

6. Application was filed by NCB u/s 52-A(2) of NDPS Act for certification of alleged seized contraband on 28.10.2024. The said application was allowed by Court after pendency of 6 months and 8 days for certification on 26.04.2025., when Section 52-A(2) directs the Magistrate to allow the application, as soon as may be.

7. As period of filing of complaint/charge-sheet was going to be expire on 23.04.2025 u/s 36 A(4) of the Act, NCB filed application for extension of time of investigation under section 36-A(4), only proviso, which was allowed by special court granting 60 days' further time to NCB by the order date 19.04.2025 for completing investigation/filing complaint.

8. Said extension order dated 19.04.2025 was challenged by petitioners in Criminal Misc. Application (u/s 428) No.-18181 of 2025- "**Amit Singh & anr. V/s State of U.P. & Anr.**" Which was allowed by setting aside the order

of extension of time of investigation dated 19.04.2025 of special court granting liberty to NCB to file fresh application and special court was directed to pass appropriate order.

9. No such fresh application was filed by NCB before court in pursuance to order dated 26.08.2025 of this court nor the special court passed any fresh order extending time for completing investigation and filing complaint by NCB. Petitioners were given notice u/s 67 of NDPS Act on 29.10.2024/01.11.2024 and their statements were recorded which the petitioners claim are not admissible in evidence as per judgment of Apex Court in the case of *Toofan Singh v/S State of Madras AIR 2020 (SC) 5592*.

10. Petitioners applied for Default Bail which was rejected by special Court on 13.05.2025. Only petitioner, Amit Singh, applied for default bail before this Court which also rejected. Petitioners have not applied for regular bail till date either before this court or trial court or Hon'ble Supreme Court.

11. Samples were sent to FSL on 29.04.2025. Only Qualitative Test of samples was conducted on 19.06.2025 wherein "**Mephedrone**" was found and not "**Amphetamine**" which was found in test conducted by DD Kit by NCB at the time of raid.

12. Learned counsel for the petitioner has submitted that no quantitative test of the alleged seized contraband was conducted by FSL. No report of quantitative test was given by FSL. There is no report on record showing the content of drug in the alleged seized contraband. **Rule 14 of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022**(hereinafter referred to as NDPS Rules) mandates about the qualitative as well as quantitative test within 15 days which is mandatory in nature and any deviation from the same will vitiate all the proceedings as held by the Courts in:-

1. "Bharat Chaudhary V/s Union of India"-2021 (2) SCC 50.

Followed in:-

A. In the matter of Abdul Gani V/s State- CRM (NDPS) 394 of 2025.

B. Sri Rushab Shramik Mastrulal V/s State. Criminal Petition NON NO. 1429 of 2025.

C. "Anuraj V/s State"-Bail No.-5549 of 2023.

D. "Shekappa & an. V/s Drectorate of Revenue Intelligence"-Criminal Petition No.- 12347 of 2023)

13. In the absence of FSL report regarding quantitative test charge sheet/complaint filed by authority is not complete charge sheet/complaint and any cognizance thereon is illegal as held by the courts in:-

A. Ajit Singh @ Jeeta & an. V/s State of Punjab (2018) Law.

Today Live Doc. Id 14121-Criminal Revision No. 4659 of 2015

B. Sunil Vasantrao Phulbande & Anr. Vs. State of Maharashtra 2022 (3) MHLJ 689.

C. Bhartendu Pratap Singh Vs. State of U.P. "-Criminal Case No. 4621 of 2010.

14. Destruction of alleged seized contraband without the orders of the Court vitiates the entire proceedings which is admitted in the order dated 26.04.2025 of special court and cross examination of PW-1, Harender Kumar Dagar. Reliance has been placed upon the following authorities in this regard:-

A. Criminal Appeal No. 303 of 2014-Baldev Singh V/s State of Haryana

B. Criminal Appeal Nos. 741-742 of 2011-Union of India V/s Jarooparam

C. Criminal Appeal No. 2182 of 2010-Mohinder Singh V/s State of Punjab.

15. Compliance of provision of Section 52 A of the NDPS Act is mandatory and any deviation from the same will vitiate the entire trial as held in:-

A. Criminal Appeal No.- 250 of 2025- Bharat Aambale V/s Stae of Chhatisgarh.

16. Therefore under the totality and facts and circumstances of the case, there is no justification for detention of the petitioners.

17. Once the order dated 19.04.2025 passed by Trial Court extending the investigation period for 60 days was quashed by this Court in Criminal Misc. Petition (u/s 482) No. 18181 of 2025 filed by petitioners and no subsequent fresh order has been passed by trial Court in pursuance to order dated 26.08.2025 passed by this Hon'ble Court, then there is no order of remand in existence and after quashing of the order dt. 19.04.2025 by this court, there was no valid and legal order of remand in existence. Hence, the custody of petitioners is illegal and, therefore, the petitioners deserve to be released from jail.

18. NCB filed Complaint Case No. 771 of Amit Singh & Others Vs. State & others before Additional Session Judge, Fast Track Court No. 1, Gautam Budh Nagar u/s 8, 22, 27, 29 NDPS Act against all accused without there being any quantitative test report with the said complaint. There was no quantitative test ever conducted of the alleged seized contraband by NCB which is clear from the Test Report dated 19.06.2025.

19. Trial Court took cognizance on the complaint dated 20.06.2025 and summoned the petitioners on the basis of incomplete complaint by the order dated 25.06.2025.

20. The learned counsel for the NCB has vehemently opposed the submissions made by learned counsel for petitioners and has submitted that the remand order passed against the petitioner was legal and in accordance with law since the petitioners were found in possession of illicit contraband. They were supplied the grounds of arrest as per the law. The information regarding the arrest were provided to their family members and therefore the Remand Magistrate rightly allowed the remand application of the NCB. Commercial quantity of contraband were recovered from their possession. The provisions of section 52-A of NDPS Act were fully complied. The sampling of these contraband were drawn in accordance with Rule. The trial court extended the period of investigation on the request of NCB by 60 days and it was completed within the aforesaid period of 60 days. The order dated 26.08.2025 passed in Criminal Misc. Application (u/s482 Cr.P.C.,) No.

18181 of 2025 was passed by this Court without considering the correct facts. The arrest of the petitioners were not based solely upon their statements under section 67 of the NDPS Act rather it was based on the recovery of contraband. The search, seizure, preparation of inventory sampling and investigation of huge contraband of commercial quantity was done as per the law. He has submitted that the Habeas Corpus Petition is bereft of merit and deserves to be rejected outright. He has also submitted that in the case of **Hira Singh and Anrs. Vs. Union of India and Anrs. (2020) 20 SCC 272**, the Apex Court held that where a Narcotic Drug and Psychotropic Substance is found in mixture with one or more neutral substance, the entire weight of the mixture, not just the actual/pure drug content, is to be taken for determination whether it falls within small quantity or commercial quantity as per Note-4 to Notification No. SO 1055(E) dated 19.10.2021. Although he has admitted that correctness of the aforesaid judgment has been questioned before Apex Court in the case of **Mayank Girish Bhai Shah Vs. Union of India & Ors., Writ Petition (Civil) No. 816/2025**. He has placed reliance upon the judgment in the cases of **Bharat Aamble Vs. The State of Chattisgarh (Criminal Appeal No. 250/2025) on paragraph 51.5 and 51.6; Narcotics Control Bureau Vs. Kashif (Criminal Appeal No. 5544/2024) on paragraph nos. 39 and 40 and Jothi @ Nagajothi Vs. the State, Rep. by the Inspector of Police (Criminal Appeal No. 259/2025) on paragraph nos. 22, 23 and 31.**

21. After hearing the learned counsel for the parties number of times at length and going through the pleadings on record, we first of all find that clear averments were made in paragraph 26 to 35 of the supplementary-affidavit dated 09.08.2026 filed on behalf of the petitioners regarding non compliance of Section 52-A of the NDPS Act as follows:-

" 26. That, it is also relevant to state here that the said complaint filed on 20.06.2025 was an incomplete complaint as no quantitative test of the alleged seized contraband was done as mandated under Rule 14 of the Rules, 2022. Only Qualitative test has been conducted on the alleged seized contraband. The compliance of Rule 14 of Rules, 2022 is mandatory. In absence of quantitative test, no allegation or charge can be framed under commercial quantity.

27. That, as per the case of the petitioners, more than 21 months have

elapsed, yet no quantitative analysis report has been furnished to the Court.

28. That, the petitioners further submit that the absence of quantitative analysis was not subsequently cured and the alleged seized contraband was subsequently destroyed/disposed of by the NCB without, obtaining mandatory prior permission of the learned Trial Court/Magistrate as required under 52A of NDPS Act.

29. That, no application seeking permission for destruction/disposal of the alleged case property was moved before the Trial Court, no notice was issued to the accused persons and no prior judicial order authorising such destruction was obtained.

30. That, the destruction of the alleged case property in such circumstances has caused serious prejudice to the petitioners because the physical material which could have been subjected to further scientific examination is no longer available.

31. That, the petitioners respectfully submit that the procedure governing certification, sampling, preservation and disposal of narcotic substances under Section 52A of the NDPS Act and the applicable Rules constitutes an important safeguard for maintaining the integrity and evidentiary value of the seized material.

32. That, the petitioners further rely upon the provisions of the NDPS Rule 14 (Seizure, Storage, S 23 A(4)ampling and Disposal) Rules, 2022, particularly the provisions concerning quantitative. Therefore under the totality and facts and circumstances of the case, there is no justification for detention of the petitioners qualitative analysis and the procedure for forwarding samples to the laboratory.

Rule 13 Under the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022

*33. That, the petitioners' specific case is that the procedure contemplated for dispatch of the samples from the Magistrate to the laboratory was not followed and that the samples were instead forwarded by NCB officials violation of **Rule 13 The NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022.**, lays down a comprehensive procedure for disposal of seized*

drugs and its non-compliance will result in setting aside of the remand order.

34. That, there is also a significant and unexplained variation between the weight of the samples recorded in the Test Memo at the time of withdrawal in the presence of the Magistrate and the weight of the samples recorded upon receipt by the CRCL Laboratory, Delhi..

35. That, the aforesaid discrepancy raises a serious question regarding the integrity of the sample and the chain of custody, subsequently particularly when the prosecution destroyed/disposed of the primary case property."

36. In the counter filed on behalf of NCB, respondent no.2, the above paragraphs have been replied in paragraph nos. 27, 28, and 29, as follows:-

" 27. That the contents of Paragraph Nos. 26, 27, 28 & 29 are denied. The allegation that the complaint is incomplete merely because the petitioners dispute the quantitative analysis in the laboratory report is misconceived. The evidentiary value and sufficiency of the scientific material are matters to be considered on the basis of the entire record and evidence in the criminal proceedings. That the allegation that no charge involving commercial quantity can be sustained in the absence of the particular quantitative report relied upon by the petitioners is denied. The nature and quantity of the recovered substance and the applicability of the relevant provisions of the NDPS Act are matters which have to be determined upon appreciation of the evidence. Such disputed evidentiary questions cannot be finally adjudicated in a habeas corpus petition. It is further submitted that the petitioner No. 1 moved an application for retesting/sampling of the seized contraband before the Trial Court after receiving the test report of the samples. The Trial Court after considering the grievance and the legal proposition of law vide its detail and reasoned order rejected the aforesaid application on 29.07.2025.

28. That the contents of Paragraph Nos. 30, 31 & 32 are denied. The allegations concerning destruction/disposal of the seized material, absence of permission and alleged prejudice are matters of evidence and record. The petitioners are put to strict proof of each such assertion. In any event, the petitioners cannot, merely by raising such evidentiary objections, establish that their present judicial custody is without authority of law.

29. That the contents of Paragraph Nos. 33, 34, 35, 36 & 37 are denied. The allegations regarding the procedure of sampling, dispatch of samples and alleged discrepancy in weight are matters concerning the chain of custody and evidentiary appreciation. Such questions require examination of the relevant documents and testimony of the concerned witnesses before the trial court. That the alleged discrepancy in sample weight, by itself and without proof of tampering, substitution or destruction of the identity of the sample, cannot be treated as conclusively establishing illegality of the prosecution or illegality of judicial custody. The evidentiary consequences, if any, are matters for trial. "

22. Therefore, it is clear that the NCB has not got any quantitative analysis of the contraband seized and has resorted to destruction/disposal of the case property without any notice to the accused and without compliance of any judicial order. No such orders have been brought on record along with the supplementary counter-affidavit, nor it has been stated that the quantitative analysis of the contraband was conducted and contraband were destroyed/disposed with the permission of the court. Even the date of such order has not been mentioned in the supplementary counter-affidavit of NCB.

23. The Apex Court in the cases of noted above has clearly held that in the absence of clear reports regarding quantitative analysis of the samples, the prosecution cannot be permitted to state that the accused were found in possession of commercial quantity of contraband.

24. The Apex Court in the case of **Ajit Singh @ Jeeta & anr(supra)**., held that in the absence of report of chemical examination being included in the report under section 173 Cr.P.C., the report shall be treated as incomplete.

25. The Apex Court in the case of **Sunil Vasantrao Phulbande & Anr. (supra)**., held in this regard from paragraph 9 to 12 as follows:-

"9. On the backdrop of above undisputed facts, the question which arises for my consideration in the present case is whether mere filing of charge-sheet within the prescribed time, unaccompanied by material papers as contemplated under Section 173(5) of the Code renders it incomplete and

such filing of charge-sheet amounts to failure to file the same, which in turn confers on the accused right to be released on bail under Section 167(2) of the Code since Court is not competent to take cognizance of the offence on the basis of such incomplete charge-sheet/report.

10. The above referred question, in my opinion, is no more *res integra* and is concluded by the judgment in the case of **Matchumari China Venkatareddy and Ors. v. State of Andhra Pradesh ,1994 Cri.L.J. 257 as well as in the case of Sharadchandra Vinayak Dongre and Ors. v. State of Maharashtra, 1991(1) Mh.LJ. 656 = 7997 Cri.LJ. 3329.**

11. Andhra Pradesh High Court in para (9) of the judgment in **Matchumari China Venkatareddy Nagajothi Vs. the State, Rep.** by the Inspector of Police (Criminal Appeal No. 259/2025) on paragraph nos. 22, 23 and 31 **and Ors. v. State of Andhra Pradesh, 1994 Cri.LJ. 257** has observed thus :

"9. Fairness and reasonable procedure is what is contemplated by the expression "procedure established by law" in Art. 21 of the Constitution. Section 167(2), Criminal Procedure Code was not there in the old Code. It was introduced in 1973 amendment. The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days or 90 days as the case may be. An order for release of bail made under proviso to Section 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under Section 309(2). The order of bail can only be cancelled under Section 437(5) or 439(2). The duty of the police is to forward the police report after completion of investigation under Section 173(2) Criminal Procedure Code. The forwarding is done for the purpose of taking the same on record and file of the court and then only, the same is perused by the Court to take cognizance of the offence. Mere forwarding without meaning it to be taken on file is not contemplated under law. If the police report is forwarded to the Magistrate for taking it on file, but if the Magistrate finds that the said report, is not in consonance with Section 173(2) read with Section 173(5) Criminal Procedure Code, he declines to take it on record and that act is only administrative and not judicial. The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the court together with its accompaniments to be

furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence. The next stage is framing of charges under Chapter XVII. Next 23 A(4) stage is trial and the eventual being the judgment.

The observations in para (10) of the same judgment are also relevant for the controversy in issue. Those read thus :

".....It is not sufficient for the prosecution to just file some sort of police report not conforming to the provisions of Sections 173(2) and 173(5) Criminal Procedure Code and then play fraud not only on the statute but also on the Constitution. This kind of tactics by the police to water down and nullify the constitutional and statutory guarantees cannot be countenanced and in fact, the courts should keep a strict vigil on this kind of unscrupulous acts of officers to get over the constitutional and statutory mandate of filing a charge-sheet within the stipulated time under the guise of filing defective charge-sheet and then knowing fully well that it will be returned. Until a charge-sheet with all specifications enumerated under Section 173(2) Criminal Procedure Code and accompaniments under Section 173(5) Criminal Procedure Code is filed into the court and the court scrutinises it on its administrative side to satisfy that all such documents are in order and unless the court takes it on record and keeps it on its file for examination for taking cognizance or not, it cannot be said that a police report (charge-sheet) is filed as contemplated under Section 173(2) Criminal Procedure Code. Once the police report is filed, it should be capable of examination for the purpose of judicial determination to take cognizance of the offence and to proceed further into Chapter XVI Criminal Procedure Code and any act short of that cannot be construed as 'taking cognizance'."

*Similar view is taken by this Court in the case of **Sharadchandra Vinayak Dongre and Ors. v. State of Maharashtra, 1991(1) Mh.LJ. 656 = 1991 Cri.L.J. 3329** where it has been observed that incomplete charge-sheet cannot be treated as Police report at all as contemplated under Section 173(2) of the Code.*

12. In the instant case, it is not in dispute that report of Chemical Analyser is the foundation on the basis of which Magistrate can proceed to take

cognizance of the offences. The contraband, which is seized in the present case, is Ganja and unless and until sample, which was drawn by the prosecution, conforms with the article, which is seized during investigation, i.e. Ganja, the Magistrate is not in a position to proceed to take cognizance of the offence. The charge-sheet/report as contemplated under Section 173(5) of the Code, forwarded to the Magistrate should be such that on the basis of which Magistrate should be able to proceed further and take cognizance. The documents, which are required to be accompanied with the charge-sheet/report as contemplated under sub-section (5) of Section 173 of the Code, therefore, assume importance, without which charge-sheet/report submitted by the Police under Section 173 of the Code would be incomplete and Magistrate also may not be in a position to proceed to take cognizance on the basis of the said report. The concept of filing of charge-sheet by the Police in the Court must fulfil requirement of Section 173(2) and (5) of the Code and it is only after such compliance, report which is filed by the Police in the Court can be construed as complete report under Section 173(2) and (5) of the Code. "

26. Regarding the destruction of seized contraband without order of the court, it has been held by the courts that the entire proceedings against accused become vitiated. The Apex Court in the case of ***Union of India V/s Jarooparam (supra)*** held in paragraphs 10 and 11 that the disposal of the contraband without any order from the court and that too without notice to the accused before such destruction or disposal makes the prosecution case doubtful and conviction of accused cannot be ordered. For ready reference paragraphs nos. 10 and 11 are quoted as follows:-

"10. Omission on the part of the prosecution to produce the bulk quantity of seized opium would create a doubt in the mind of Court on the genuineness of the samples drawn and marked as A, B, C, D, E, F from the allegedly seized contraband. However, the simple argument that the same had been destroyed, cannot be accepted as it is not clear that on what authority it was done. Law requires that such an authority must flow from an order passed by the Magistrate. On a bare perusal of the record, it is apparent that at no point of time any prayer had been made by the prosecution for destruction of the said opium or disposal thereof otherwise. The only course of action the prosecution should have resorted to its disposal is to obtain an order from the competent Court of Magistrate as envisaged under Section 52-A of the

Act. It is explicitly made under the Act that as and when such an application is made, the Magistrate may, as soon as may be, allow the application [See also : Noor Aga Vs State of Punjab & Anr. (2008) 16 SCC 417].

11. There is no denial of the fact that the prosecution has not filed any such application for disposal/destruction of the allegedly seized bulk quantity of contraband material nor any such order was passed by the Magistrate. Even no notice has been given to the accused before such alleged destruction/disposal. It is also pertinent here to mention that the trial Court appears to have believed the prosecution story in a haste and awarded conviction to the respondent without warranting the production of bulk quantity of contraband. But, the High Court committed no error in dealing with this aspect of the case and disbelieving the prosecution story by arriving at the conclusion that at the trial, the bulk quantities of contraband were not exhibited to the witnesses at the time of adducing evidence. "

27. The Apex Court in paragraph 30 in the case of **Bharat Amble (supra)** has held that Section 52-A of the **Narcotics Drugs and Psychotropic Substances Act, 1985**, provides for a procedure intended to guide the officers and to ensure that fair procedure is adopted by them. Substantial compliance of the procedure is the requirement of law and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the prosecution as per the facts of the each case. In the present case there is no documentary evidence brought on record by NCB to prove substantial compliance of section 52-A.

28. Before proceeding further, we find that the paragraph nos. 51.5 and 51.6 of above judgment have also been relied upon by learned counsel for NCB which provide that non compliance of procedure under section 52-A of NDPS Act or the Sanding Order/Rules will not be fatal to the trial unless such discrepancies are pointed out in the physical evidence which render the prosecution case doubtful. The courts should take holistic view of the matter. If the evidence adduced by prosecution satisfies the court, the court can proceed to hold the accused guilty despite procedural defects in terms of Section 52-A of the NDPS Act.

29. We find that in this case there is no quantitative analysis of the contraband allegedly recovered from the petitioners. We also find that the recovered contraband has been destroyed without any order from the

competent court or intimation to he accused before destroying the same. Therefore, if the totality of the facts and circumstances of the case are taken into account the quantitative analysis of the recovered contraband in future is not possible at all. This lacuna in prosecution case is incurable now. While filing the complaint no report of quantitative analysis as per the **Rule 14 of The Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022**, was filed by NCB and incomplete complaint was filed whereon cognizance was taken by the court without application of mind. As per counsel for NCB this is to be considered at the trial along with other evidences. He submitted that as per case of ***Hira Singh(supra)*** quantitative analysis of sample was not required.

30. The Apex Court in the case of ***Hira Singh (supra)*** decided on 22.04.2020 held that entire weight of mixture of Narcotics Drugs and Psychotropic Substances is to be taken into consideration and not just the actual/pure drug content overruling the earlier judgment of **E. Michael Raj Vs. Narcotics Control Bureau, (2008) 5 SCC 161**, which held that the neutral substances in such mixture are required to be excluded for determination of small or commercial quantity. But the legislature in its wisdom has formulated the **Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022** which came into force on 23.12.2022. The Central Government has framed the above Rules in 2022, after the judgment of the Apex Court in the case of ***Hira Singh(supra)*** passed in 2020 and Rule 13 provides that the sample certified by the Magistrate shall be sent to the Forensic Science Laboratory for chemical analysis without any delay. The only proviso to Rule 14 provides that where quantitative analysis of the samples require longer time than 15 days, the results of qualitative test shall be dispatched to the court of Magistrate with a copy to the investigating officer within set time limit on the original copy of the test memo and in the next 15 days, the result of quantitative test shall also be indicated on duplicate test memo to the court of Magistrate with a copy to investigating officer. It is clear that no quantitative test was conducted within 15 days after sending the report of qualitative test to Magistrate by the FSL. It cannot be done now as per the law and more so when the contraband recovered and seized has been illegally destroyed/disposed. In this case the samples were forwarded directly by the officials of NCB to the Central Revenue Control Laboratory Delhi and not by the Magistrate as per Rule 13. Hence the veracity of the samples is also

doubtful. The enforcement of Rule 14 of the Rules aforesaid dilutes the ratio of the judgment of Apex Court in the case of **Hira Singh (supra)**. Keeping in view the Rule 13 and 14 of the Rules aforesaid the ratio of **Hira Singh(supra)** case cannot be complied since the Rule aforesaid is a subsequent Rule of 2022 and it's validity has not been challenged as yet.

31. As considered above from the pleadings of the supplementary- affidavit of petitioners and supplementary counter-affidavit of the NCB, it is clear that there were no order passed by the court under section 52-A(1) for disposal of the contraband allegedly recovered from the petitioners. There is further no orders brought on record regarding compliance of section 52-A(2) of the NDPS Act, by the NCB.

32. We further find that in the qualitative test of the sample at FSL "**Mephedrone**" was found but at the time of recovery when the test was conducted by NCB, the contraband substances recovered was "**Amphetamine**". This raises serious doubt about the prosecution case.

33. Again it is on record that the NCB filed the application under section 52(2) of NDPS Act for certification of allegedly seized contraband on 28.10.2024, which was allowed by the court after six months on 26.04.2025. There is nothing on record to indicate where the samples were stored for more than six months and whether the court made any efforts to certify their place of secure storage.

34. We also find that the investigation of this case was not completed as per section 36-A(4) of the NDPS Act which provides that where the investigation of offence punishable under section 19, 24 or 27 A or for offences involving commercial quantity is involved the period of investigation of 90 days provided under section 167(2) Cr.P.C., shall be construed as 180 days. The proviso provides that where further time is required for completing the investigation the special court may extend the same up to 1 year on the report of the public prosecutor. In the present case the special court extended time of investigation by 60 days under the aforesaid provision but it was set aside by this Court vide order dated 26.08.2025 passed in Crl. Misc. Application (u/s 482 Cr.P.C) No. 18181/2025 directing the NCB to file fresh application for extension of time. The NCB did not complied the order of this Court and file the complaint within the same 60 days time on 20.06.2025 which was extended by the

special court on 19.04.2025 but was set aside by this Court. Therefore, the complaint was filed against the provisions of section 36-A(4) of the NDPS Act and is barred by time and cannot legally proceed. There is no valid cognizance order of the court on the basis of which detention of petitioners in jail can be justified.

35. Therefore under the totality and facts and circumstances of this case, we find that the detention of the petitioners by the respondents since their arrest from 26.10.2024 has no sanction of law.

36. Repeated violations of law have been committed by NCB., which stands proved from the material brought on record of the petitioners.

37. The judgement of Apex Court in the case of NCB Vs. Kashif(supra) relied upon by learned counsel for NCB is clearly distinguishable on facts. The Apex Court held in the above case that mere non-compliance with procedure of disposal of contraband will not vitiate the trial and accused will not be released on bail or acquitted only on this account. But the facts of the case are different. Disposal of contraband has been done without compliance of Rules 13 and 14 of the Rules which are mandatory. In case before Apex Court this was not the issue involved.

38. It is settled law that strict procedures under NDPS Act are required to be strictly complied, failing which accused would be entitled to bail or acquittal.

39. We have no option but to **allow** the habeas corpus petitions.

40. The arrest of petitioners by NCB and their detention in jail are held to be illegal. **They are directed to be released from jail forthwith on furnishing personal bond of Rs. 2 lacs and two sureties of like amount to the satisfaction of the court concerned.**

41. Let the certified copy of this order be issued to the petitioners on payment of usual charges today.

September 28, 2026
Abhishek

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)