

(2026) 02 MAD CK 1808

In the Madras High Court

Case No : Criminal Original Petition No. 34184 Of 2025

Ramesh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-02-2026

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 20(b)(ii)(C), 29(1), 37, 37(1)(b), 52A, 52A(2), 52A(4)

Citation : (2026) 02 MAD CK 1808

Hon'ble Judges : K. Rajasekar, J

Bench : Single Bench

Advocate : R.C. Paul Kanagaraj, A. Gopinath

Final Decision : Dismissed

Judgement

K. Rajasekar, J

1. The petitioner, who was arrested and remanded to judicial custody on 19.08.2025 for the offences under Sections 8(c), 20(b)(ii)(C) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.675 of 2025 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 08.08.2025 at about 19:30 hours, based on a specific information regarding illegal sales of Ganja by the petitioner herein and one Mohammed Oli Jinna, the respondent team went to the place of occurrence; that on seeing the police, the accused fled away from the spot leaving behind a white colour bag; that when the respondent had inspected the said bag left by the accused, it contains 28 kilograms of Ganja; that thereafter, A2 was arrested in this case and his statement was recorded; that subsequently, the petitioner herein was intercepted near Retteri Aatusandhai by the respondent; that after complying all the mandatory provisions under NDPS Act, search and seizure was effected from the petitioner, thereby another 1.500 kilograms of Ganja was seized from him; that thereafter, his confession

statement was recorded, which reveals that the petitioner had procured Ganja from Andhra Pradesh and sold the same to other accused, which were in turn sold to general public for monetary gain; that thereafter, the petitioner was arrested and remanded to judicial custody.

3. The learned counsel appearing for the petitioner submitted that, though it is alleged that the petitioner herein along with other accused brought 28 kilograms of Ganja, that on seeing the police party, they have dropped the same and ran away from the spot; that thereafter, the contraband was seized and the FIR was registered against the petitioner and A2 in this case, however the seized contraband was produced before the concerned Magistrate only on 19.08.2025, in which the petitioner herein was arrested with another seizure of 1.500 kilograms of Ganja. He further submitted that the report of the forensic examination reveals that no samples were taken from the 28 kilograms of Ganja seized on 08.08.2025 and the same was not subjected to chemical examination, only the sample taken from the 1.5 kilograms of Ganja alleged to have been seized on 19.08.2025 was sent for chemical examination after a huge delay and further there is no material to link the petitioner herein with the 28 kilograms of Ganja alleged to have been recovered during the first occurrence on 08.08.2025. He further submitted that there is a long delay in producing the contraband before the concerned Court is fatal to the prosecution case and it is clear non compliance of Section 52A of the NDPS Act; that the co-accused/ A2 in this case was granted bail by this Court, vide order dated 18.11.2025 in CrI.O.P.No.25682 of 2025; that the petitioner is in judicial custody since 19.08.2025; and that the petitioner is ready to abide by any condition that may be imposed by this Court and sought for bail to the petitioner.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the identification of the petitioner was made in the first occurrence itself, since the police party, who received prior information regarding the sale of contraband and was awaiting at the place of occurrence for intercepting the petitioner and A2, as they knew the petitioner prior to the occurrence since, the petitioner was notorious offender and was involved in previous cases in the city of Chennai, more particularly in the neighboring jurisdiction of the Kodungaiyur Police Station. He further submitted that the delay in sending the sample or delay in subjecting the sample for chemical examination is not fatal to the prosecution case and the same has to be decided by the explanations offered to be given by the officer, who involved in the seizure proceedings, transporting the sample to the concerned Court and to the Forensic Science Laboratory and also the Forensic Officer at the time of recording their evidence during the trial; that therefore mere delay in sending the sample or any violation of Section 52A of the NDPS Act would not entitle the petitioner to seek bail under Section 37 of the NDPS Act, hence opposed to grant bail to the petitioner.

5. I have considered the submissions made on both sides and perused the

materials available on record.

6. Admittedly in this case, the final report has been filed and the statement of the witnesses including the seizure officer, who seized 28 kilograms of Ganja reveals that, the petitioner herein along with other accused came to the place of occurrence with a gunny bag, that on seeing the police party, the petitioner had ran away from the spot leaving the bag, which contains 28 kilograms of Ganja. It was not the prosecution case that the petitioner was not known to them and he was subsequently identified. The FIR was registered immediately, after seizure of 28 kilograms of Ganja, even prior to arrest of the petitioner herein. In the FIR, it is categorically stated that the petitioner after seeing the police party, dropped the bag containing 28 kilograms of Ganja and ran away from the spot, hence there is a direct evidence regarding the involvement of the petitioner herein in the offence.

7. The next contention raised by the petitioner with regard to the violation of Section 52A of the NDPS Act. It is true that Section 52A of the NDPS Act and the Rules contemplated inter alia mandates procedures regarding preparation of inventory of seized contraband, weighing of samples, taking photographs etc., as well as its disposal has to be properly recorded. The Apex CrI.O.P.No.34184 of 2025 Court recently in *Bharat Aambale vs. The State of Chhatisgarh* [2025 8 SCC 452] had once again considered the scope of Section 52A of the NDPS Act and observed in paragraph No.50 as follows:

"50. We summarize our final conclusion as under: -

(I) Although Section 52A 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 presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) 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* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of 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.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced

before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A 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.

(V) Mere non-compliance of the procedure under Section 52A 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.

(VI) 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 52A of the NDPS Act.

(VII) 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.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A 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 material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, 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.

(X) Once the foundational facts laid indicate non-compliance of Section 52A 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 52A 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."

8. The above judgment of the Apex Court has reiterated that delayed

compliance, or violation of Section 52A and its rules framed/ standing orders issued, will not automatically throw away the case of the prosecution, unless there is a clear evidence to show that the seized contraband is tampered with. Any lapse on the part of the police shall raise adverse inference depend only on the facts and circumstances of the case. The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A. In this case, the final report reveals that the inventories were taken in the presence of Magistrate and the same was sent to FSL, hence mere raising suspicion based on the delay in sending the sample is not a valid ground for seeking bail, unless it contemplates substantial probable causes for believing that the accused is not guilty of the offence. Further there is no tampering of seals recorded in any of the documents or statement of witnesses, under the said circumstances the same is not a valid ground to satisfy "Reasonable grounds" used in clause (b) of the Sub Section1 of Section 37 of the NDPS Act.

9. Further the fact that the petitioner has previous antecedents and the likelihood of the petitioner involve in any offence to denying bail, has not been satisfied by the petitioner, hence this Court is of the view that no grounds were made out by the petitioner herein to satisfy the conditions contemplated under Section 37 of the NDPS Act.

10. Accordingly, this criminal original petition stands dismissed.