

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC. APPLICATION (FOR SUSPENSION OF SENTENCE)****NO. 1 of 2026****In R/CRIMINAL APPEAL NO. 408 of 2026****With****CRIMINAL MISC. APPLICATION (FOR SUSPENSION OF SENTENCE)****NO. 1 of 2026****In R/CRIMINAL APPEAL NO. 685 of 2026**

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MONESHKUMAR SUKHENBHAI GARANGE**Versus****STATE OF GUJARAT**

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Appearance:**MR YATIN OZA, SR ADVOCATE WITH MR. ANURAG R RATHOR(9315) for****the PETITIONER****MR LB DABHI APP for the RESPONDENT No. 1**

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 29/04/2026****COMMON IA ORDER****(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. Rule. Learned APP waives service of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.
2. These applications have been filed with a prayer for suspension to sentence and grant of bail during the pendency of instant appeals.
3. The applicants – original accused No. 1 & 2 stand convicted for the offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS’) and sentenced to suffer 15 years rigorous imprisonment with fine of Rs.2,00,000/- vide judgment of conviction and order dated 25.11.2025 passed by the Additional Sessions Judge, Ahmedabad in

Special NDPS Case No. 42 of 2023.

4. Brief facts giving rise to file present application are that, four accused persons were tried and prosecuted for the possessing and transporting the psychotropic substance mephedrone drugs.

According to prosecution case, on 05.02.2023, the police officials of SOG Ahmedabad were on patrolling in Ahmedabad city and at that time, a secrete information being received from the informer that, “two brothers namely - Himesh Garange and Monesh Garange, resident of Kubernagar, Sardarnagar, along with their companion Chanakya @ Raja have proceeded at Rajasthan to get the quantity of MD drugs from Ajay Gehlot and they have received the MD drugs from Ajay Gehlot, and they would be returning to Ahmedabad with said drugs by travelling in silver colour Ford Car having registration No. GJ-01-RW-8922 and they would be entering into Ahmedabad from Gandhinagar Koba Circle to Indira Bridge.”

It is further case of the prosecution that, the information was noted down into writing and immediately it was transmitted to higher officer. Accordingly, raid was conducted and in the presence of two panchas, the car was intercepted. In the car, on the driver seat, accused no. 3 Chanakya was found and beside him, A1 – Himesh Garange was found seated, whereas, in the back seat, the accused no. 2 – Monesh was there. The accused applicants were informed by the PW-8 B.P. Chaudhary, P.I., SOG, Crime Branch that they have right to be searched in the presence of Gazetted

Officer and nearest Magistrate or before him as he was authorized and Gazetted officer. The applicants herein were given written notice about their right as referred above before the search. The accused applicants gave their consent to PW-8 for search and did not opt to be searched by the nearest Magistrate or any Gazetted Officer. The proceedings of search were being carried out in the presence of panchas. According to prosecution case during the search of A1 – Himesh, a mephedrone drug weighing 59.150 gram found from left side of pocket of his pant, allegedly filled in the plastic zip lock bag, whereas, from the search of A2- Monesh, a mephedrone drug weighing 59.090 gram found from the pocket of his pant. The commercial contraband drugs weighing 118.240, in total , seized and recovered from the applicants accused herein.

The accused persons came to be arrested. Upon registration of the complaint and after due investigation, the chargesheet for the offences as referred above was filed before the Sessions Court, Ahmedabad. After framing of the charge, the trial Court proceeded to record the evidence. In order to prove the charge, the prosecution has examined 15 witnesses and exhibited 51 documents. After hearing the parties and upon appreciation of the evidence, the accused nos. 1 to 3 have been convicted under Section 8(c), 22(c) read with Section 29 of the NDPS Act and sentenced to undergo 15 years rigorous imprisonment with fine amount.

5. Mr. Yatin Oza, learned Senior Counsel while praying for suspension of sentence and grant of bail, made following submissions :

- (i) That the conviction is solely based on the recovery of the contraband drugs from the applicants herein. The complainant, who had received the information PW-8, was not empowered and authorized officer. Thus, the proceedings of search at the behest of PW-8 is in violation of Sections 42 and 43 of the NDPS Act.
- (ii) The trial Court, while convicting the accused failed to appreciate the statutory provision in its true prospective as there is absolutely non-compliance of Section 50 of the NDPS Act; that in the facts of the present case, before search, the accused were informed of their right to be searched by a Gazetted Officer or nearer Magistrate, as well as before PW-8, Police Official B. P. Chaudhary, P.I, SOG, Crime Branch. The PW-8 had given a third option in addition to two options for the search. It was improper on the part of PW-8 conveying the applicants accused that, he being Gazetted Officer, they could be searched before him. Admittedly, PW-8 was the Raiding Officer. He could not have given a third option to the accused as Section 50(1) of the NDPS Act does not provide any kind of such option and therefore, there was non-compliance of provisions of Section 50 of the NDPS Act, which rendered the search and seizure illegal.
- (iii) That there were glaring loopholes in the prosecution case, that made it doubtful as to whether the samples drawn remained untampered or in safe custody from the time of seizure till it reached the FSL. In the facts of the present case, admittedly, the colour of contraband described by the police as well as expert witness are contradictory to

each other. The outward number for the dispatch the contraband to the FSL is also different compared to the facts mentioned in the panchnama as well as proceedings of the court; that, the carrier who had deposited the contraband with the FSL Laboratory has not been examined.

In support of the contentions, heavy reliance, being placed on the judgment of **State of Rajasthan Vs. Parmanand and Another (2014) 5 SCC 345** and **The State of Himachal Pradesh Vs. Surat Singh (Criminal Appeal No., 96 of 2018 decided on 16.03.2026)**, to contend that, the third option is not provided in Section 50 of the NDPS Act and such option would frustrate provisions of Section 50 and vitiated the proceedings of Search and Seizure.

6. In such circumstances, learned senior counsel Mr. Oza urged that, the impugned judgment of conviction is not sustainable and having regard to the nature of evidence, the case is arguable. Thus, it was submitted that the case is made out for exercising judicial discretion.
7. On the other hand by opposing the submissions, Mr. L.B. Dabhi, learned APP for the respondent State vehemently contended that, the trial Court has rightly convicted the applicants; that there is no legal error on the face of record and findings are based on evidence and at this stage, the appellate court cannot reanalyze and/or re-appreciate the entire evidence and take a different view. The raiding officer as well as other police officials at relevant time were empowered and

authorized officers for carrying out search and seizure. That the accused were informed of their right as provided under Section 50 of the Act and after informing them, they consented for the search to be carried out by PW-8. In such circumstances, it was submitted that, the commercial quantity of contraband drugs allegedly found from the possession of the accused and in view of Sections 35 and 54 of the NDPS Act, it is presumed to have committed the offence by them. The accused herein failed to explain satisfactorily about the contraband found from their possession. That the seized drugs was the commercial quantity and therefore, after the conviction, rigors of Section 37 of the NDPS Act would also apply at the stage of suspension of sentence and bail pending the appeal and thus, in absence of any evidence for the satisfaction of the Court that, there are reasonable grounds for believing that they are not guilty of such offence; the appeal court at this stage, may not exercise discretion.

8. We have carefully examined the case records and submission at the bar. Before advertng to the issue, we deem it fit to refer the case of **Om Prakash Sahni Vs. Jai Shankar Chaudhary and Another, (2023) 6 SCC 123**, wherein, while discussing on the power of Appellate Court for granting bail and suspension of sentence, the Supreme Court in para-33 of the judgment has observed that, it is imperative on the part of the appellate court to see as to whether case presented by the prosecution and accepted by the trial Court can be said to be a case in which ultimately, the convict stands for fair chances of acquittal and in order to decide the same, if the appellate Court while examining the impugned judgment, finds that something

which is very apparent or gross on the face of the record, on the basis of which the Court can arrive at prima-facie satisfaction that the conviction may not be sustainable.

9. In the facts of the present case, the conviction is solely based on the recovery of contraband drugs from the personal search of the applicants accused. The principal argument canvassed by the accused is that, there was non-compliance of Section 50 which renders the search and seizure illegal, as the Raiding Officer himself had given an option to the accused, as provided under Section 50 of the Act, which he could not have given and on that ground, the conviction is vitiated. We are conscious about the fact that at this stage, the re-analysis of the evidence cannot be done. However, fact remains that, PW-8 was Raiding Officer. Section 50 is applicable in the fact of present case, which says that when any officer duly authorized under Section 42, is about to search any person under the provision of Section 41, 42 or 43 of the NDPS Act, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer or a Magistrate.
10. In order to appreciate the submissions, we deem it fit to refer the observations made by the Constitution Bench in case of **State of Punjab Vs. Baldev Singh (1999 6) SCC 172**). In para-32 of the judgment, it was observed that, the provisions to the Act implicitly make it imperative and obligatory and casts a duty on the investigating officer (empowered officer) to ensure that, search of a person (suspect) is conducted in the manner prescribed by Section

50 by intimating to the person concerned about the existence of his right that, if he so requires, he shall be searched before a Gazetted Officer or a Magistrate and in case if so opts, failure to conduct his search before a Gazetted Officer, or a Magistrate, would cause prejudice to the accused and render the recovery of illicit article suspect and vitiated the conviction and sentence of the accused. In para-57 of the judgment, the Constitutional Bench arrived at the following conclusion :

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

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

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an

accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of [Section 50](#) of the Act.

(5) That whether or not the safeguards provided in [Section 50](#) have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of [Section 50](#) and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

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

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in [Section 50](#) of the Act cannot be used as evidence of

proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search."

11. We may also refer the case of **State of Rajasthan Vs. Parmanand and Another (2014 (5) SCC 345)**, wherein, the Apex Court, on the interpretation of Section 50, in para-16, 17, 18 and 19, made the following observations:

"16. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent No.2 Surajmal is stated to have signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand did not sign.

17. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would

frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval.

18. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore,

in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.

19. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our

opinion, the search conducted by PW-10 SI Qureshi is vitiated.”

12. It is beneficial to refer the observation of the Supreme Court made in the case of **State of Rajasthan Vs. Ram Chandra (2005 (0) AIR SC 2221)**, wherein, in para-18, 19, 20, 21 and 22, the Supreme Court has highlighted the object of the compliance of Section 50, which read as under :

“18. If the person so requires, the officer referred to under sub-section (1) of [Section 50](#) may detain the person to bring him before the Gazetted Officer or the Magistrate, as the case may be. As was noticed in [Raghubir Singh's](#) case (supra) the Act affords the person to be searched a safeguard to the effect that he may require the search to be conducted in the presence of a senior officer. The senior officer may be a Gazetted Officer or a Magistrate depending upon who is conveniently available. That being the purpose of the Act, if any Gazetted Officer even if he is a police officer of a particular rank is present nearby when the accused is detained, the accused may be asked as to whether he would like to be searched in the presence of that officer or a Magistrate. The foundation of the stand taken by the accused-respondent which found favour with the High Court is that if he is a member of the raiding party the requirements of [Section 50](#) are not met. This is not legally tenable, and in any event on the facts of the present case it was not so because PW-3, the Deputy Superintendent of Police reached the spot after the person was detained.

19. As noted above, in [Raghubir Singh's](#) case (supra) the option given to the accused is only to choose whether he would like to be searched by the officer making the search or in the presence of the

nearest available Gazetted Officer or the nearest available Magistrate. The choice of the nearest Gazetted Officer or the nearest Magistrate has to be exercised by the officer making the search and not by the accused. In the instant case all the options were made known to the accused and he himself opted to be searched in the presence of the Deputy Superintendent of Police (PW-3).

20. Sections 41, 42, 43 or Section 50 do not speak of a raiding party. Section 41(2) speaks of arrest by any officer of gazetted rank of enumerated department or by an officer subordinate to him (but superior in rank to a peon, sepoy or a constable) to arrest such a person. Under sub-section (1) of Section 41 a warrant may be addressed to an officer for arrest of a person under circumstances enumerated in the said provision. Section 42 deals with action permissible to be taken by an officer authorized. Section 43 deals with power of an officer of any of the departments mentioned in Section 42. The officer exercising power under Sections 41, 42 and 43 can take assistance of others for the purpose of carrying out the prescribed acts.

21 The conclusions of the High Court would have been correct if the officer proposing to effect the search is a Gazetted Officer and he gives option to be given under Section 50 to the person detained to be searched in his presence. In that event, the requirement of Section 50 would not be met because the officer proposing to effect the search cannot act in dual capacity; first as an officer authorized under Section 42 to search a person and

second as the Gazetted Officer in whose presence the accused may opt to be searched.

22. *The object of the Act being that the search is conducted in the presence of a superior officer, in order to lend transparency and authenticity to the search it cannot be held as a principle in law that if a superior officer happens to be with the officer authorized (which the High Court has described as being a member of the raiding party) the position would be different. The High Court proceeds on the basis that there may be bias on the part of the officer because he was accompanying the officer authorized. Such a presumption is not legally available.”*

13. In the facts of the present case, the evidence of PW-8 would show that he being Raiding Officer, had given an option to the accused about the existence of their right as provided under Section 50 of the NDPS Act. The written notice given to the accused Exh. 80 and 82, would further suggest that the PW-8 himself informed the accused applicant to their right to be searched before him or before the Magistrate or any Gazetted Officer. In such circumstances, we are of the prima-facie view that, the PW-8 could not have given option to the accused of their right to be searched before him. Therefore, in view of the ratio laid down by the Supreme Court in the case of State of Rajasthan Vs. Parmanand and others, and The State of Himachal Pradesh Vs. Surat Singh (supra), and having regard to the peculiar facts and circumstances of the present case, we find substance in the submissions advanced by the accused on the aspect

of non-compliance of Section 50 of the NDPS Act.

14. For the reasons recorded, without much discussion on merits of the case, we are persuaded to exercise our discretion in favour of the applicants convict for the purpose of suspension of sentence and grant of bail.
15. Accordingly, present applications are **allowed**. Rule is made absolute to aforesaid extent. The sentence of the applicants awarded vide judgment dated 25.11.2025 by the learned Special NDPS Judge, City Civil & Sessions Court, Ahmedabad in Special NDPS Case No. 42 of 2023 is suspended during the pendency of the Criminal Appeal and the applicants shall be released on bail on their furnishing a personal bond of Rs.10,000/- each with one surety each of the like amount to the satisfaction of the trial Court subject to condition that they will not leave India without prior permission of this Court and shall appear before this court as and when appeal is taken for final hearing and shall not change their address and in case of change in address, shall inform to the concerned police station as well as to this Court. Direct service permitted.
16. The observations made herein are tentative and prima-facie in nature and it shall not come into way at the time of hearing of the Appeals.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)