IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.570 OF 2022

C/W

CRIMINAL PETITION No.3455 OF 2022

IN CRIMINAL PETITION No.570 OF 2022

BETWEEN:

MR.JOSWIN LOBO
S/O JOHN LOBO
AGED ABOUT 26 YEARS
R/A NO.21, 8TH CROSS
NEAR DASARAHALLI,
BBMP OFFICE
PRASARA BHARATHI LAYOUT
KEMPAPURA MAIN ROAD,
BENGALURU – 560 024.

... PETITIONER

(BY SRI HASHMATH PASHA, SR. ADVOCATE A/W
SRI KARIAPPA N.A., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY BYADARAHALLI POLICE STATION
BENGALURU CITY - 560 091.

2. MR. R. VIRUPAKSHASWAMY
POLICE INSPECTOR - W & N WING

CCB POLICE, N.T. PETE
BENGALURU CITY.

3. MR.NAVEEN PRASAD V.,
POLICE SUB-INSPECTOR
BYADARAHALLI POLICE STATION
BENGALURU RURAL DISTRICT
BENGALURU.

(R-1 TO R-3 ARE REPRESENTED BY
LEARNED STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU)

... RESPONDENTS

(BY SRI V.S.HEGDE, SPP-II, A/W
SRI B.J.ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., QUASH THE ENTIRE PROCEEDINGS INITIATED IN SPL.C.NO.1876/2021 ON THE FILE OF THE HON'BLE XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPL. JUDGE FOR NDPS CASES, BENGALURU CITY, WHICH IS ARISING OUT OF CR.NO.224/2021 OF BYADARAHALLI P.S., BENGALURU RURAL DISTRICT, BENGALURU FOR THE OFFENCE P/U/S 8c, 21c, 22c, 27(a), 20(ii)(B), 23(c) OF THE NDPS ACT AS AN ABUSE OF PROCESS OF LAW AND CONSEQUENTLY RELEASE THE PETITIONER FROM JUDICIAL CUSTODY.

IN CRIMINAL PETITION No.3455 OF 2022

BETWEEN:

PETITIONER
S/O VINAY K. KONNURU
AGED ABOUT 20 YEARS
STUDEN OF FINAL YEAR B.TECH
R/AT NO. 379, 10TH MAIN
NGEF LAYOuT

NAGARABHAVI
BENGALURU – 560 072.

... PETITIONER

(BY SRI HASHMATH PASHA, SR. ADVOCATE FOR
SRI KARIAPPA N.A., ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
BYADARAHALLI POLICE STATION
BANGALORE CITY – 560 091.

2. MR. VIRUPAKSHASWAMY
POLICE INSPECTOR
CCB POLICE, BENGALURU
BANGLAORE
OFICE AT N.T. PET
BENGALURU – 560 53.

3. MR. NAVEEN PRASAD
POLICE SUB-INSPECTOR
BYADARAHALLI POLICE STATION
BENGALURU – 560 091.

(ALL THE THREEE RESPONDENTS
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU)

... RESPONDENTS

(BY SRI B.J.ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING IN SPL.C.C.NO.1876/2021 ON THE FILE OF THE XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPL. JUDGE FOR NDPS CASES, BANGALORE WHICH IS ARISING OUT OF CR.NO.224/2021 OF

BYADARAHALLI P.S., BANGALORE FOR THE OFENCE U/S 8(c), 21(c), 22(c), 23(C), 27(a) OF NDPS ACT AS AN ABUSE OF PROCESS OF LAW.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in Crl.P.No.570 of 2022 is before this Court calling in question proceedings in Special Case No.1876 of 2021 pending before the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bangalore city registered for offences punishable under Sections 8(c), 21(c), 22(c), 27(a), 20(ii)(B) and 23(c) of the NDPS Act.

2. Heard Sri Hashmath Pasha, learned Senior Counsel along with Sri.Kariappa.N.A., learned counsel for petitioner and Sri.V.S.Hegde, learned SPP-2 along with Sri.B.J.Rohith, learned High Court Government Pleader for respondents.

3. Brief facts as projected by the prosecution are as follows:

On 22.06.2021, the second respondent, on receipt of a credible information that near East West college in Prasidhi paying

guest Room No.11, 5 persons are in possession of Narcotic Drugs and Psychotropic Substances and were intending to sell the same, proceeded to the room along with the panchas wherein petitioner/accused No.1 was found in possession of 56.5 grams of MDMA ecstasy tablets and 350 gms. of hashish and also a mobile phone for contact with the buyers. In the same way, the accused Nos.2 to 5 were also found in possession of LSD strips, MDMA tablets. Seizure was undertaken and panchanama was drawn against petitioner and accused Nos.2 to 5 and they were taken into custody. Thereafter, the second respondent prepared a report, pursuant to which, the accused were remanded to judicial custody on 23.06.2021. After conduct of investigation, the police filed a charge sheet on 26.11.2021 on receipt of an FSL report. Pursuant to the filing of the chargesheet, the petitioner has knocked the doors of this Court in the subject petition.

4. The learned senior counsel Sri.Hashmath Pasha appearing for petitioner would vehemently argue and contend that the entire proceedings from the stage of registration of the FIR stands vitiated on one solitary ground that the proceedings are instituted by an

incompetent officer. The learned senior counsel would submit that the police Sub-Inspector who registers the FIR and files the final report/charge sheet before the Competent Court is not the officer in-charge of the police station. Officer in-charge of the police station has not filed any charge sheet. He would take this Court through several provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short) to contend that the violation of the provisions of the Act are incurable and the proceedings would stand vitiated. No other ground is urged by the learned senior counsel.

5. On the other hand, the learned SPP-2 Sri.V.S.Hedge would vehemently refute the submissions made by the learned senior counsel and would contend that the Government has issued the notification way back in the year 1986 empowering the Sub-Inspector to be performing the duties of the officer in-charge of the police station and would submit these very submissions are considered by the Constitution Bench of the Apex Court in the case of ***MUKESH SINGH v. STATE*** and the petitioner cannot now agitate the issue that has been settled by the Apex Court. He

would further place reliance upon a judgment of the co-ordinate Bench of this Court while dealing with a petition filed by the petitioner herein under Section 439 of the Cr.P.C. in ***Crl.P.No.6916/2021*** disposed on ***02.02.2022*** seeking enlargement of bail, to contend that all these submissions have been negatived and would be binding upon the petitioner.

6. By way of statement of objections, the State has placed on record certain notifications which empower the Police Sub-Inspector to investigate into the offences under the Act.

7. I have given my anxious consideration to the submissions made by the learned counsel for both the learned counsel and perused the material on record, in furtherance whereof, the only issue that falls for my consideration is:

"Whether the proceedings are vitiated for the FIR and the final report not being filed by the officer in-charge of the police station?"

8. Before embarking upon the consideration of the case of the petitioner on its merit, I deem it appropriate to notice the provisions of the Act. Sections 42, 52, 53, 53A of the Act read as follows:

> *"**42. Power of entry, search, seizure and arrest without warrant or authorisation**.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,—*
>
> *(a) enter into and search any such building, conveyance or place;*
>
> *(b) in case of resistance, break open any door and remove any obstacle to such entry;*
>
> *(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or*

conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]

***52. Disposal of persons arrested and articles seized**.— (1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.*

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under Section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

***53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station**.—(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence [or any other department of the Central Government including para-military forces or armed forces] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.*

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise [or any other department] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

*[**53-A. Relevancy of statements under certain circumstances**.—(1) A statement made and signed by a person before any officer empowered under Section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—*

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept

out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]"

Section 42 of the Act deals with power of entry, search, seizure and arrest without a warrant. Section 52 deals with disposal of persons arrested and articles seized. Section 52(3) mandates that every article seized under Sections 41, 42, 43 or even 44 shall be forwarded to the Officer in-charge of the nearest police station or officer empowered under Section 53. Section 53 invests power to invest officers of certain departments to exercise the power of an officer in-charge of the police station. Section 53(2) empowers the State Government by issuance of a notification to invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of the officer in-charge of the police

station. Thus, Section 42 directs that any such Officer of the department mentioned therein which includes police shall have the power to search, seizure and arrest without warrant and continue further proceedings. Section 53 empowers the State to issue such notification declaring officers of those departments mentioned therein to be the officer in-charge of the police station for investigation of offences under the Act.

9. In furtherance of both Sections 42 and 53 of the Act, the State Government has issued notification. In terms of Section 53 of the Act, the notification is issued on 11.09.1986 empowering Sub-Inspector of the Drugs Control department, Excise department to have the powers of officer in-charge of the police station for investigation under the Act. The notification reads as follows:

> ***"HOME SECRETARIAT***
> *Notification No. HD 214 EDC 85*
> *Bangalore, dated 11th September 1986*
>
> ***In exercise of the powers conferred by sub-section (2) of Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), the Government of Karnataka hereby invest the officers of and above the rank of the Sub-Inspector of Excise, Excise Department and the Drug Inspector, Drugs Control Department, with the powers of an officer in charges of the Police Station for the investigation of offences under this Act.***

By Order and in the name of the Governor of Karnataka,
C.RAMAIAH
Under Secretary to Government,
Home Department (Excise)"

(Emphasis supplied)

On the same day, another notification is issued under Sections 41 and 42 of the Act authorising those very officers to act in furtherance of the aforesaid provisions. Therefore, two notifications as required under Sections 42 and 53 are in place, which depicts that the Sub-Inspector is empowered to conduct investigation for the offences under the Act.

10. A five Judge Bench of the Apex Court has considered this very submission and the very provisions of law. In the case of ***MUKESH SINGH V. STATE***[1] *(supra)* wherein the Apex Court has held as follows:

> ***"9.*** *Now we consider the relevant provisions of CrPC with respect to the investigation:*
>
> ***9.1.*** *Section 154 CrPC provides that every information relating to the commission of a cognizable offence, if given*

[1] ***(2020)10 SCC 120***

orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction.

9.2. *Section 156 CrPC provides that any officer in charge of a police station may investigate any cognizable offence without the order of a Magistrate. It further provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Therefore, as such, a duty is cast on an officer in charge of a police station to reduce the information in writing relating to commission of a cognizable offence and thereafter to investigate the same.*

9.3. *Section 157 CrPC specifically provides that if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender.*

10. *Therefore, considering Section 157 CrPC, either on receiving the information or otherwise (may be from other sources like secret information, from the hospital, or telephonic message), it is an obligation cast upon such police officer, in charge of a police station, to take cognizance of the information and to reduce into writing by himself and thereafter to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. Take an example, if an officer in charge of a police station passes on a road and he finds a dead body and/or a person being beaten who ultimately died and there is nobody to give a formal complaint in writing, in such a situation, and when the said officer in charge of a police station has reason to suspect the commission of an offence, he has to reduce the same in writing in the form of an information/complaint. In such a situation, he is not precluded from further investigating the case. He is not*

debarred to conduct the investigation in such a situation. It may also happen that an officer in charge of a police station is in the police station and he receives a telephonic message, may be from a hospital, and there is nobody to give a formal complaint in writing, such a police officer is required to reduce the same in writing which subsequently may be converted into an FIR/complaint and thereafter he will rush to the spot and further investigate the matter. There may be so many circumstances like such. That is why, Sections 154, 156 and 157 CrPC come into play.

10.1. *Under Section 173 CrPC, the officer in charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate. Thus, under the scheme of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same. Officer in charge of a police station has been defined under Section 2(o) CrPC and it includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.*

10.2. *As observed and held by this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524 : AIR 2014 SC 187] , the word "shall" used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing.*

10.3. *Now let us consider the relevant provisions under the NDPS Act with respect to the procedure to be followed to issue warrant, authorisation of entry, search, seizure and arrest without warrant or authorisation; seizure and arrest in public place; entry; stop and search conveyance and the conditions under which search of persons shall be conducted. The relevant provisions are Sections 41, 42, 43, 49, 50, 51, 52, 53, 54, 55, 57, 57-A, which are as under:*

*"**41. Power to issue warrant and authorisation**.—(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed.*

(2) Any such officer of gazetted rank of the departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may

furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under Section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under

Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

***43. Power of seizure and arrest in public place**.—Any officer of any of the departments mentioned in Section 42 may—*

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

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***49. Power to stop and search conveyance**.—Any officer authorised under Section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance [or controlled substance], in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and—*

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

***50. Conditions under which search of persons shall be conducted**.—(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.*

(2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer or the Magistrate referred to in sub-section (1).

(3) The gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest gazetted officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest gazetted officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which

necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

***51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures**.— The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.*

***52. Disposal of persons arrested and articles seized**.— (1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.*

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under Section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.—(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence [or any other Department of the Central Government including

paramilitary forces or armed forces] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise [or any other department] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

54. Presumption from possession of illicit articles*.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—*

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily].

55. Police to take charge of articles seized and delivered*.—An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the*

purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

***

***57. Report of arrest and seizure**.—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.*

***57-A. Report of seizure of property of the person arrested by the notified officer**.—Whenever any officer notified under Section 53 makes an arrest or seizure under this Act, and the provisions of Chapter V-A apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure."*

***10.3.1.** Section 67 of the NDPS Act authorises/permits any officer referred to in Section 42 to call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the NDPS Act or any rule or order made thereunder, during the course of any enquiry. Section 68 of the NDPS Act provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence.*

***10.3.2.** From the aforesaid scheme and provisions of the NDPS Act, it appears that the NDPS Act is a complete code in itself. Section 41(1) authorises a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of the Second Class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the NDPS Act, or for the search, whether by day or by night.… Sub-section (2) of*

Section 41 authorises any such officer of gazetted rank of the Departments of Central Excise … as is empowered in this behalf by general or special order by the Central Government, or any such officer of the Revenue … Police or any other department of a State Government as is empowered in this behalf by general or special order, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under the NDPS Act, authorising any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

10.3.3. As per Section 42, any officer of the Department of Central Excise … as is empowered in this behalf by general or special order by the Central Government or any such officer … of the Revenue, Drugs Control … Police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under the NDPS Act has been committed, enter into and search any such building, conveyance or place; in case of resistance, break open any door and remove any obstacle to such entry; seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.

10.3.4. As per sub-section (2) of Section 42, such an officer has to send a copy of the information taken down in writing under sub-section (1) or his grounds for belief, to his immediate official superior within 72 hours.

10.3.5. There are inbuilt safeguards provided under the NDPS Act itself, such as, Sections 50 and 52. Section 50 of the NDPS Act provides that when any officer duly authorised under Section 42 is about to search any person under the provisions of Sections 41, 42 or 43, he shall inform the person to be searched in the presence of a gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires, he shall take such person without unnecessary delay to the nearest gazetted officer as mentioned in sub-section (1) of Section 50. As per sub-section (5) of Section 50, when an officer duly authorised under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest gazetted officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest gazetted officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. Sub-section (6) of Section 50 provides that after a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

10.3.6. *Section 52 of the NDPS Act mandates that any officer arresting a person under Sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest. Sub-section (2) of Section 52 further provides that every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the*

warrant was issued. As per sub-section (3) of Section 52, every person arrested and article seized under sub-section (2) of Sections 41, 42, 43, or 44 shall be forwarded without unnecessary delay to the officer in charge of the nearest police station, or the officer empowered under Section 53. That thereafter the investigation is to be conducted by the officer in charge of a police station.

10.3.7. *As per Section 51 of the NDPS Act, the provisions of CrPC shall apply, insofar as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued and arrests, searches and seizures made under the NDPS Act. Therefore, up to Section 52, the powers are vested with the officers duly authorised under Sections 41, 42, or 43 and thereafter so far as the investigation is concerned, it is to be conducted by an officer in charge of a police station.*

10.3.8. *Section 53 of the NDPS Act provides that the Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including paramilitary forces or armed forces or any class of such officers with the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act. Sub-section (2) of Section 53 further provides that the State Government, may, by notification published in the Official Gazette, invest any officer of the Department of Drugs Control, Revenue or Excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Therefore, other persons authorised by the Central Government or the State Government can be the officer in charge of a police station for the investigation of the offences. Section 53 does not speak that all those officers to be authorised to exercise the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act shall be other than those officers authorised under Sections 41, 42, 43, and 44 of the NDPS Act. It appears that the legislature in its wisdom has never thought that the officers authorised to exercise the powers under Sections 41, 42, 43 and 44 cannot*

be the officer in charge of a police station for the investigation of the offences under the NDPS Act.

10.4. *Investigation includes even search and seizure. As the investigation is to be carried out by the officer in charge of a police station and none other and therefore purposely Section 53 authorises the Central Government or the State Government, as the case may be, invest any officer of the Department of Drugs Control, Revenue or Excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Section 42 confers power of entry, search, seizure and arrest without warrant or authorisation to any such officer as mentioned in Section 42 including any such officer of the Revenue, Drugs Control, Excise, Police or any other department of a State Government or the Central Government, as the case may be, and as observed hereinabove, Section 53 authorises the Central Government to invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government … or any class of such officers with the powers of an officer in charge of a police station for the investigation. Similar powers are with the State Government. The only change in Sections 42 and 53 is that in Section 42 the word "police" is there, however in Section 53 the word "police" is not there. There is an obvious reason as for police such requirement is not warranted as he always can be the officer in charge of a police station as per the definition of an "officer in charge of a police station" as defined under CrPC.*

10.5. Therefore, as such, the NDPS Act does not specifically bar the informant/complainant to be an investigator and officer in charge of a police station for the investigation of the offences under the NDPS Act. On the contrary, it permits, as observed hereinabove. To take a contrary view would be amending Section 53 and the relevant provisions of the NDPS Act and/or adding something which is not there, which is not permissible."

(Emphasis supplied)

The Five Judge Bench of the Apex Court considers the very provisions on which the learned senior counsel has sought to place reliance upon. Considering the same, the Apex Court holds that there is a marked difference between Section 42 and Section 53 of the Act as Section 42 deploys the word 'police' and Section 53 does not deploy the word 'police'. The Apex Court answers that it was not warranted under Section 53, as the Police officer who had investigated would always be an officer in-charge of the Police Station.

11. The solitary submission of the learned senior counsel is that the officer who has investigated into the offence is not the officer in-charge of the Police Station as is required under Section 42 of the Act. The State Government, as observed hereinabove, has issued a notification in exercise of powers conferred on it in terms of sub-section (2) of Section 53 of the Act investing Officers above the rank of Sub-Inspector of Excise Department and Drugs Inspector of Drugs Control Department with the powers of an officer in-charge of the Police Station for investigation of offences under the Act. Another notification comes to be issued on the same day

and on the same lines authorizing those very officers who are invested with such powers as observed in the notification to be invested with such powers under Sections 41 and 42 of the Act as well. Therefore, the two notifications, as required under Sections 42 of 53 of the Act are already in place, which clearly depict the Sub-Inspector being empowered to conduct investigation into the offences under the Act.

12. Sub-section (2) of Section 53 *(supra)* of the Act clearly declares that the State Government may by issuance of a notification invest any officer of the department of Drugs Control, Revenue or Excise or any class of such officers with the powers of an officer in-charge of a Police Station for investigation of offences under the Act. Therefore, the notification issued by Government is in tune and in consonance with sub-section (2) of Section 53 of the Act. If that be so, the contention of the learned senior counsel that the Investigating Officer who was the Sub-Inspector of Police was not the officer in-charge of the Police Station who could have exercised powers under Section 42 of the Act and conduct investigation or even conduct a search or seizure as the Sub-

Inspector of Excise of the Excise Department who is also invested with powers, to be the officer in-charge of the Police Station, *sans* countenance.

13. The Apex Court in the case of ***MUKESH SINGH*** *(supra)* has considered the entire spectrum of the Act and the law and has clearly held that the officer in the rank of Sub-Inspector can be the officer in-charge of the Police Station. Therefore, the solitary submission and the issue that has arisen for consideration would necessarily go against the petitioner, as the Police Sub-Inspector who registers the FIR and files a final report/charge sheet before the competent Court is in fact invested with the powers of the officer in-charge of the Police Station. Therefore, the said submission tumbles down.

14. Insofar as the judgments relied on by the learned senior counsel are concerned, there can be no qualm about the principles laid therein, but all the judgments would get subsumed by the judgment of the Five Judge Bench in the case of ***MUKESH SINGH*** *(supra)*. Therefore, they would not merit any consideration. The

judgment in the case of ***MUKESH SINGH*** *(supra)* was concerning interpretation of the very provisions and the very issue that the learned senior counsel is seeking to project. Therefore, those judgments are not quoted or distinguished, as they are unnecessary to be done so.

15. Criminal Petition No.3455 of 2022 arises out of proceedings in Special C.C.No.1876 of 2021 for offences punishable under Sections 8(c), 21(c), 22(c), 23(C) and 27(a) of the Act. The case concerns a boy of 20 years who is accused No.5 in the very same crime that concerns the companion petition. Therefore, the submission of the learned senior counsel is that the grounds urged are akin to what is urged in Criminal Petition No. 570 of 2022 and would become squarely applicable to the grounds urged in the present petition as well, as the solitary ground is concerning competence of the Police Sub-Inspector registering a crime and conducting investigation and also filing the final report. The contention is that he is not the officer in-charge of the Police Station. These submissions are elaborately considered in the aforementioned paragraphs. The same would become applicable to

this case as well. Therefore, this petition as well, lacking in merit, should necessarily meet its dismissal.

16. For the aforesaid reasons, both the petitions stand dismissed.

Consequently, pending applications also stand disposed.

Sd/-
JUDGE

bkp
CT:MJ