

**IN THE COURT OF JITENDRA PRATAP SINGH
ADDL. SESSIONS JUDGE /SPECIAL JUDGE (NDPS),
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

SC No. 21/2026

NCB Vs. Kunal Pandey

Crime No.: VIII/23/DZU/2025

U/s: 8/21/22 NDPS Act

ORDER ON CHARGE

1. Vide this order, I shall decide the point of charge in the present complaint filed by the Narcotics Control Bureau against accused Kunal Pandey for offences punishable under Sections 8, 21(a) and 22 of the NDPS Act.

2. I have heard the submissions advanced by Ld. Special Public Prosecutor for NCB and Ld. Counsel for the accused and have carefully perused the complaint, documents filed along with the complaint, chemical examination report, order on application for retesting and the entire record.

3. The purpose of framing a charge is to intimate to the accused, clear, unambiguous and precise nature of accusation that accused is called upon to meet in the course of a trial. Reliance is placed upon the decision of the Hon'ble Supreme Court of India in "*VC Shukla Vs. State through CBI*" 1980 SCC (Cri) 695. In

“Union of India Vs. Prafulla Kumar Samal and Anr.” (1993) 3 SCC 4, the Hon’ble Supreme Court of India considered the scope of inquiry a Judge is required to make while considering the question of framing of charges. It was observed that the Judge while considering the question of framing of charge has the power to sift and weigh the evidence for the limited purpose for finding out whether or not a *prima facie* case has been made out against the accused. From the material placed before the Court, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to some suspicion but not a grave suspicion against the accused, he will be fully within his right to discharge the accused.

4. The case of the prosecution, in brief, is that on 01.07.2025, specific intelligence was received by the officers of NCB that a suspicious parcel bearing No. EL526194333IN was lying at the Foreign Post Office, Delhi and the said parcel was suspected to contain narcotic drugs and psychotropic substance and is destined for Dheeraj Sharma, r/o Mandawali. Acting upon the said information, a raiding team of NCB officials reached the Foreign Post Office and the said parcel was identified and intercepted. The postal officials informed that earlier, the delivery of the parcel could not be completed due to incomplete address.

5. As per the requisite procedure, the parcel was opened in the presence of independent witnesses. Upon opening the parcel, a greeting card was found and inside the greeting card a transparent polythene packet containing white coloured powder was recovered. Along with the powder, a piece of paper allegedly LSD blot was also recovered from inside the parcel. The recovered white powder was weighed and the total weight was found to be approximately 6.88 grams including the weight of the polythene packet. The LSD blot was also seized separately but could not be weighed being very light. The recovered powder was tested with field testing kit and it allegedly gave positive result for cocaine. Thereafter, seizure proceedings were conducted, samples were drawn and the case property was sealed and seized as per procedure.

6. During investigation, notice u/s 67 of NDPS Act was issued to one Deepak Kumar, r/o Mandawali, who in his statement dated 02.07.2025, u/s 67 of the NDPS Act disclosed that he knew the accused Kunal Pandey for two years, who frequently used to take money from him as loans. One Dheeraj Sharma was also examined on 02.07.2025, who disclosed that the seized parcel belonged to Kunal Pandey, who informed him about the same and asked him to collect it from the post office as

Kunal was going out of the city. Dheeraj had made inquiries at the post office regarding the parcel. Subsequently, the accused Kunal Pandey was apprehended and arrested in the present case and thereafter, on the basis of the investigation conducted by the NCB, the present complaint was filed against the accused for offences under the NDPS Act.

7. After taking cognizance of the offence, the accused was summoned and the matter was listed for arguments on charge.

8. Ld. SPP for the NCB has prayed for framing charge against the accused under the above-mentioned provisions of the NDPS stating that the statements of Dheeraj Sharma and Deepak Kumar would show that the accused had in fact booked the said parcel. The mobile number mentioned on the parcel was being used by Dheeraj Sharma and Kunal Pandey was in continuous touch with him at the relevant time, which shows his complicity in the instant case.

9. On the other hand, Ld. Counsel for the accused Kunal Pandey has prayed his discharge submitting that even if, the case of the NCB is taken at its face value, the CRCL report dated 13.10.2025 of the sample of the alleged contraband powder recovered from the parcel shows that the said powder did not

contain any substance either prohibited or controlled under the NDPS Act. That for want of such confirmation, the case of the prosecution crumbles as it cannot be said that the accused has committed any offence under the NDPS Act.

10. In the present case, the CRCL report forms the foundation of the allegation that the accused had either possessed or was indulged in transportation or trafficking of a narcotic or psychotropic substance. However, as per the CRCL report dated 13.10.2025, the sample marked A was examined on the basis of chemical, chromatographic and spectroscopic examination and it was conclusively reported that the sample did not show the presence of Cocaine, Heroin, Methamphetamine, Ketamine and THC. The second sample marked B was returned untested as the quantity was insufficient for testing.

11. Thus, the only chemical examination report available on record clearly states that the sample does not contain any narcotic drug or psychotropic substance falling under the NDPS Act.

12. After receipt of the CRCL report, the prosecution moved an application seeking retesting of the corresponding samples in another laboratory. The said application was considered and dismissed by this Court vide a detailed order dated 29.01.2026,

wherein it was held that there were no exceptional circumstances warranting retesting and that the CRCL report was conclusive and retesting cannot be permitted merely because the report is not favourable to the prosecution.

13. Thus, the CRCL report dated 13.10.2025 has attained finality and remains the only chemical examination report on record.

14. At the stage of framing of charge, the Court is required to see whether there is sufficient ground for presuming that the accused has committed an offence. The Court is not required to conduct a detailed trial but the Court can sift the material to see whether the basic ingredients of offence are made out. If the material on record, even if taken at face value, does not constitute offence, the accused is liable to be discharged.

15. In NDPS cases, the most essential requirement is that the recovered substance must be proved to be a narcotic drug or psychotropic substance through chemical examination. Without chemical examination confirming the presence of contraband, no offence under NDPS Act can be said to be made out. The field testing kit result is only a preliminary test and has no evidentiary value unless confirmed by chemical examination report. The

chemical examination report is conclusive for determining whether the seized substance is contraband or not.

16. In the present case, the CRCL report clearly states that the sample does not show presence of cocaine or any other narcotic drug or psychotropic substance. Thus, the very foundation of the prosecution case stands demolished. If the recovered substance itself is not a narcotic drug or psychotropic substance, the accused cannot be prosecuted under NDPS Act. Once the chemical report is negative, the entire prosecution case collapses and no charge can be framed under the NDPS Act.

17. The prosecution had sought retesting of samples, however the said application was dismissed. The law regarding retesting is settled by the Hon'ble Supreme Court in *Thana Singh vs Central Bureau of Narcotics*, (2013) 2 SCC 570, wherein it was held that retesting cannot be permitted as a matter of routine and can be allowed only in rare and exceptional circumstances.

18. Therefore, once the chemical report is negative and retesting is not permitted, the prosecution cannot proceed on the basis of suspicion or preliminary test report.

19. The prosecution has relied upon statements recorded under Section 67 NDPS Act. However, it is settled law after the

judgment of Hon'ble Supreme Court in 'Tofan Singh v. State of Tamil Nadu', (2021) 4 SCC 1 that statements under Section 67 NDPS Act are not admissible as confessional statements and cannot be the sole basis of conviction. In the absence of recovery of contraband confirmed by chemical examination, the statements under Section 67 NDPS Act lose all their evidentiary value.

20. In the instant case, even if the entire prosecution case is accepted as true, no offence under NDPS Act is made out against the accused. There is not even a grave suspicion against the accused for offences under the NDPS Act.

21. This Court is of the considered opinion that the chemical examination report goes to the root of the prosecution case and once the report clearly states that the sample does not contain any narcotic drug or psychotropic substance, the essential ingredients of the offence(s) under NDPS Act are missing.

22. In such circumstances, continuing the trial would be an abuse of the process of law as the prosecution cannot establish that the alleged recovered substance was contraband.

23. Thus, no sufficient ground exists for presuming that the accused has committed any offence punishable under the NDPS Act.

24. Accordingly, accused Kunal Pandey is hereby discharged for the offences under Sections 8, 21 and 22 of the NDPS Act. His bail bonds are cancelled and surety stands discharged.

25. Accused is directed to furnish his bail bonds u/s 481 BNSS, 2023 (erstwhile 437-A CrPC, 1973) in the sum of Rs 50,000/- with one surety of like amount within one week from today.

26. File be consigned to record room after due compliance.

(Jitendra Pratap Singh)
ASJ NDPS Act
(Special Judge)/PHC
NDD/30.03.2026