

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 1790/2025
URN: SOSA / 3460U / 2025

Kamal Ramchandani Son Of Babulal Ramchandani, Aged About 41 Years, Resident Of C 238-39, Murlipura Scheme, Police Station Murlipura, Jaipur. (At Present Confined In Central Jail, Jaipur)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Shantnu Bansal
For Respondent(s)	:	Mr. Vivek Choudhary, PP Mr. Shubham Jain, AAAG

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

02/07/2026

1. The applicant herein has been convicted for offence punishable under Section 8/22 of NDPS Act vide judgment dated 25.06.2025 passed by the learned Special Judge, NDPS Cases, Jaipur Metro-I (Raj.) in Sessions Case No. 90/2022 (CIS No.90/2022) and has been sentenced to undergo ten years' rigorous imprisonment along with a fine of Rs. 1,00,000/- and in default of payment of fine, further one year imprisonment.
2. Learned counsel appearing on behalf of the applicant submits that the applicant has wrongly been convicted by the learned trial Court. Counsel submits that learned trial Court has failed to appreciate the evidence available on record in correct perspective. Counsel submits that the applicant is running a medical store namely Kamal Medical and Provisional Store situated at Murlipura

Scheme Circle, Jaipur. Counsel submits that on the basis of information furnished by one Constable Girdhari Lal, the medical store of the applicant was searched by the SHO, Police Station Murlipura on 31.01.2022 at 5:15 PM. Counsel submits that when the police party arrived, Drug Controller Officers namely, Smt. Aruna Meena and Shri Aman Thakur as well as the Constable Girdhari Lal were already present at the scene of occurrence. Upon reaching the said medical store, Drug Controller officers informed the SHO that based on the information of Shri Girdhari Lal, they inspected the medical store and during inspection, a stock of narcotic drugs was found i.e. 3000 tablets of B-Rest 0.5 and 450 tablets of Rlam 0.5, for which no purchase bill voucher was found. Counsel submits that the provisions of Sections 42, 50 and Sub-section (2) of Section 52A of NDPS Act have not been followed properly. He argues that the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. However, there is total non-compliance of these provisions of law. The alleged contraband was recovered on 31.01.2022, and the samples drawn by the seizing officer were forwarded to the FSL on 01.02.2022. However, the inventory was prepared before the learned Magistrate only on 10.03.2022. Thus, the samples subjected to forensic examination were admittedly drawn by the seizing officer at the spot and not in the presence of the learned Magistrate, which is contrary to the mandatory procedure prescribed under Section 52A of NDPS Act and as a result whereof, the entire alleged recovery is vitiated. The Hon'ble

Supreme Court in **Union of India versus Mohanlal**, reported in **(2016) 3 SCC 379**, has held that after seizure of the contraband, the empowered officer is required to approach the Magistrate under Section 52A(2), whereafter representative samples are to be drawn in the presence and under the supervision of the Magistrate, who is also required to certify the inventory and the list of samples. The Hon'ble Supreme Court has reiterated that samples drawn merely in the presence of a Gazetted Officer do not satisfy the statutory mandate under Section 52A of NDPS Act. This position has been consistently reaffirmed in subsequent decisions.

3. Counsel argues that even the trial, itself, has been contaminated owing to the non-conformity with the provisions of Section 42 of the NDPS Act. It is argued that the search and seizure in the present case were not conducted by an officer duly empowered under the Narcotic Drugs and Psychotropic Substances Act, 1985, because in terms of the notification issued under section 42 of the NDPS Act, only the Inspectors and Sub-inspectors posted as Station House Officers (SHOs) are authorized to do the same. Inviting attention of this Court to the cross-examination of Drug Controller Officer, Smt. Aruna Meena (PW-4), counsel further argues that the witness has unequivocally admitted that the recovery of the medicines had already been effected before she reached the spot and that the recovery was made through Police Constable Girdhari. Learned counsel argues that there is clear admission on part of the prosecution witness which goes to show that the recovery was not carried out by a

competent and duly authorized officer as contemplated under Section 42 of the NDPS Act.

4. Counsel submits that despite the availability of the independent witnesses, no independent witness was associated during the search and seizure proceedings. Counsel submits that in cross-examination of the Seizure Officer, he has admitted the fact that alleged recovery of contraband was made from a place where a lot of other shops are situated and the place is usually rushing with people. Counsel further submits that association of the independent witnesses contemplated under Section 103 of the BNSS (Corresponding to Section 100 of Cr.P.C) is not a mere formality and concerned officer is required to make all endeavour to associate the independent witnesses from the same vicinity. He cannot escape from his obligation merely by saying that a person refused to become an independent witness and if any person refuses to become a witness, his name should be recorded and proper action should be initiated against him for disobeying the order of the public servant.

5. Counsel submits that the prosecution evidence suffers from material inconsistencies. The prosecution case is founded upon information furnished by Constable Girdhari Lal regarding the applicant's medical store. Significantly, on the very same day, the said constable is stated to have supplied similar information in respect of another medical store, resulting in registration of another NDPS case (Sessions Case No.108/2022) in which the present applicant was also arrayed as an accused. Surprisingly, in another case, the police party reached the medical store at 04:50

PM and at that time, constable Girdhari Lal was already present at that medical store. It is submitted that the distance between both the shops is approximately 8kms which makes his simultaneous presence at both locations highly improbable. Counsel submits that a bare perusal of the record would reveal that the seizure in the present case was effected on 31.01.2022 at about 06:40 PM, whereas in the other case, the seizure was effected at about 7:10 PM on the same day. Counsel submits that in the present case, when Constable Girdhari Lal was examined, he admitted in his testimony that he was at the place of incident till 06-06:30PM and the other prosecution witnesses have also deposed that he was present at the place of occurrence however, the overlapping timelines casts serious doubt on the genuineness of the prosecution version and strongly indicates ulterior motives behind registration of the present case, as well as the subsequent case against the applicant.

6. It is also pertinent to note that the applicant has already been acquitted by the learned Special Judge, NDPS Cases, Jaipur Metro-I (Raj.) in Sessions Case No.108/2022 vide judgment dated 24.06.2025. The certified copy of judgment dated 24.06.2025 has been placed on record. It is submitted that the applicant has undergone incarceration for more than four years and five months. Counsel submits that looking to the large pendency of criminal appeals before this Court, there is no immediate prospect of this appeal being heard and disposed of in near future. Counsel further submits that in these circumstances, it is urged that the

execution of sentence imposed upon the applicant deserves to be suspended during the pendency of appeal.

7. Learned State counsel opposes the submissions advanced on behalf of the applicant and submits that the learned trial Court has rightly recorded the conviction of the applicant. It is submitted that huge quantity of narcotic drugs have been recovered from the medical store of the applicant and upon inspection of the said medical store, no purchase bill vouchers were found. In these circumstance, looking to the gravity of offence, no case is made out for suspending the sentence of the applicant.

8. Heard learned counsel for the applicant as well as learned State counsel and perused the material available on record.

9. It appears from the perusal of the record that the alleged contraband was recovered on 31.01.2022 and the samples drawn by the seizing officer were forwarded to the FSL on 01.02.2022, the inventory under Section 52A of the NDPS Act was prepared before the learned Magistrate only on 10.03.2022. Prima facie, the record indicates that the samples subjected to forensic examination were not drawn in the presence or under the supervision of the learned Magistrate.

10. Counsel for the applicant has drawn attention of this Court towards another NDPS case registered on the same date wherein Constable Girdhari Lal is stated to have furnished the information and remained present during the search and seizure proceedings. According to the record, the seizures in both cases were effected within a narrow time span, yet the said constable is shown to have been present at both places of occurrence. The apparent overlap

in the timelines, coupled with the applicant's acquittal in the said connected case, constitutes a circumstance which cannot be ignored and lends support to the applicant's contention that the prosecution case warrants closer scrutiny. It is also apposite to mention that both the cases have been decided by the same trial Judge with a difference of one day however, he also failed to notice that Constable Girdhari Lal has furnished the information in both the cases and he is shown to have been present at both places of occurrence.

11. Upon a consideration of the arguments advanced on behalf of the applicant as well as learned State Counsel and having regard to the facts and circumstances as available on the record including judgment passed by learned trial Court, this Court is of the view that the aforesaid circumstances, particularly looking to the admission of Drug Controller Officer, Smt. Aruna Meena (PW-4), according to which narcotic drugs had already been recovered by the police constable Girdhari Lal (PW-6), which shows that the recovery was not carried out by a competent and duly authorized officer, as also the challenge regarding compliance with Section 52A of the NDPS Act, the procedural irregularities under Sections 42 and 50 of NDPS Act, the absence of independent witnesses, and the inconsistencies emerging from the prosecution evidence, give rise to substantial and arguable issues and looking to the large pendency of criminal appeals before this Court, there is no immediate prospect of this appeal being heard and disposed of in near future, this Court is of the considered opinion that the applicant has available to him strong grounds to assail the

impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentence awarded to the applicant during pendency of the appeal.

12. Accordingly, this application for suspension of sentence filed under Section 430 BNSS is allowed and it is ordered that the sentences passed by the learned Special Judge, NDPS Cases, Jaipur Metro-I (Raj.) vide judgment dated 25.06.2025 in Sessions Case No. 90/2022 against the applicant **Kamal Ramchandani Son Of Babulal Ramchandani** shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.5,00,000/- with two sureties of Rs.2,50,000/- each to the satisfaction of the learned trial Judge for his appearance in the Court on 03.08.2026 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

13. The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to

pendency and disposal of cases in the trial Court. In case the said accused-applicant does not appear before the trial Court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

14. Before parting with this order, this Court considers it appropriate to make certain observations arising from the facts and circumstances that have come to light during the course of adjudication of the present application for suspension of execution of sentence. This Court has observed, in the preceding paragraphs, that in both the present case as well as the other case, the key witness is Police Constable Girdhari Lal, who has been examined on behalf of the prosecution as PW-6 in the present case and as PW-9 in the other case.

15. A careful examination of the records of both cases reveals that the proceedings in the two matters were conducted almost simultaneously. Furthermore, the evidence available on record indicates that Police Constable Girdhari Lal is shown to have remained present throughout the proceedings in both cases on the same date and during overlapping periods of time. Prima facie, this gives rise to a serious and disturbing anomaly, as it is humanly impossible for an individual to be physically present at two different places at the same time. This contradiction puts a question in the mind of this Court over the legitimacy of the investigation and the entire prosecution process, especially since the witness involved in the case is a police personnel whose testimony plays a crucial role in the trial.

16. This Court is conscious of the fact that the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 prescribe stringent punishments and have serious ramifications upon the liberty of an accused. The investigation that takes place under the aegis of the said statute should, therefore, not only be fair and impartial but should also generate complete trust and not raise any doubt in anyone's mind. The sanctity of the criminal justice process demands scrupulous adherence to these principles.

17. In view of the aforesaid circumstances, this Court deems it appropriate to bring the matter to the notice of the Director General of Police for an independent examination. The Director General of Police shall objectively examine the issue, uninfluenced by any observations made in this order, and shall undertake such inquiry as may be considered necessary in accordance with law. It is anticipated that in the process of carrying out this inquiry, the Director General of Police shall examine the entire record of both cases, including the depositions, evidence, and all other relevant material pertaining to Police Constable Girdhari Lal with a view to ascertaining the true factual position and determining whether any impropriety, irregularity, or misconduct has occurred during the proceedings.

18. It is, furthermore, anticipated that the aforesaid exercise shall be completed as expeditiously as possible, preferably within a period of three months from the date of receiving the copy of this order. A report of the inquiry shall thereafter be placed before this Court for its consideration.

19. Office is directed to immediately send a copy of this order to the Director-General of Police, Rajasthan for necessary compliance.

20. List this case as and when report of the inquiry is received from the Director General of Police.

(ANIL KUMAR UPMAN),J

37/Manoj Solanki