

Deepak Astickar vs the State of Karnataka

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Court : Karnataka

Decided On : Nov-28-2025

Judge : M.Nagaprasanna

Appeal No. : WP/4819/2025

Appellant : Deepak Astickar

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2025 BEFORE THE
HON'BLE MR. JUSTICE M.NAGAPRASANNA WRIT PETITION NO.
4819 OF 2025 (GM-RES) BETWEEN:

1. DEEPAK ASTICKAR AGED ABOUT 32 YEARS S/O LATE
P.M.ASTICKAR R/AT NO.234/10, BRAMHAPURA BANASHANKARI
LAYOUT KALABURAGI - 585 103.
2. V.R.SURYA TEJA REDDY AGED ABOUT 30 YEARS S/O
KRISHNAREDDY NALLAMILLI R/AT NO. 302, SRI RANGAM NILAYA

3RD FLOOR, 14TH A CROSS, 17TH MAIN HSR LAYOUT, SECTOR IV
Digitally BENGALURU - 560 102. signed by NAGAVENI Location: High
3. KURAMELLA SAMPATH KUMAR Court of Karnataka AGED ABOUT
31 YEARS

S/O K.VENKATESHWAR RAO R/AT NO. 4-5-37, SREE SAI NILAYAM
VELLAMPET, NEAR GANESHA THEATRE CHITTIVALLA POST,
BEEMALI MANDALA VISHAKHAPATNAM ANDHRA PRADESH - 531
163.

4. THUMMALA JOSPEPH SANDEEP REDDY AGED ABOUT 34 YEARS
-2- S/O ANAND REDDY R/AT NO. TF-2, PADMA PRIYA APPARTMENT
BHARATHINAGAR, 6TH LANE, VIJAYAVADA ANDHRA PRADESH -
502 355.

5. BACHHU SHIVAPRASAD AGED ABOUT 52 YEARS S/O JALARAO
R/AT NO. 39-5-15 NEAR VENKATESHWARA SWAMY TEMPLE
GOPAL NAGAR, ONGOLE PRAKASHAM DISTRICT ANDHRA
PRADESH - 523 001.

6. G.SURESH BABU AGED ABOUT 31 YEARS S/O SREENIVAS RAO
R/AT NO. 2-294, NAVOTEL ROAD 4TH CROSS, NEAR SAI SHREE
BOY'S HOSTEL BHARATI NAGAR, VIJAYAWADA ANDHRA PRADESH
- 520 008.

7. K.SUKUMAR AGED ABOUT 63 YEARS S/O LATE NARAYAN R/AT
NO. 37-1-407, 2ND LINE BHAGYA NAGAR, ONGOLE PRAKASHAM
DISTRICT ANDHRA PRADESH - 523 001.

8. G.JAYAPRAKASH AGED ABOUT 36 YEARS S/O LATE LASAR
BABU R/AT NO. 4-F-3, ABHINAV ENCLAVE RAMAVARAPPADU,
VIJAYAWADA -3- ANDHRA PRADESH - 521 108.

9. ARJUN GOWDA AGED ABOUT 36 YEARS S/O LATE LAKSHMI
NARAYANA T. V., R/AT NO. 99, TALAGAVARA VILLAGE CHINTAMANI

TALUK CHIKKABALLAPURA DISTRICT - 563 128.

10. P.BHUPATI REDDY AGED ABOUT 20 YEARS S/O RAMI REDDY R/AT NO. 2002, A BLOCK LODHA MERIDIAN, K.P.H.C. HYDERABAD - 500 072.

11. K.PRASAD AGED ABOUT 37 YEARS S/O K.NARASIMHA REDDY R/AT NO. 45, PAPAREDDY PALLI G.D.NELLORE, CHITTOOR DISTRICT ANDHRA PRADESH - 517 125.

12. T.KIRAN KUMAR AGED ABOUT 42 YEARS S/O LATE CHINNA RAO R/AT NO. 5-6/2-11 KUMMARI STREET OPPOSITE LALITA BAR CHITTI NAGAR, VIJAYAWADA ANDHRA PRADESH - 500 072.

13. BEVARA HARI TEJA AGED ABOUT 34 YEARS S/O BABAJI -4- R/AT NO. 4-2-225 NEAR ANJANEYA TEMPLE CHITTI NAGAR, NTR DISTRICT VIJAYAVADA ANDHRA PRADESH - 520 001.

14. AADHARLA SRINIVASU AGED ABOUT 35 YEARS S/O KANTHA RAO R/AT NO. 5-7/8-14 8TH LANE, K.L.RAO NAGAR CHITTI NAGAR, N.T.R. DISTRICT VIJAYAWADA ANDHRA PRADESH - 520 001.

15. R.SURAJ AGED ABOUT 29 YEARS S/O RAJASHEKHAR R/AT NO.37, 2ND MAIN, 3RD CROSS WILSON GARDEN, ADUGODI POST BENGALURU - 560 030.

16. KONA ABHISHEK REDDY AGED ABOUT 35 YEARS S/O LATE PADMANABHA REDDY R/AT NO. 102, BRUNDAVANA TOWERS ASHOK NAGAR, KARNOOL ANDHRA PRADESH - 518 004.

17. SAGAR T., AGED ABOUT 36 YEARS S/O GANGADHAR RAO R/AT NO. 82, LANDMARK ENCLAVE BANJARA HILLS, 13TH ROAD HYDERABAD - 500 034. -5-

18. SANDEEP KURUPATI AGED ABOUT 36 YEARS S/O VENKATESHWAR R/AT NO. 1401 APARNA WEST SIDE

APARTMENTS MANIKONDA, HYDERABAD - 500 089.

19. PILLA NARESH AGED ABOUT 33 YEARS S/O NARAYAN RAO R/AT NO. 5-6/1-59 KUMARA STREET, 2ND LANE K.L.RAO NAGAR, CHITTI NAGAR VIJAYAVADA, ANDHRA PRADESH - 520 001.

20. MASAPU RAVI AGED ABOUT 35 YEARS S/O KRISHNA RAO R/AT HALLI VILAS, NO. 23-20-3/1 SITARAM NAGAR, B.C.STREET GAJUVAKA, VISHAKAPATNAM ANDHRA PRADESH - 530 026.

21. P.SAMBA SIVA RAO AGED ABOUT 36 YEARS S/O RAMI NARAYAN R/AT NO. 4-7-7/2, IZAC STREET T.M.H.STREET, CHITTI NAGAR VIJAYAVADA, ANDHRA PRADESH - 520 001.

22. ALLURI SRIKANTH AGED ABOUT 34 YEARS S/O KRISHNA R/A NO. 40-3-107/1, SITANAGAR -6- 1ST LANE, GUNTUR ANDHRA PRADESH - 522 001.

23. VINOD KUMAR VEERASHETTY AGED ABOUT 38 YEARS S/O LATE SHIVAYYA R/AT NO. 39-13-1367 NEHRU NAGAR, 2ND LANE, GUNTUR ANDHRA PRADESH - 522 001.

24. A.KRISHNA PRASAD AGED ABOUT 35 YEARS S/O LATE SUBBA RAO R/AT NO. 1/15, GUMMALADODDI RAJAMANDRI RURAL GODAVARI - 533 289.

25. K.SUDHEER AGED ABOUT 31 YEARS S/O YARRIAHA R/AT NO. 1-138, ARUNDATHI PET KWALAMURU, RAJAMANDRI RURAL EAST GODAVARI ANDHRA PRADESH - 533 102.

26. Y.PRASANNA KUMAR AGED ABOUT 30 YEARS S/O SATYANARAYAN R/AT NO. 1-6/47, NEW PRASHANTH NAGAR COLONY NEAR VIRSHAVANATHAN GARDEN MIYAPURA, HYDERABAD - 500 034.

27. D.PREMCHAND AGED ABOUT 31 YEARS -7- S/O SEETA RAMAIAH R/AT NO. 7-42-163/2 SANGEEVAALASA VILLAGE BHEEMANI PATTANAM MANDALA VISHAKAPATNAM DISTRICT ANDHRA PRADESH - 531 162.

28. PALLAM RAJU CHINTAPALLI AGED ABOUT 34 YEARS S/O SREENIVAS R/AT NO. 5/91, MAIN ROAD KOTTAPET, EAST GODAVARI ANDHRA PRADESH - 533 223.

29. MAHESH VERMA AGED ABOUT 29 YEARS S/O PRABAHAKAR RAO R/AT NO. F.T-1, JAMAK APARTMENT IPIC COLONY, VIJAYAWADA ANDHRAPRADESH - 520 010.

30. G.SAI KUMAR AGED ABOUT 30 YEARS S/O LATE RAMAN R/AT NO. 10-37-109 DEKKATAPALAM VILLAGE CHIMANI PATTANAM TALUK VISHAKAPATNAM DISTRICT ANDHRA PRADESH - 531 163.

31. K.PRUTHVIRAJ AGED ABOUT 29 YEARS S/O K.PRASAD RAO R/AT NO. 43-18-6 R.C.M CHURCH STREET -8- AJITH SINGH NAGAR VIJAYAWADA, KRISHNA DISTRICT ANDHRA PRADESH - 520 001.

32. BANDI RAMESH AGED ABOUT 45 YEARS S/O VENKATESHWAR RAO R/AT G.F-03, ABHINAV ENCLAVE BELLAVARI STREET, RAMAVARAPPADU VIJAYAWADA, ANDHRA PRADESH - 521 108.

33. BEWARA SAI KIRAN AGED ABOUT 33 YEARS S/O RAMAN R/AT NO. 4-3/1-214 BANGARAYYA SHOP EEDGA MAHAL STREET, VIJAYAVADA ANDHRA PRADESH - 520 001.

34. CHIMATA GOPI AGED ABOUT 33 YEARS S/O VADIKAALUSU R/AT NO. 6-96, SURAM PALLI KRISHNA DISTRICT ANDHRA PRADESH - 521 212.

35. HABIB ULLA AGED ABOUT 36 YEARS S/O HASAN HULLA R/AT NO. 728, 2ND FLOOR 6TH B CROSS, 3RD BLOCK KORAMANGALA,

BENGALURU - 560 034.

36. KAUSHIK ASHWATH AGED ABOUT 32 YEARS -9- S/O R.ASHWATH R/AT NO.521, 16TH CROSS II STAGE, INDIRANAGAR BENGALURU - 560 038.

37. SHEIKH IMRAN AGED ABOUT 29 YEARS S/O SHEIKH FAREED R/AT NO. 4-29-12, ALI NAGAR BACK OF CHOLERA HOSPITAL VIJAYAWADA, ANDHRA PRADESH - 560 046.

38. SHEIKH JILANI AGED ABOUT 29 YEARS S/O SHEIKH BUJJI R/AT HIBA-13, NEW MICO LAYOUT BEGURU ROAD, BOMMANAHALLI INDUSTRIAL LAYOUT, BENGALURU - 560 076.

39. SURESH SUNKU AGED ABOUT 48 YEARS S/O LATE RAMALINGAIAH R/AT NO. 1160, 32ND G CROSS 4TH T BLOCK, JAYANAGAR BENGALURU - 560 041.

40. NEDUR BHARADWAJ AGED ABOUT 29 YEARS S/O LATE SANYASI RAO R/AT NO. 40-13-82 NEAR RAMALAYAM, DHARMA NAGAR KANCHARA PALLYAM, VISHAKAPATNAM ANDHRA PRADESH - 530 004. - 10 -

41. VINEETH NAYAR AGED ABOUT 34 YEARS S/O MADHAVAN NAYAR R/AT NO. 96, B.D.A.VILLA PHASE - 2 ALURU, NELAMANGALA BENGALURU - 562 162.

42. GOUTAM K., AGED ABOUT 30 YEARS S/O KRISHNA KUMAR R/AT NO. 980, 20TH CROSS 7TH SECTOR, H.S.R LAYOUT BENGALURU - 560 102.

43. DIVYA R., AGED ABOUT 24 YEARS D/O LATE RAVINDRA R/AT NO. 402, ALPA GARDEN APARTMENT 2ND CROSS, AYAPPA NAGAR KODIGEHALI, K.R.PURAM BENGALURU - 560 036.

44. RAKSHITA R., AGED ABOUT 26 YEARS S/O LATE RAVINDRA R/AT NO. 402, ALPA GARDEN APARTMENT, 2ND CROSS, AYAPPA NAGAR KODIGEHALI, K.R.PURAM BENGALURU - 560 036.

45. PRIYANKA CHATTERJEE AGED ABOUT 32 YEARS D/O PRADEEP CHATTERJEE R/AT NO. 16, RAMDHAN MITRA LANE HATIBAGAN, SHAM BAZAR MAIL - 11 - KOLKATA - 700 004.

46. AMREEN AGED ABOUT 26 YEARS D/O RAZAK SHARIFF R/AT NO. 12, 2ND CROSS CHIRANJEEVI LAYOUT, KEMPAPURA HEBBAL, BENGALURU - 560 024.

47. MARIYAM NISA KHAN AGED ABOUT 23 YEARS D/O INAYATH ULLA KHAN R/AT NEAR STELLA CONVONENT BANK COLONY, V.V.PURAM GOWRI BIDANUR, CHIKKABALLAPURA - 561 208.

48. S.NIRAJA

AGED ABOUT 32 YEARS D/O SHIVARAM PRASAD R/AT NO. 32-15-96, FLAT NO. 2002 LAKSHMI APARTMENT DASARI LINGAIAH STREET MUGHALRAJA PURAM, VIJAYAWADA ANDHRA PRADESH - 520 010.

49. CHANDRA SIRISHA AGED ABOUT 29 YEARS D/O LATE VENKATESHWARA R/AT NO. 7-69, PADMAVATHIPURAM TIRUCHANUR ROAD, TIRUPATI ANDHRA PRADESH - 560 102.

50. PRATHYUSHA AGED ABOUT 26 YEARS - 12 - D/O LATE VENKATESHWARA R/AT PLOT 7-69, PADMAVATHIPURAM TIRUCHANUR ROAD, TIRUPATI ANDHRA PRADESH - 560 102.

51. CHAITHRA P., AGED ABOUT 26 YEARS D/O LATE PARAMESHWARAPPA R/AT NO. 188/A, 3RD CROSS 3RD STAGE, SREE RAMPURA MYSURU - 570 008.

52. ANJALI B., AGED ABOUT 22 YEARS D/O LATE VIKRAM R/AT NO. T-02, 3RD FLOOR NORTH PARK APARTMENT, KHB MAIN SULTHANPALYA, R.T.NAGAR BENGALURU - 560 032.

53. SHAIK KAMAL AYESHA KAMAL AGED ABOUT 23 YEARS D/O NASEER KAMAL R/AT NO. LIG 20/105 HOUSING BOARD COLONY GUNTAKAL, ANANTHAPURA DISTRICT ANDHRA PRADESH - 515 801.

54. HARIKA C., AGED ABOUT 24 YEARS D/O C.V.L.KUMAR R/AT NO. 1-40-17/2 RAJA NAGAR COLONY, UPPAL HYDERABAD - 500 039. - 13 -

55. SHIVANI JAISWAL AGED ABOUT 26 YEARS S/O SHIVSHANKAR JAISWAL R/AT NO. 106, APPA LAYOUT TELLARA, AKOLA MAHARASHTRA - 500 034.

56. HITHYASHREE AGED ABOUT 30 YEARS D/O SURYA PRAKASH R/AT NO.9, GOKULAM, 1ST CROSS OPPOSITE HITTAMADU BUS STAND BESIDE T.C.L, BANASHANKARI II STAGE BENGALURU - 560 085.

57. RIYA AGED ABOUT 23 YEARS D/O ANOOP R/AT NO. 2-D HIRA WATERS APARTMENT KADAVANDARA ROAD, COCHIN CITY KERALA - 682 020. PETITIONERS (BY SRI MAYUR D.BHANU, ADVOCATE A/W., SRI SHAMANTH GOWDA J., ADVOCATE AND SRI CHARAN N. S., ADVOCATE) AND:

1. THE STATE OF KARNATAKA KARNATAKA REPRESENTED BY SHO HEBBAGODI POLICE STATION INVESTIGATED BY CCB (ANW) REPRESENTED BY SPP HIGH COURT BUILDINGS - 14 - AMBEDKAR VEEDHI BENGALURU - 560 001.

2. SANTHOSH HOSPITAL HAVING ITS REGISTERED OFFICE AT NO. 6/1, PROMENADE ROAD BEHIND COLES PARK PULIKESHI NAGAR,

FRAZER TOWN BENGALURU - 560 005. RESPONDENTS (BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1; SRI VIVEKANANDA S., ADVOCATE FOR R2) THIS W.P. IS FILED UNDER ARTICLE 226 OF THE

CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BNSS, PRAYING TO QUASH THE CHARGE SHEET ANNEX-A IN SPL.C.NO.741/2024 PENDING ON THE FILE OF THE LEARNED VIII ADDL. DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL AT BENGALURU. THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioners - accused Nos.13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 64, 66, 67, 70, 73, 74, 75, 79, 80, 81, 82, 83, 84 and 87 in Special Case No.741 of 2024 are at the doors of - 15 - this Court calling in question filing of charge sheet and all further proceedings before the VIII Additional District and Sessions Judge, Bengaluru Rural registered for offences punishable under Sections 8(c), 21(b), 22(a), 22(b), 22(c), 27(a), 27(b) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (the Act for short) read with Section 14 of the Foreigners Act, 1946 and Sections 290 and 294 of the IPC.

2. Heard Sri Mayur D. Bhanu, learned counsel along with

Sri Shamanth Gowda J. and Sri Charan N.S., learned counsel appearing for the petitioners, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Vivekananda S., learned counsel appearing for respondent No.2.

3. Learned counsel appearing for the petitioners submits that the issue in the lis stands completely covered by the

judgment rendered by this Court in W.P.No.31069/2024

disposed on 29.04.2025 and that the accused in the subject petition are identically placed and involved in the very same Special Case No.741 of 2024. - 16 -

4. This Court in the case of W.P.No.31069/2024 disposed on 29.04.2025, has held as follows: 8. The afore-narrated facts are not in dispute. The entire incident happens on 19-05-2024. A complaint comes to be registered on the same incident on 20-05-

2024. The complaint reads as follows: g , , . . # %() + . -/0 / 1, , -03. 4- 8. :+; , : < > -@ -3 < CD -E 3G ; -H@ J . *****

LN 4 N O P, D -/0 / , 1 4Q > R-1 T ;0 ;V EP@D. W WD 19-05-2024 3H/ - 11-30 X Y QHZ[QHZ D3]0R@ > 8. .:+ ; > "VASU'S BIRTHDAY" ^_ ; E > Sunset to Sun Rise Victory [T WD 19-05-2024 05-00 PM Onwards 3G ; - Y ;E 3H/]cd e -@ -3 < CD -E 3G ; -P@ C; D(W @ gP H@P@3 -VH W@[. 3G ; > - 100 150 @ T - ; > 3h3]T .E.. Ri . , <q h < 3 - @Y CD < -3 - H@e[T QHZY k I QHZY V O c -0 E R @ R C<]m Hn P@D. -0 - 17 -

V O o p 4 -[> Y [W / s t L3 3 O @ uWY n t P@D.

I 8. .:+ ; > "VASU'S BIRTHDAY ^_ ; E > WD 19-05-2024 05-00 PM Onwards -Y ;E 3H/]cd e -@ -3 < CD -E 3G ; -P@ C; D(W @ gP -E 3G ; w 4) < 3G ;Y x -E 8. . :+ ; - 4z @ -@ CD @ -3 -H@ 0{@ 4z / s E@[@ DW ;/ |H@/ /HY H@ @[.

Dc W (4gk . /- 20/5/24 [%() +] . -/0 / , 1, .

The complaint is registered at 1.45 a.m. by the CCB before the Electronic City Police Station. The complaint becomes a crime in Crime No.242 of 2024 for the alleging offences under Sections 290, 294 of the IPC and 8(c), 22(a)(b)(c), 25, 27, 27(b) of the NDPS Act. A raid at the said rave party took place and consequence of raid is, these petitioners along with

others who are said to be consumers of drugs are taken to the 2nd respondent hospital. A requisition was made to test urine samples of these and other persons. All these petitioners were also directed to be tested. The requisition reads as follows:

,][0O o, P} ~P/, e ^ . - 18 - -03, 4:- 3 ; > {N1l Co W -@ CD -E[3 J -E W 4. >:-
%..242/2024 290, 294 .R. v PA 8() 22(), 22(), 22(J), 27(), 25, 27 JrJ ***** L 4 N O
P (> 4 -E ose[D3, d;[3 ^/ %() +- , -/0 / , 1, WD 20.05.2024 E L3 (. %..242/2024 PA
290, 294 .R. v PA 8() 22(), 22(), 22(J), 27(), 25, 27 JrJ P0 / [T@[. / > 0 x] /-, Di
P>. H@ <n, h;e-2, <u E, T /<,]; -165, 8. :+ ; L [n -El, :+; < > 5 3Ro

1. i.] 1 i. 3G 35 ;,]. 0 4-

2.].. - 1 %-, 31 ;, 4c: :-> .102. ; L .351, ^/ C3 ;L, 5D / , 1D > , .

3. D .E 1 <k 3G 32 ;] .10/14/45.] X 4] 8 >, //[30.

4. O 1 4./ 43 ;] .18-310 / 3 t@ //[30.

5. %) Wl 1]) 29 ;] .37. .4D 1W 3 QH .

LN { -1 u /@ -2 3 ;Y (El, -3 -5 3Ro - @c - @c .E.. {/ i, .E.. X Ri , , <q hY P CD -Ee
@ ; > QTdTI 68 e < 30 Vc >l, LN - @ - 19 - CD -E C0P @[. l 3R < 3 ; > {N1WIY]0{
E P WY [. The Police after investigation file a charge sheet. The allegation in the
charge sheet, as against accused Nos.7, 8, 13 to 88, is common. The summary of
the charge sheet, as obtaining in column No.17, insofar as accused Nos.7, 8, 13 to
88 are concerned, read as follows:

/ -7, -8 @ -13 -88 3T 3Ro, <u E Wl 8. .:++; < > VICTORY "VASU'S
BIRTHDAY, Sunset to Sun Rise Date 19-05-2024, 5:00 PM Onwards "
JA P CrAi g vq ;Y -1 @ -2 3Ro wD -El, -7, -8 @ -13 -88 3T 3Rn -1 @ -2
3Ro <k L3 3G ; x ; Wl, ; > -@o @[% HnWl, -1 @ -2 3Ro ; > P -3, -4, -5
@ -10 3Rn W -@Y x CD -Ee, 3R & C 4 # @ P} ~P/ Wo < # @[.

l -7, -8 @ -13 -88 3T 3Ro 27(&) NDPS Act-1985 P0 3 Te # @[.

It is consumption and therefore, they are charged under Section 27(a) and (b) of the Act. Likewise, the other accused are also charged of consumption and accused No.5 admits the fact that he has supplied drugs and other accused have consumed those drugs. Therefore, the allegation against these petitioners is not in dispute that it is under Section 27(a) and (b) of the Act. As quoted hereinabove, the requisition was to send the accused to Santosh Hospital/2nd respondent. The urine samples are said to have divulged presence of drugs. Whether that could be taken note of for the offences punishable under Section 27(a) and (b) of the Act in the teeth of Santosh Hospital being a private hospital is what is required to be considered in the case at hand. - 20 -

9. The urine test samples of these petitioners are

appended to a memo placed before this Court. This is a part of the charge sheet. In terms of the memo, the medical examination report by Santosh Hospital reads as follows: - 21 - - 22 - - 23 - - 24 - - 25 - I deem it appropriate to notice the tests conducted, petitioner by petitioner. Accused No.8/7th petitioner gives her urine sample for test and in terms of the test report she is found positive for five drugs viz., (i) Amphetamine,

(ii) Cocaine, (iii) Methamphetamine, (iv)

Methylenedioxymethamphetamine and (v) Tetra Hydro Canabinoids. It is in public knowledge or in medical parlance twined with narcotic parlance that if these five drugs are consumed by one person at a time, the person can no longer be alive. With regard Accused No.16/8th petitioner, the urine sample is again shown to be for the same five drugs. Insofar as accused No.23/1st petitioner again for the same five drugs. Accused No.46/9th petitioner again for the same five drugs. Accused No.69/2nd petitioner has tested positive for only one drug viz., Cocaine. Accused No.71/10th petitioner is found to have tested positive for two drugs viz., cocaine and tetra hydro canabinoids. Accused No.76/6th petitioner is

found to have tested positive for three drugs viz., Amphetamine, Methamphetamine and Methylenedioxymethamphetamine and the same goes with Accused No.77/3rd petitioner, Accused No.78/4th petitioner and insofar as accused No.85/5th petitioner is concerned, he is tested positive for three drugs viz., Methamphetamine, Methylenedioxymethamphetamine and tetra hydro cannabinoids. This covers the petitioners.

10. Whether tests done in a private laboratory

should be given credence is what is required to be noticed. The Government of India has notified standing orders in Standing Order No.1 of 1988 which deals with chemical analysis of seized drugs and would indicate certain procedure. Clause 1.3 of the said Standing Order reads as follows:

1.3 An illicit narcotic drugs or psychotropic substances recovered from a person, place, conveyance, etc. are material evidence as they are liable to confiscation. Further, they constitute primary evidence for any act, omission or commission on the part of a person rendering him liable for punishment under Chapter IV of the NDPS Act, 1985. Most of the narcotic drugs and psychotropic substances cannot be conclusively proved to be such drugs or substances merely by visual examination in the trial court and they require to be proved by chemical analysis to be conducted by chemists authorized under Section 293 of - 26 -

Cr.P.C.1973. The provisions of sub-Section 4 of Section 293 of Cr.P.C. are reproduced hereunder for ready reference:- Section 294(4) of Cr.P.C., 1973. This Section applies to the following Government scientific experts, namely:-

- (a) Any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b) The Chief Inspector of Explosives;
- (c) The Director of Finger-print Bureau;
- (d) The Director Hoffikin Institute of Bombay;

(e) The Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory.

(f) The Serologist to the Government. And Clause 1.11 reads as follows: 1.11 Laboratories to which samples may be sent.

The Seizing Officers of the Central Government Department, viz., Customs, Central Excise, Central Bureau of Narcotic, Narcotics Control Bureau, D.R.I., etc. should dispatch samples of the seized drugs to one of the laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The addresses of the Dy. Chief Chemists of the Central Revenues Control Laboratories are given below:

1. General Manager, Govt. Opium and Alkaloid Works, GHAZIPUR (U.P.);
2. General Manager, Govt. Open and Alkaloid Works, Neemuch (M.P);
3. Chief Chemist, Central Revenue Control Laboratory, Pusan Road (IARI), New Delhl.
4. Dy.Chief Chemist, Office of the Collector of Customs House, Chennai 600 001.
5. Dy.Chief Chemist, Chemical Laboratory, Customs House, Calcutta-1; - 27 -
6. Dy.Chief Chemist, New Customs House Ballard Estate, Mumbai-400 038.
7. Dy.Chief Chemist, Central Excise Laboratory, Estrellia Batteries Compound, Dharavi Road, Mumbai-400 019.
8. Chemical Examiner, Office of the Commissioner of Customs, Customs House, Cochin-9;
9. Chemical Examiner, Central Excise Laboratory, Yashkamal, Building , 8th Floor, Baroda-5 (Gujarat),

10. Chemical Examiner, Central Excise Laboratory, Central Excise Laboratory, CORIL Refinery, Vishakhapatnam (AP);
11. Chemical Examiner, Customs House, Kandla, Gujarat
12. Chemical Examiner, Customs House Laboratory, Sada, MARMUGOA GOA-403 803
13. Chemical Examiner, Customs House Laboratory, Assam Oil Refinery, Dibsai (Assam);
14. Chemical Examiner, Central Excise Laboratory, Assam Oil Refinery, Distt. Begusarai (Bihar);
15. Chemical Examiner, HPCL, Refinery corridor Road, Trombay, Mumbai-400 074.

The other Central Agencies, like BSF, CBI and other Central Police organizations may send such samples to the Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs and psychotropic substances to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

The addresses of the State Forensic Science Laboratories are given below:

1. Director, Forensic Science Laboratories, Govt. of Bihar, Patna-800 023. - 28 -
2. Director, Police Forensic Science Laboratory, Rajasthan, Nehru Nagar, Jaipur-6;
3. Director, Forensic Science Laboratory, mini Punjab Secretarial Plot No.2, Sector 9-A Chandigarh.
4. Director, State Forensic Science Laboratory, Rasulgarh, Bhubaneswar-10 (Orissa);

5. Director, Forensic Science Laboratory, Haryana Madhubn (Karnl);
6. Director, Forensic Science Laboratory, Andhra Pradesh Red Hills, Hyderabad;
7. Director, Forensic Science Laboratory, Trivandrum- 10;
8. Director, State Forensic Science Laboratory, Govt. of West Bengal, Balgachi Road.
9. Director, Forensic Science Laboratory, Gujarat State, New Mental Corner, Ahmedabad - 380 016;
10. Director, Forensic Science Laboratory, Maharashtra State, Vidhyanagari, Kalina, Santacruz (East), Mumbai-400 098;
11. Director, Forensic Science Laboratory, Civil Lines, Sagar (M.P) 470 001;
12. Director, Forensic Science Laboratory, Mahanagar, Lucknow (U.P.);
13. Director, Forensic Science Laboratory, Sector-18 Chandigarh
14. Director, Forensic Science Laboratory, Bureau of Police Research and Development (MHA), Govt. of India, O.V. Campus, Ramnathpur, Hyderabad-500 013;
15. Director, Forensic Science Laboratory, C.B.I Block-4, C.G.O Complex, Lodhi Road, New Delhi.
16. Director, Forensic Science Laboratory, Junagarh (Gujarat);
17. Chemical Examiner to the U.P. Govt., Agra (U.P.)
18. Govt. Examiner of questioned documents, Railway Board Building, Shimla (H.P)
19. Director, Forensic Science Laboratory, Opposite C.D. Hospital, Srinagar (J.K.).
(Emphasis supplied)

Clause 1.3 mandates that the Director of a Central Forensic Science Laboratory should be in-charge of these tests and clause 1.11 mandates laboratories to which the samples may be sent. There are about 15 laboratories. These are concerning chemical analysis of drugs. The Ministry of Finance in the Department of Revenue, Government of India has notified Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and - 29 -

Disposal) Rules, 2022 (for short the Rules). Rule 12 deals with storage of samples. It reads as follows: 12. Storage of samples.-(1) Each sample shall be kept in heat-sealed plastic bags or heat-resistant glass bottle or apparatus, which shall be kept in a paper envelope, sealed properly and marked as original or duplicate, as the case may be.

(2) The paper envelope shall also bear the respective serial number of the package or container from which the sample had been drawn.

(3) The envelope containing the duplicate

sample shall also have reference of the test memo and shall be kept in another envelope, sealed and marked Secret-drug sample/Test memo, to be sent to the designated laboratory for chemical analysis. (Emphasis supplied) Rule 12 mandates that the duplicate sample should be seized and marked as secret-drug sample and has to be sent to a designated laboratory for chemical analysis.

11. The learned counsel for the petitioners has

contended that if urine samples are to be tested for the presence of drugs, there must be a confirmatory test of those tested urine sample by either of the two methods - Gas Chromatography or Mass Spectrometry. In the case at hand what is being sent is testing of urine samples. The test report is quoted hereinabove. It is admittedly not tested by either of the methods as noted hereinabove. A coordinate Bench of this Court in SRI PRANAY NATARAJ V. THE STATE OF KARNATAKA in W.P.No.

7178 of 2024 disposed of on 29-05-2024, considers this aspect and holds that urine samples must be confirmed by the afore-quoted two tests. The coordinate Bench, in the said decision, holds as follows:

. . .

2. According to the prosecution's case, based on

credible information, a raid was conducted with a search warrant from the Deputy Commissioner of Police, Crime Branch, Mangaluru. During the raid, a plastic cover containing contraband ganja was discovered under a - 30 - table. Upon questioning the apartment's inhabitants, the petitioner revealed his identity and allegedly confessed to procuring ganja from Vishaka Pattana tribes. He admitted to packaging and selling quantities of 50 and 100 grams to college students and the public for financial gain.

3. The prosecution further relies on the

confession statement of accused No.1, who purportedly confessed to supplying ganja to other accused persons for consumption. Subsequently, these co-accused allegedly stated that the petitioner, accused No.16, also consumed ganja with them.

4. The Sub-Inspector of Police, CCB, Mangaluru,

searched the petitioner-accused No.16's residence apartment, arrested him, and then took him to A J Institute of Medical Sciences Hospital, Mangaluru, for examination.

5. Furthermore, the prosecution contends that

upon examination, it was found that the petitioner- accused No.16 had consumed ganja, thereby making him liable for offences under Section 27(B)(2) of the NDPS Act.

6. Mr. P.P. Hegde, learned senior counsel for the

petitioner-accused No.16, argues that the urine sample taken from him was obtained in violation of Section 16 of the NDPS Act, 1984, as none of the prescribed procedures were followed. He further contends that the Inspector of Police failed to record in writing the information received from the co-accused, which is mandatory under Section 42(1) of the NDPS Act. Therefore, any breach of mandatory provisions under Section 42(1) of the NDPS Act would vitiate the trial.

7. In support of his argument, he cites the

decision of the Hon'ble Supreme Court in State of Punjab vs. Balbir Singh - (1994) 3 SCC 299, Roy V.D. vs. State of Kerala - (2000) 8 SCC 590, and Najmunisha vs. State of Gujarat - 2024 SCC Online SC 520.

8. On the contrary, the learned High Court

Government Pleader argues that there was substantial compliance with Section 42(1) of the NDPS Act, and therefore, the trial remains valid. She asserts that the confession statement of accused No.16, combined with medical findings, clearly establishes his involvement in the offence under Section 27(b) of the NDPS Act. She further argues that the issues raised by the senior - 31 -

counsel can only be addressed during the trial and should not be considered in this petition, urging for its dismissal.

9. The submissions of both parties have been duly considered.

10. Initially, the FIR was registered against

accused No.1 for offences under Sections 8(c) and 20(b)(ii)(B) of the NDPS Act. Following his apprehension, it was alleged that other accused persons had purchased ganja from him and subsequently consumed it with accused No.16. Based on information received from these co-

accused, the Sub-Inspector of Police, CCB, Mangalore City, entered the premises where accused No.16 resided, conducted a search, and arrested him. He was then sent for medical examination by a police constable.

11. The urine sample drawn from accused

No.16 during the examination at A J Institute of Medical Sciences Hospital, Mangaluru, reportedly tested positive for ganja. However, it is noted that this is a screening test, and all positive results should be confirmed by Gas Chromatography or Mass Spectrometry to establish conclusive proof, a matter to be determined during the full-fledged trial. Additionally, compliance with Section 42(1) of the NDPS Act is under scrutiny.

12. It is observed that the Sub-Inspector of

Police, CCB, Mangalore City, failed to record the information received from the co-accused in writing, as mandated by Section 42(1) of the NDPS Act. The Hon'ble Supreme Court, in State of Punjab vs. Balbir Singh -

(1994) 3 SCC 299, has held that any arrest or search conducted under a warrant issued by an unauthorized Magistrate or officer would be illegal, thus affecting the prosecution's case and vitiating the trial.

13. Referring to Roy V.D. vs. State of Kerala

- (2000) 8 SCC 590, the Court emphasized that Section 482 of the Cr PC should be invoked to prevent abuse of the legal process or to ensure justice. Initiation of criminal proceedings based on illicit material gathered through illegal searches or arrests not only compromises the validity of any conviction but also taints the entire trial process.

The issue before the coordinate Bench was consumption of Ganja and the offence is under Section 27(b) of the Act which punishes such consumption. The coordinate Bench holds that urine sample drawn during the examination was not sent for screening test or confirmation test for the aforesaid methods of establishment of conclusive proof against the accused therein.

12. The Apex Court in the case of THANA SINGH

v. CENTRAL BUREAU OF NARCOTICS in (2013) 2 SCC 590, has laid down certain guidelines for conduct of test and working of Forensic Science Laboratory particularly in NDPS cases. The Apex Court, in the said judgment, holds as follows: D. Narcotics Laboratories

16. Narcotics laboratories at the national level

identify drugs for abuse and their accompanying substances in suspected samples, determine the purity and the possible origin of illicit drugs, carry out drug- related research, particularly on new sources of drugs liable to abuse, and, when required by the police or courts of law, provide supportive expertise in drug trafficking cases. Their role in the effective implementation of the mandate of the NDPS Act is indispensable which is why every State or region must have proximate access to these laboratories so that samples collected for the purposes of the Act may be sent on a timely basis to them for scrutiny. These samples often form primary and clinching evidence for both the prosecution and the defence, making their evaluation by narcotics laboratories a crucial exercise.

17. The numbers of these laboratories speak for themselves and are reproduced here. The numbers for Central Forensic Science Laboratories (CFSL) are as follows: Sl. No. CFSL Location Status

1. Chandigarh In operation

2. Hyderabad In operation

3. Kolkata In operation

4. Delhi (under Central In operation Bureau of Investigation)

5. Bhopal Being established - 33 -

6. Pune Being established

7. Guwahati Being established

18. Similarly, numbers for the State and Regional Forensic Science Laboratories (FSL) are as follows: Sl. Name of State Existing State Facilities No. Main State FSL Regional FSL

1. Andhra Pradesh 1 9

2. Arunachal Pradesh 1 0

3. Assam 1 0

4. Bihar 1 1

5. Chhattisgarh 1 2

6. Goa Being established 0

7. Gujarat 1 5

8. Haryana 1 2

9. Himachal Pradesh 1 0

10. Jammu & Kashmir 1 1

11. Jharkhand 1 0

12. Karnataka 1 4

13. Kerala 1 2

14. Madhya Pradesh 1 3
15. Maharashtra 1 4
16. Manipur 1 0
17. Meghalaya 1 0
18. Mizoram 1 0
19. Nagaland 1 0
20. Orissa 1 2
21. Punjab 1 0
22. Rajasthan 1 3
23. Sikkim 0 1
24. Tamil Nadu 1 9
25. Tripura 1 0
26. Uttar Pradesh 1 2
27. Uttarakhand 1 0
28. West Bengal 1 2 Union Territories
1. Andaman and 1 0 Nicobar Islands
2. Chandigarh 0 0
3. Dadra & Nagar 0 0 Haveli
4. Daman & Diu 0 0
5. Lakshadweep 0 0 - 34 -

6. NCT of Delhi 1 0

7. Puducherry 0 0 Total 28 52

19. A qualitative and quantitative overhaul of these laboratories is necessary for ameliorating the present state of affairs, for which, we are issuing the following directions:

19.1. The Centre must ensure equal access to CFSLs from different parts of the country. The current four CFSLs only cater to the needs of northern and some areas of western and eastern parts of the country. Therefore, besides the three in the pipeline, more CFSLs must be established, especially to cater to the needs of southern and eastern parts of the country.

19.2. Analogous directions are issued to the States. Several States do not possess any existing infrastructure to facilitate analysis of samples and are hence, compelled to send them to laboratories in other parts of the country for scrutiny. Therefore, each State is required to establish State-level and regional-level forensic science laboratories. However, the decision as to the numbers of such laboratories would depend on the backlog of cases in the State.

20. The abovementioned authorities must

ensure adequate employment of technical staff and provision of facilities and resources for the purposes of proper, smooth and efficient running of the facilities of forensic science laboratories under them and the laboratories should furnish their reports expeditiously to the agencies concerned.

21. The Directorate of Forensic Science Services,

Ministry of Home Affairs, must take special steps to ensure standardisation of equipment across the various forensic laboratories to prevent vacillating results and disallow a litigant an opportunity to challenge test results on that basis.

(Emphasis supplied) No Guidelines/Circular/Government orders issued as on date under the Act with regard to urine samples being tested have been brought to my knowledge. The Apex Court and several other High Courts in a plethora of - 35 - judgments have found the testing done by a private laboratory to be faulty. I deem it appropriate to notice them.

13. The Apex Court, in the case of MARIAM FASIHUDDIN v. STATE in 2024 SCC OnLine SC 58, has

held as follows:

...

38. It is a matter of record that in the course of

further investigation, no new material was unearthed by the investigating agency. Instead, the supplementary chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original chargesheet was filed. The term further investigation stipulated in Section 173(8) Cr PC obligates the officer- in-charge of the concerned police station to obtain further evidence, oral or documentary, and only then forward a supplementary report regarding such evidence, in the prescribed form.

42. We also fail to understand the reliability of

the material based on which the investigating agency or the Trial Magistrate could form a prima facie opinion concerning the allegation of forgery of signatures of Respondent No. 2. As observed earlier, the State FSL report does not substantiate these allegations. In our opinion, a paid report obtained from a private laboratory seems to be a frail, unreliable, unsafe, untrustworthy and imprudent form of evidence, unless supported by some other corroborative proof. It is painful to mention that Respondent No. 2 has not produced any other substantive proof, nor has

the investigating agency obtained any such material in compliance with the Trial Magistrate's order for further investigation. The basis on which the Trial Magistrate formed a prima facie opinion, in the absence of such supporting evidence is, therefore, beyond our comprehension.

(Emphasis supplied) - 36 -

14. The High Court of Madras in the case of STATE v. P.PONNUSAMY in 2024 SCC OnLine Mad 2314, has

held as follows:

. . .

26. (i) That apart, there are other infirmities as well, which may not be relevant in the light of the observations made above. For the sake of narration, we would like to record them.

(a) PW54, has not compared the gait pattern of the entire body and has restricted only to the foot pattern.

(b) There is a doubt with regard to the storage of the backup copy on a pen drive which is incomplete and truncated.

(c) Science with regard to gait analysis is not absolute and there cannot be an assumption that the gait pattern is unique for a person.

(d) Above all, we find that in the absence of proof

that the DVR was really scrapped, as we have discussed above, the action of the investigating officer in sending the hard disc - M.O.9 to a private lab even with the approval of the Magistrate, also raises suspicion. This suspicion is not without basis. The Hon'ble Supreme Court had on more than one occasion, commented adversely upon the investigating officer in seeking the assistance of private labs for investigation purposes and more particularly, in the case of Truth Labs. It

would be useful to refer to the observations of the Hon'ble Supreme Court at paragraph Nos. 12 and 42 of the judgment in *Mariam Fasihuddin v. State by Adugodi Police Station*, 2024 SCC OnLine SC 58, which are extracted hereunder. - 37 -

12. In addition to the State FSL Report, the supplementary charge sheet also mentioned a report dated 15.07.2013 purportedly obtained by Respondent No. 2 from a private agency, known as, Truth Lab. This report opined that the signatures on the passport application did not signify a close resemblance with the specimens of Respondent No. 2's signatures.

42. We also fail to understand the reliability of the

material based on which the investigating agency or the Trial Magistrate could form a prima facie opinion concerning the allegation of forgery of signatures of Respondent No. 2. As observed earlier, the State FSL report does not substantiate these allegations. In our opinion, a paid report obtained from a private laboratory seems to be a frail, unreliable, unsafe, untrustworthy and imprudent form of evidence, unless supported by some other corroborative proof. It is painful to mention that Respondent No. 2 has not produced any other substantive proof, nor has the investigating agency obtained any such material in compliance with the Trial Magistrate's order for further investigation. The basis on which the Trial Magistrate formed a prima facie opinion, in the absence of such supporting evidence is, therefore, beyond our comprehension.

Similar observations were made by the Hon'ble Supreme Court in *Canara Bank v. United India Insurance Co. Ltd.*, (2020) 3 SCC 455 and by this Court in *CrI.R.C. (MD) No. 35 of 2016 [K. Venkateshwaran v. S. Baskaran]* decided on 17.02.2021]. Both cases relate to obtaining an opinion from this particular lab and the Hon'ble Supreme Court and this Court has deprecated the said practice.

(ii) That apart, it is seen that no camera was

shown in the Rough Sketch (Ex.P163) and Observation Mahazar (Ex.P3) in ShreshtaSubhashree apartments. But a camera was shown in the other apartment nearby viz., CEEBROS Apartments. Even assuming that the investigating officer had inadvertently missed out the mentioning of cameras in ShreshtaSubhashree apartments, the prosecution has not proved as to why the footage from the other Apartment was not collected. The explanation that the footage was not available is mere ipsidixit of the investigating officer and no person/witness from the said CEEBROS Apartment was examined by the prosecution.

(iii) Considering the fact that the cloned copies could not be produced, because of alleged mechanical - 38 -

failure; the fact that the investigating officer had copied the footage on a pen drive and had not produced it before the Court; the version of PW54 that a truncated backup of the footage was taken being doubtful; besides the act of the investigating officer in referring it to a private lab and the not so good reputation of the said private lab; that the prosecution did not establish that the DVR which was called for by the Government Lab was scrapped and for the other reasons mentioned above, we are of the view that no reliance can be placed either on Ex.P155-pen drive or Ex.P157-report of PW54.

(Emphasis supplied)

15. The High Court of Gauhati in the case of BARASHA BORAH BORDOLOI v. STATE OF ASSAM in 2018 SCC OnLine Gau 534, has held as follows: . . .

10. Reference is made to different SMSes as

indicated in the paper book to say that messages have established an emotional blackmailing of petitioner. It is contended that the petitioner

has duly projected her case by inserting new facts relating to the commission of offence under sections 66/67A of the IT Act, and the admissibility of the same to be tested under section 65B of the Evidence Act and the petitioner has produced relevant certificate issued by a private laboratory, namely, Truth Lab as required under section 65B of the Evidence Act to prove that the SMSes were sent by the respondent, and none else.

18. As regards the contention regarding the

offence under the provisions of the IT Act it is submitted that no such offence is made under the IT Act against the respondent as SMSes sent by the parties to each other are obviously, consensual and the accused cannot be singled out for the offence, if any, under the provisions of the law. It is categorically challenged that no any ingredient of offence under section 67A of the IT Act is discernible in the present case and there is no certificate as mandated by section 65B of the Evidence Act to prove the genuineness of the purported SMSes. The material brought by the informant through a private investigating agency cannot be admissible -
39 -

in evidence which was verified by a privately run laboratory. The hon'ble Supreme Court in Navinchandra N. Majithia v. State of Meghalaya,

(2000) 8 SCC 323, it is held that the Code does

not recognize the private agency. If any person is interested in hiring such private agency, he may do so at his own risks and costs but such investigation would not be regarded as investigation made under the law. Any evidence collected by such private investigation and any conclusion reached by such investigation cannot be permitted by the public prosecutor in any trial. Of course it may be possible for the defence to present such case.

(Emphasis supplied) If what is held by the Apex Court and other High Courts is considered, what would become unmistakably clear is, that reports from the private laboratories, of any kind are always doubtful, therefore, lurking suspicion percolates into every report.

16. It becomes apposite to refer to a Division

Bench judgment of the High Court of Allahabad in the case of PARSADI LAL TULSIRAM COLD STORAGE AGRA v. STATE OF U.P. in 2023 SCC Online All 4669, wherein it is held as follows: . . .

8. It is not known to this Court as to

whether Duke Ornex, Hyderabad is a government laboratory or private, however, if a report has been obtained under Section 292 or under Section 293 Cr PC, such report, being public document, would be admissible in evidence and would be accepted automatically and there would not be any need to examine the scientist who examined the material and prepared the report on behalf of the complainant except on the request of the defence but if any examination report has been obtained from any private agency, such report would be treated to be a private document.

9. In case of report of a private laboratory, it would be a private document in view of Section 75 of the Indian Evidence Act, 1872 and in that case, there would be need of examination of the - 40 - Scientist who examined the subject-matter and submitted the report.

10. In view of the above discussion, this

Court is of the view that since the report was obtained from a private agency i.e. Duke Ornex, Hyderabad, hence it was the duty of the prosecution to prove such report in due course.

11. From the perusal of the impugned order, it

does not disclose that whether the report of Duke Ornex, Hyderabad is on record of the lower court or not. Since the alleged report is the basis of the concerned Criminal Complaint, hence it was duty of the learned trial court to order the prosecution to produce the same as in absence of that, there was no prima facie evidence to prosecute the applicants. Before passing the impugned order, it was duty of the lower court to ascertain as to whether the report of Duke Ornex, Hyderabad is on record or not, but he simply based his conclusion on the evidence of PW-4, Ramesh Chandra without examining deeply and properly and concluded that the burden of proof is upon the complainant and rejected the application moved by the applicants.

(Emphasis supplied) The Division Bench holds that the report of a private laboratory would become a private document, under Section 75 of the Indian Evidence Act.

17. What happens to a charge sheet filed on the

basis of a report of private laboratory is taken into consideration by several coordinate Benches. A coordinate Bench of this Court in the case of GANGAPA MOGAVEERA v. STATE in CrI.P.No.3590 of 2019 disposed on 25-01-2022, has held as follows: . . .

9. Though there is no allegation in the FIR

lodged by the respondent No.2, the Police initially registered the FIR against the petitioner for the offences punishable under Sections 409, 420 of Indian Penal Code and after investigation, the investigating officer has filed the charge sheet against the petitioner for the offence punishable under Section 465 of IPC based on a report submitted by a private laboratory stating that the - 41 -

petitioner has created the document by forging the signature of the respondent No.2.

10. The co-ordinate bench of this Court in

Crl.P.No.100822/2016 disposed on 23.11.2016 has held that the investigating officer has committed a serious error in referring those documents for verification to a private laboratory, instead of sending the same to forensic laboratory of the Government. Therefore, it is seen that the court below though initially committed an error in accepting aforesaid 'B' report has subsequently set right this mistake by rejecting the report.

11. In view of the same, the charge sheet filed by the investigating officer on the basis of the report submitted by the private laboratory is not sustainable in law. (Emphasis supplied) Another coordinate Bench in the case of IQBAL SYED SAB DEFEDHAR v. FOOD SAFETY INSPECTOR in

W.P.No.59039 of 2015 decided on 23-02-2022, has held

as follows: . . .

34. On perusal of the said letter, furnished by Sri

S.K. Biradar, it is seen that basic requirement for effective implementation of the Act is the establishment of NABL in the State of Karnataka. Many times, the delay occurs because of the want of proper laboratory facility. As an ad hoc arrangement, a memorandum of Understanding (MOU) is entered into with a private laboratory by the Department, where under, the samples would be sent to the private laboratory and reports would be obtained.

35. Acceptability/admissibility of a report

given by a private laboratory for the purpose of adjudication of an offence under the Act is doubtful. It is the bounden duty of the Government to establish necessary laboratory for testing the samples under the Act. Such a responsibility cannot be outsourced by Government. Further, the

opinion given by the laboratory is the basis for launching the prosecution under the said Act. When the very report itself is questionable, given by a private laboratory, it would open flood gates - 42 -

by practically challenging every report before this court and prosecutions being quashed by this court perhaps only on that ground eventually defeating the very purpose and object of enactment. (Emphasis supplied) Long before the afore-quoted two judgments of coordinate benches, another coordinate bench in the case of STATE OF KARNATAKA v. BIMAL KUMAR GUPTA in CrI.A.No.341 of 2011 decided on 11-10-2019, has held as follows: . . .

12. The next important aspect is that the

learned Counsel for the respondents submitted that because the complaint has been filed in a delayed manner, he has lost the opportunity under Section 25(4) to approach the Court requesting the Court to send the second sample which was given to the Court for the purpose of sending the same to the Central Government Analyst for test. This, in my opinion, may not be helpful to the respondents because he himself has sent the said sample given to him to another Private Laboratories which is called as Industrial Testing Laboratories as per Exs.D2 and D3 wherein the test report given by the said Laboratory was that the drugs were of standard quality. However, the learned Counsel for the respondents has not brought to the notice of this Court under which provision of law the respondents are entitled to send the sample to a private Laboratory when the law contemplates that either it should be sent to the State Analyst or to the Central Drug Analyst as per Section 25 of the Act. It is open to the respondents under Section 25(4) of the Act to request the Court to send the second sample furnished to the Court for analysis to the Central Drug analyst and there is no provision under the Act or Rules that the respondents are entitled to send the said sample to a private analyst. Therefore, the said report is of no avail so far as the respondents are concerned. Therefore, I am of the opinion that the Appellate Court has committed serious error in appreciating these

aspects.

(Emphasis supplied) - 43 - Samples were being sent to Truth Labs, which is said to be reigning in authentic sampling. Even in such cases, the coordinate bench holds that without exhausting the remedy before Forensic Science Laboratory, Karnataka, the report of the Truth Labs relied on would vitiate the proceedings.

18. In the case at hand, the test is conducted at

Santosh Hospital. The Additional State Public Prosecutor has not produced any material to demonstrate as to why the urine samples were or are always sent to Santosh Hospital, a private laboratory and not to any Government laboratory. Prior to sending the sample for testing what is necessary is, authorisation of the Magistrate. No material is produced that the Magistrate had authorised the testing at a private laboratory. The State has also failed to produce any Government notification or Circular which recognizes Santosh Hospital as a Government recognized/authorised laboratory for any kind of testing. Therefore, the very report that is provided by the 2nd respondent is seeped in suspicion, as one urine sample cannot project 5 broad band drugs or 5 psychotropic substances. 5 narcotic drugs in one urine sample cannot emerge, let alone psychotropic substances.

19. It is in public domain that narcotic drugs are

derivatives of natural products. Psychotropic substances are chemical derivatives. The indication in the urine sample is 5 chemical substances and if a person would consume all five, his life would be at risk. It is, therefore, necessary after the conduct of test of urine samples, confirmatory tests become mandatory. The confirmatory tests are as afore-quoted. It is not that there is no consideration by any Court with regard to confirmatory tests. The Kerala High Court, in extensor, has considered the tests in the case of *SUO MOTU v. STATE OF KERALA* in 2021 SCC OnLine Ker. 665, and held as follows:

. . .

6. State Police Chief/Director General of Police,

Police Headquarters, Thiruvananthapuram, 3rd respondent, has filed another statement dated 21.11.2019, wherein he has produced a chart showing the number of NDPS Crimes registered during the - 44 - period 01.01.2016 to 30.09.2019 in each Police Districts in Kerala - gender wise. Said statement is reproduced. A. A statement has been filed in this regard on behalf of the State Police Chief on 30.09.2019 narrating the steps taken to obtain the performance analyses of Abon Drug Detection Kit. This Court, after considering the case on 24.10.2019 issued an interim

order directing that Director General of Police and

State Police Chief, Kerala to furnish a detailed statement of men, women and children involved in such crimes and also the performance analysis report of Abon Kits in the detection of NDPS crimes. In this regard a performance analysis report was obtained from the concerned authorities and the contents of the report are narrated hereunder.

B. The District Police Chief Kochi, City collected ten numbers of ABON Kit from Chief Store, Trivandrum and distributed to Assistant Commissioner of Police, Narcotic Cell, Kochi City, to check the result and performance level and 15 number was distributed to Assistant Commissioner of Police Narcotic Cell, Trivandrum. The Assistant Commissioner of Police, Narcotic Cell, Kochi City examined the Multy 6 oral drug detection device in various persons addicted to different Narcotic substances. The detection proved positive while examining the cases of MDA, LSD, Hashish Oil, Ganja, Nitrazepam Pills, etc., when checked, in co-operation with De-addiction Centres. According to ACP Narcotic Cell, 9 drug detection kits tendered positive results.

PROCEDURES: 1). PRELIMINARY ANALYTICAL TEST

1. Screening - Identify the suspected persons having consumed a Narcotic substance from his behavior and attitude depending on the influence of substance used.
2. Insert the sponge end of the fluid collector into his mouth for 3 minutes and actively swab to get the sponge saturated with Saliva.
3. Remove the collector from the mouth and insert into the test device and turn the collector clockwise and wait for one minute.
4. Rotate the collection chamber counter clockwise and set the timer for 9 minutes and read the result at 9 minutes. - 45 -

5. The drug positive oral fluid specimen. will not generate a coloured line in the specific test line region of the strip and the drug negative oral fluid specimen will generate a line in the test line region. A coloured line will always appear in the Control line region. If the control line does not appear the test result is not valid. II. SECONDARY ANALYTICAL TEST

Secondary Analytical Test is used to obtain a confirmed result by sending the specimen after sealing with tamper evident tape and sent to FSL examination where Gas Chromatography or Mass Spectrography (GCMS) are preferred. The result can be tallied with the opinion of a MRO (Medical Review Officer) for confirmation. ADVANTAGES

1. No such scientific device is available till now to identify a suspected drug user either to prosecute him or save him sending to De- addiction Centres.
2. It is easy to handle and result oriented and can be used everywhere.
3. All types of common drugs/substances can be detected using this device.
4. The device can be utilized for investigation of crime and traffic accident cases.
5. The company guarantees for two years.

6. The rampant use of drugs among students and youths attending the DJ parties can be curtailed and controlled by spreading an impression of getting identified easily using this device. DISADVANTAGES

1. The consumed person detected by the device can't be connected through reliable evidence to prove the ownership. - 46 -

2. If the suspected consumed person resists the collection of oral fluid from his mouth it becomes difficult to conduct the test.

3. Positive test result does not indicate the

concentration or quantity of the drug in the specimen, but only shows that he has consumed it. But, in Breath Analyzer, the concentration of alcohol in breath can be read through a printer. Hence, there is a chance of claiming the consumption of any NDPS substances on medical grounds.

4. A negative result may not necessarily indicate a drug-free specimen. Drugs may be present in the specimen below the cut off level.

5. Legal sanctity of the device for effective prosecution. REQUIREMENTS 1) The device must be equipped with collecting the Biometrics or Fingerprint of the suspected person. 2) Additional facility providing issue of printed result.

3) As a practice in drunkenness tests, the addict/suspect along with the Detecting Officer in presence of a witness, have to make their signatures in the place with non removable ink. 4) Enactment of suitable legislature/amendments in related laws. In another judgment in the case of ANURAJ v. STATE OF KERALA in Bail Application No.5549 of 2023, the High Court of Kerala has held as follows: . . .

8. Pursuant to the above order, the Additional Chief Secretary has filed an affidavit dated 13.10.2023 stating as follows: - 47 -

3. It is submitted that based on the order of the Hon'ble High Court dated 25.07.2023 in B.A Nos. 5686, 5549 and 5693/2023, as per the letter No. K2/212/2023- Home dated 14.09.2023, the State Police Chief had been

directed to examine the possibility of establishing a lab/converting an existing lab, exclusively for NDPS cases and if necessary, to furnish a detailed and comprehensive proposal by incorporating details of the infrastructure facility, total expenditure for the project, availability of fund etc. In this regard, the State Police Chief has reported that following steps have been taken to ensure the completion of the Chemical Analysis of Narcotic Drugs within the stipulated time.

4. The testing facility of the Narcotic substances is made available in the following Units:

1. State Forensic Science Laboratory, Thiruvananthapuram
2. Regional Forensic Science Laboratory, Kochi.
3. Regional Forensic Science Laboratory, Thrissur.
4. Regional Forensic Science Laboratory, Kannur.

4. The testing facility for the examination of

Ganja Samples is present in the newly established 13 District Forensic Science Laboratories (DFSLs). One more DFSL is under the process of establishment at Wayanad. As of now, there is one special unit under the State FSL, which is functioning at the Regional Forensic Science Laboratory at Thrissur. The Narcotic Division of RFSL, Thrissur, has been functioning since 2020 and carries out exclusively the examination of Narcotic Substances, A separate floor has been constructed at RFSL, Thrissur for the purpose.

5. The Testing facility for narcotics

substances in the units under the State Forensic Science Laboratories has been enhanced by providing adequate amount in the State Plan Scheme and Central Assistance Schemes for the procurement of necessary instruments/equipment, chemicals glassware and lab ware.

6. To establish the identity of any unknown substance under the NDPS Act, at least two - 48 -

Independent analytical techniques of which one should be instrumental. So, it is mandatory to follow alternative methods like Chromatography and Spectroscopy. Gas chromatography (GC) and High performance Liquid Chromatography (HPLC) offer high sensitivity and specificity for confirmation of presumptive results in screening tests. Gas - Chromatography-Mass Spectrometry (LC-MS) are the most sensitive and specific methods for confirmation of drug presence in a sample. The Spectroscopic methods are FT-IR with standard library/control and UV-Vis Spectrophotometer with control sample. At present, from among the above mentioned sophisticated and costly instruments Gas Chromatography (GC) and High performance Liquid Chromatography (HPLC), FT-IR with standard library/Control, and UV-Vis Spectrophotometer with control samples are made available to all the units where the examination of the narcotic substances is being carried out except for District Level Laboratories where only the examination of Ganja is being carried out. All the basic requirement concerning instrumentation are made available at FSL and RFSLS.

(Emphasis supplied) A learned single judge of this Court, while considering this issue has way back in 2008, in the case of R.MAYILVAHANAM v. INTELLIGENCE OFFICER in 2008 SCC OnLine Kar. 187, has held as follows: . . .

76. P.W. 14 also admits that, on all the sample packets, it is written as 5 gms of sample whereas, the weight of the samples that were examined by him were 4:7 gms (S1), 5.02 gms

(S3) and 4.9 gms (S5). It is also an admission

made by P.W. 14 in his evidence that as per the manual, colour test is not a definite test and it is mentioned in the manual that while testing heroin, colour test will be achieved while conducting the tests of other

alkaloids and uncontrolled substances. This witness also admits in the cross-examination that he has not conducted the two - 49 -

confirmatory tests viz., gas chromatography and mass spectroscopy.

77. The testimony of P.W. 15 A. Ameer

Razakhan, another Assistant Chemical Examiner, is also to the same effect and Ex. P-79 is his report and this witness also admits in the course of his cross-examination that he has not conducted quantitative or qualitative tests and goes on to say that M.Os. 1, 3 and 5 sample packets did not contain N.C.B. seal and the weight of S1 packet was 4.6 gms, the weight of S2 packet was 4.9 gms and the weight of S3 packet was 4.7 gms. He admits that he has not mentioned the reasons or grounds for his opinion and also for the delay in conducting the tests. It has been brought out further in the cross-examination of this witness that Method A in respect of screening of samples and Method B is in respect of confirmatory tests and Method A is presumptive test that includes colour test and he has not conducted any test mentioned in Method B, which is confirmatory test.

78. What is clear from the testimony of the

above Assistant Chemical Examiners is that they only conducted preliminary test or presumptive test but did not conduct any confirmatory test so as to formally fix that the sample packets contained contraband heroin and nothing but heroin. This procedure adopted by the Assistant Chemical Examiners and their failure to point out the percentage of purity of the contraband drug and the difference in weight of the samples received by them when compared to the weight mentioned on the sample packets on the top, all give rise to doubt the prosecution case insofar as its effort to establish through the testimony, beyond all reasonable doubt, that the sample packets which were tested by the Assistant Chemical Examiners contained heroin and nothing but heroin.

In the absence of purity test being conducted and the percentage of heroin drug being indicated and no confirmatory test or quantitative test also being held, I am of the view that the evidence of the Assistant Chemical Examiners also - 50 -

creates yet another loophole in the prosecution case. (Emphasis supplied) The aforesaid judgments were not considering urine samples, but they were considering seized contraband samples. Insofar as urine samples are concerned, the coordinate Bench in the case of SRI PRANAY NATARAJ supra has elucidated that tests are mandatory.

20. The High Court of Bombay in the case of SAGAR PARSHURAM JOSHI v. STATE OF

MAHARASHTRA in 2021 SCC OnLine Bom 3051, held

that in the absence of the report of the Chemical Analyzer, a bare reference of, field test being conducted, is not "sufficient material" to detain an applicant in jail. In the absence of documented, standards of colour test reagents for preliminary identification of drugs, would lead to doubting the authenticity of the test result. Leaving the entire field test process to the understanding of the field officers of the suspect substance, without any standard documented colour test for reagents is arbitrary. It held as follows:

18. Before advertng to the arguments of the learned counsel for the applicant, it may be stated that the Director General of the Narcotic Control Bureau has issued a field officer's hand-book for guidance of Drugs Law Enforcement Officers. Chapter VI refers to, Drug Detection Kit, the relevant paragraph is as under:

Drug Detection Kit: These kits assist the DLEO in forming a reasonable belief about a substance being a drug. The kit is a portable case

containing different reagents that are used to test a small quantity of the substance recovered and determine the nature of the substance based on the color range resulting from the reactions of the suspect substance with the reagents. There are three types of test kits used at present : Narcotic Drugs Kit to test traditional drugs like Ganja, Charas, Opium Heroin, Cocaine, and the like; Precursor Chemicals Kit to test Acetic Anhydride, Ephedrine, Pseudoephedrine etc. and Ketamine Kit. All these kits are very user friendly and come with an Instruction sheet to guide the user draw appropriate Inference. It is essential that the DLEO conducts the test, matches - 51 -

the resultant color and forms a reasonable belief that the substance gives positive color pattern for a drug. This process must be recorded In the Panchanama.

19. I have perused the hand-book. Chapter VII of

the hand-book is about Drug Identification and Field Testing. Chapter I enumerates, check-list, for Drugs Law Enforcement Officers, while executing the field operation, to ensure that the Drugs Law Enforcement Officer does not overlook anything, which might subsequently affect the case. Item No. 10 in the check-list reads as under:

10. Were all recovered suspect substances field tested with Drug Detection Kits/Precursor Testing Kits and the matching colour results to show presence of ND, PS or CS and was it all documented?

20. In relation to the identification of drug, it states -

Identification: Natural narcotic drugs like Ganja, Charas, Opium Poppy can be easily identified by their color, texture and smell. But, most of the drugs abused today are refined and processed substances and are mostly circulated as white, off-white or brown powder, crystals or flakes or colorless odorless liquids. It is very difficult to identify a substance as a drug unless it is tested with different reagents.

21. So far as the Drug Detection Kit is concerned,

it is stated in the hand-book that these kits assist Drugs Law Enforcement Officers in forming reasonable belief about substance being a drug. The kit is a portable case containing different reagents that are used to test a small quantity of substance recovered and to determine the nature of substance based on the colour range resulting from the reactions of the suspect substance with reagents. It is stated that this process must be recorded in the panchanama.

22. Obviously, these tests are only indicative

and preliminary tests and need further confirmation for which sample is sent to a laboratory. Instructions in Hand-book also suggest preparation of the test memo in triplicate on the spot and facsimile in print of seal used in sealing the envelopes, to be affixed on test memos. (emphasis supplied).

23. In the case at hand, admittedly, it is recorded in the panchanama that test was conducted on the field drug kit and the resultant colour pattern, (dark brown) - 52 -

conforms and matched suspect substance i.e. amphetamine, recovered from the person of the applicant. However, it may be stated that natural narcotic drug like Ganja, Charas, Opium Poppy can be easily identified by their colour, texture or smell but most of the drugs abused today are refined and processed substances and are mostly circulated as white, off-white or brown powder, crystals or flakes or colorless, odorless liquids and, therefore, it is very difficult to identify the substance as a drug unless it is tested with different reagents. A reagent is a substance or compound added to a system to cause chemical reaction. In the case at hand, prosecution has not pointed out with which reagent the suspect substance was tested by the field officers. Hand-book in Chapter VII as an illustration, has just given few visuals with which the officers should familiarize during the drugs law enforcement. Obviously, it means, the Narcotic Control Bureau, Ministry of Home Affairs, Government of India

has not prescribed the standards to establish minimum requirements for colour test, and methods of testing reagents to determine nature of substance, based on colour range resulting from reaction with reagent. In the case at hand, it is prosecution's case that white powder (suspect substance) recovered from the person of the applicant and the co-accused when tested with reagents, it produced dark brown colour, which matches colour pattern for the amphetamine. However, there are no documented set standards as to which substance upon testing with reagent/s would produce, which colour. Thus, all and every aspect of field testing is left to the experience, knowledge and perception of Law Enforcement Officer.

24. Be that as it may, the National Institute of

Justice, US Department of Justice has set the NIJ standards for colour test reagents/kits for preliminary identification of the drugs of abuse. Table 1 in Chapter IV itemize particulars of final colours produced by the reagents with various drugs and other substances. However, a document of this kind, if any, by Ministry of Home Affairs is not made available by the prosecution to prima-facie ascertain and satisfy authenticity of test result of the field test conducted of the suspect substance. Nor memos of test are forming part of the charge-sheet. Thus, in my view, bare - 53 -

reference of, field test being conducted, on the kit in the panchanama is not sufficient material to detain the applicant in the jail, in absence of report from the Chemical Analyser. Besides, there is no such other material to prima-facie accept that suspect substance recovered from the applicant was amphetamine. It may not be overlooked that the Chemical Analyser's report is an essential, integral and inherent part of the investigation under the NDPS Act and would lay foundation of accused's culpability without which Magistrate is not able to form an opinion and take cognizance of the accused involved in the commission of offence under the Act. In the case at hand, prosecution relies on the test

conducted on the field and reference of such test being made in the panchanama. Except this, there is neither test memos of such tests on record though, the Ministry of Home Affairs in the hand-book suggested field officers' to prepare the test memo in triplicate (emphasis supplied). Additionally, in absence of documented, standards of colour test reagents for preliminary identification of drugs has not been made available to this Court. Therefore, entire field test process of the suspect substance, with reagents and colour produced. whether matches colour pattern of particular drug or not is left to the understanding of the field officers which is arbitrary. Thus, prima-facie to accept the authenticity of the preliminary test of the suspect substance recovered from the accused persons, prosecution is expected to place on record some more particulars or atleast test memos, which has not been done in the case at hand. Besides, it may also be stated that though prosecution has collected/drawn samples of the powder from a company where applicant and another co-accused were working neither preliminary report of that sample has been produced on record. Question to be posed, as to why field officer did not conduct the field test of the samples of Ramlatan powder collected from the company where accused were working. Had the prosecution conducted this test and place on record test memos, would have certainly assisted this Court in appreciating prosecution case and contention of applicant-accused. Therefore, to say that today before this Court there is no sufficient material to accept, prima- facie. authenticity of the test result of the, - 54 -

suspect substance done on the spot by Field Test Kit.

25. One may argue that reference in the

panchanama of the field test being conducted at the spot cannot be overlooked as it is to be presumed in law that field officers drew the panchanama in discharge of their official acts and, therefore, a relevant fact, which can be tested only during the evidence. However, in this case, officers were not precluded from filing the test memos and also

could have taken recourse to Section 36-A(4) of the NDPS Act, and file Chemical Analyser's report within extended time.

(Emphasis Supplied)

21. The High Court of Delhi in the case of AJAY

MEENA v. AIRPORT AUTHORITY OF INDIA in W.P.(C) 17282 of 2022 disposed of on 23-12-2022, has held that non-negative reports for Amphetamine Urine Test, which is a screening test, must be confirmed by gas chromatography/mass spectrometry. It observes as follows: . . .

3. The prime ground of challenge in the

present writ petition is that the medical report dated 07-11-2022, as per which the test for AMPHETAMINE SCREEN URINE is non-negative, itself notes that there are limitations of procedures and the test being limited only to screening, in case of non-negative results, the same be confirmed by gas chromatography/mass spectrometry (GC/MS) and therefore, the Respondents should have put the Petitioner to the required confirmatory tests, before coming to a

conclusion that the Petitioner is unfit for

appointment.

7. From the facts of the case it is an

undisputed position that Petitioner has successfully cleared all the tests and is high-up in merit. Insofar as the medical test is concerned, the medical report is in favour of the Petitioner, save and except, the test amphetamine screen urine, - 55

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for which the test is non-negative. It is true that the candidates were informed that if they tested non-negative for any of the psychoactive

substances they will stand disqualified for selection, however, it cannot be overlooked that the medical report itself delineates the limitations of the procedure and provides that non-negative results must be confirmed by gas chromatography/mass spectrometry (GC/MS). While it is the case of the petitioner that he has never consumed amphetamine or any other drug, it is the case of the Respondents that the medical report is to the contrary. Considering the fact that the screening test conducted in the first instance may not portray a correct picture and keeping in backdrop the limitation of the procedures as also the fact that the Petitioner has placed on record a medical test report dated 07-12-2022 albeit of a private diagnostic centre, this Court deems it appropriate to refer the Petitioner for a review medical examination.

(Emphasis supplied)

22. The High Court of Calcutta in the case of

RAKESH JHA v. STATE OF WEST BENGAL in 2023 SCC OnLine Cal 2463, held that the CFSL / Laboratory Report becomes an essential and integral part of the investigation for establishing the charges under the NDPS Act. The Chemical Examination Report is the most vital piece of evidence which is required to be made part of the charge-sheet. It observes as follows:

12. The petitioner, before us, on the other hand, has been charged for commission of an offence under the NDPS Act which requires the Trial Court to take cognizance of the offence committed under the Act. This means that the CFSL/Laboratory Report becomes an essential and integral part of the investigation for establishing the charges under the NDPS Act. The Chemical Examination Report therefore becomes the most vital piece of evidence which is required to be made part of the charge-sheet.

(Emphasis Supplied) - 56 -

In the light of what is noted hereinabove, what would become unmistakably clear is, the necessity of urine samples being tested by a Government laboratory or the tests that are done by a private laboratory, to be put to confirmation, by the aforesaid two tests, both of which, have admittedly not happened in the case at hand. The FSL report was not even a part of the charge sheet, what was part of the charge sheet was the report by Santosh Hospital. Admittedly, the report of Santosh Hospital, even according to its brochure, is only presumptive and not conclusive.

23. The petitioners are alleged of consumption of

drugs. If it were to be any other allegation of peddling or distribution for the purpose of sale, it would have been altogether a different circumstance. The petitioners are not alleged of that. They are alleged of consumption. The consumption of drugs has become a huge menace. While the distributors or the peddlers cannot be spared, so the consumers. The law itself recognizes lesser punishment upon the consumer. But, nonetheless, they are consumers of drugs. Therefore, it is necessary to test those persons who are alleged of consuming drugs, in a heist of this kind, so that the offence of consumption of drugs cannot be watered down by faulty tests.

24. It now becomes apposite to refer to the

National Policy on Narcotic Drugs and Psychotropic Substances (Policy for short) as published by the Narcotic Control Bureau (NCB for short). One of the objectives of the Policy is to re-assert India's commitment to combat the drug menace in a holistic manner. The relevant portion of the Policy which deals with the establishment and working of Forensic Laboratories, for testing of NDPS substances reads as follows:

LABORATORIES

82. The NDPS Act, 1985 spreads the network of

enforcement far and wide by enabling the Central Government and the State Governments to empower any of their officers to enforce it. Hence, we have a large number of agencies seizing drugs in the country. Although the total number of seizures in the country (about 20,000 per year) is not very large compared to the size and population of the country, these seizures are made by several agencies in several parts of the country. Several - 57 -

forensic labs in the country test these samples. These are the Central Revenue Chemical Laboratory (CRCL), the Central Forensic Science Laboratories (CFSL) and the State Forensic Laboratories (FSL) of each State. Successful prosecution of offenders hinges on the quality of test reports. Each of the seized samples has to be tested quickly, precisely and accurately as the test report forms the basis for trial of the accused. On the other hand, if the seized substance is not a drug, a quick and accurate report helps exonerate those who are arrested but against whom there is no evidence.

83. The Government of India shall continuously

build the capacities of the personnel working in the forensic labs in the country and improve the quality of their equipment so as to get in the shortest possible time precise and accurate test reports which can withstand the legal scrutiny.

84. In order to achieve the above objective, one nodal national drug testing laboratory will be identified which shall, in addition to testing samples that it receives, be responsible for the following: a) Developing/ documenting/ prescribing standard testing protocols for each narcotic drug, psychotropic substance and precursor and any other related tests.

b) Developing/ documenting/ prescribing standard methods for testing samples of blood, urine, etc. to confirm consumption of narcotic drugs or psychotropic

substances by any person. c) Developing advanced forensic testing methods such as impurity profiling. d) Developing standardized forms of reporting which can withstand legal scrutiny. e) Publishing and disseminating manuals on the above to all the forensic science labs in the country. f) Identifying the basic minimum equipment required to conduct tests to determine the nature and purity of any narcotic drug, psychotropic substance or precursor. - 58 - g) Identify the gaps between the equipment that is required and that which is available in each of the labs. h) Make recommendations on the equipment required to strengthen each laboratory. i) Conduct training programmes for the personnel working in various forensic laboratories in the country. (Emphasis supplied)

The Policy states that the Government of India shall continuously build the capacities of the personnel working in the forensic labs in the country and improve the quality of their equipment for the successful prosecution of offenders which hinges on the quality of the forensic test reports. Each of the seized samples has to be tested quickly, precisely and accurately, as the test report, forms the basis for trial of the accused. In order to achieve this objective, the Policy states that the Government of India shall identify one nodal national drug testing laboratory which shall serve several purposes including developing/ documenting/ prescribing standard methods for testing samples of blood, urine, etc. to confirm consumption of narcotic drugs or psychotropic substances by any person; developing advanced forensic testing methods and standardized forms of reporting which can withstand legal scrutiny; publishing and disseminating manuals, to all the forensic science labs, in the Country and conducting training programmes, for the personnel working in various forensic laboratories in the Country.

25. However, no such nodal drug testing laboratory

has been identified by the Government of India, nor any standard methods have been prescribed for blood or urine testing. It is therefore necessary for the Central and State Governments to notify a nodal drug testing laboratory, in

order to prescribe standard protocols and methods for

testing samples of blood, urine, etc. and also perform other functions as afore-quoted in the Policy, failing which, the Courts would be constrained to accept the contentions of the accused and obliterate the crime, like in the case at hand. - 59 - In the light of the fact that the issue standing answered by this Court in the afore-quoted order, the petitioners, who are accused in the very same special criminal case, are entitled to the very same benefit that is granted to the petitioner therein.

5. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.

(ii) Charge sheet filed by the Police in Spl.Case No.741 of 2024 pending before the VIII Additional District and Sessions Judge, Bengaluru Rural, Bengaluru stands quashed qua the petitioners. Sd/- (M.NAGAPRASANNA) JUDGE NVJ List No.: 1
SI No.: 24 CT:SS

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