SECTION 52A OF THE NDPS ACT: MANDATORY OR DIRECTORY?

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Every conviction under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**") rests, in large measure, on the integrity of the seized contraband and the samples drawn from it. Section 52A of the NDPS Act is the provision that guarantees that integrity. It requires the officer-in-charge of the nearest police station or the officer authorised under Section 53 of the NDPS Act to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. The samples drawn in the presence of the Magistrate and the list thereof on being certified alone constitute primary evidence for the purposes of trial. The provision uses the word "*shall*" majorly and on the plain text, compliance is not optional. Non-compliance has therefore always carried the potential to unravel a prosecution's story. The question that has repeatedly arisen before the courts is that when does it actually do so?

For a long time, the answer appeared settled. In *Union of India v. Mohanlal* **(2016) 3 SCC 379**, the Supreme Court held that samples drawn and certified by the Magistrate under Section 52A constitute primary evidence for the purpose of trial. Relying on *Mohanlal* (supra), the Supreme Court in *Simranjit Singh v. State of Punjab* **2023 SCC OnLine SC 906** held that drawing samples without the Magistrate's presence creates serious doubt about whether the recovered substance was contraband at all. However, in *Narcotics Control Bureau v. Kashif* **(2024) 11 SCC 372**, the Supreme Court held that delay or non-compliance with Section 52A cannot be treated as an illegality entitling the accused to be released on bail or claim acquittal. Courts below, confronted with these judgments, treated non-compliance as near fatal to the prosecution.

Bharat Aambale Judgment

In *Bharat Aambale v. State of Chhattisgarh* **(2025) 8 SCC 452**, the Supreme Court undertook a comprehensive review of Section 52A of the NDPS Act and laid down the governing framework. The accused in the matter had challenged his conviction on the ground that 73 seized packets were mixed into a composite lot before sampling, violating Section 52A and NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022. The Supreme Court dismissed the appeal and upheld the conviction.

At paragraph number 50 of its judgment in *Bharat Aambale* (supra), the Supreme Court summarised the position in ten principles. Principle V held that "*mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done*." Principle IX placed the initial burden on the accused to lay foundational facts establishing non compliance on preponderance of probabilities. Principle X then shifted the burden to the prosecution to prove either substantial compliance or that the non compliance does not affect its case both to the standard of proof beyond reasonable doubt.

This was a significant recalibration. The provision retained its significance in the sense that compliance is required and its absence cannot be ignored. But the consequence of non-compliance was no longer automatic acquittal, it became a matter of degree. Relying on *Mohanlal* (supra) and *Simranjit Singh* (supra), courts had effectively drawn a line which was that non-compliance with Section 52A was treated as fatal to the prosecution. *Bharat Aambale* (supra) replaced that line with a graduated inquiry and a two stage burden shifting mechanism. The Supreme Court however acknowledged the inherent limit of this approach in principle VII wherein it was held that "*no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.*"

Some Subsequent Judgments

In *Jothi @ Nagajothi v. the State* **2025 SCC OnLine SC 2774**, the Supreme Court applied the *Bharat Aambale* (supra) framework and upheld the conviction of the accused. The accused had been found in possession of 23.5 kg ganja. Samples were drawn at the spot, sealed, produced before the Magistrate and forwarded for analysis pursuant to a judicial order. The accused contended that sampling at the spot without Magistrate presence violated Section 52A. The Supreme Court held that the accused had failed to lay any foundational material to suggest that the sampling process was unreliable or that the integrity of the samples had been compromised. The chain of custody was clear and continuous. Even assuming some deviation from the ideal procedure envisaged under Section 52A, such irregularity did not go to the root of the matter, the prosecution had demonstrated substantial compliance and the integrity of the material evidence stood fully preserved.

Earlier in the same year, in *Nadeem Ahamed v. State of West Bengal* **2025 SCC OnLine SC 1779**, the Supreme Court acquitted the accused on two independent grounds. First, the trial Court had committed a grave factual error in concluding that the contraband heroin recovered from two distinct individuals could be clubbed together so as to be covered under commercial quantity, there being not even a semblance of evidence to substantiate the charge of prior conspiracy between the two accused persons. Second, neither representative samples were drawn in the presence of a Magistrate nor was the inventory list prepared and certified as required by law. It was held that the procedure under Section 52A is not mandatory but the facts taken cumulatively made the entire procedure of seizure and sampling a total farce and unworthy of credence. The Forensic Science Laboratory (FSL) report consequently lost significance and there was no acceptable evidence on record to prove that the recovered article was heroin.

The Unanswered Question

The ratio of *Bharat Aambale* (supra) rests on a central distinction i.e. between non-compliance that creates discrepancies in physical evidence rendering the prosecution's case doubtful and non-compliance that does not. This distinction does the entire work of the test. Yet the Supreme Court itself held in principle VII that no hard and fast rule can be laid down and that everything depends on the facts of each case. What level of deviation from Section 52A constitutes a significant departure as opposed to a minor irregularity? What degree of factual showing is sufficient to discharge the foundational burden under principle IX? These questions are left entirely to the judgment of the court in each case with no criteria to guide it.

Courts below are already grappling with this issue. In *Manjay Kumar v. State NCT of Delhi,* **2026 SCC OnLine Del 1144**, the Delhi High Court considered a bail application involving an alleged violation of the sampling procedure under Section 52A. Applying *Bharat Aambale* (supra), it was held that the mixing of samples drawn from various packets and testing of the mixed samples was not a trivial irregularity but affected the question of substantial compliance, and that on such facts it was possible that the petitioners could discharge the initial factual burden with regard to non-compliance of Section 52A. It was further held that while it may or may not ultimately vitiate the trial, an adverse inference against the prosecution was certainly plausible.

It is pertinent to note that nothing in *Bharat Aambale* (supra), *Nadeem Ahamed* (supra) or *Jothi* (supra) supplies any criteria for identifying when non-compliance crosses the threshold into a significant departure. This is not the kind of uncertainty that a provision as consequential as Section 52A ought to generate. The problem is structural. Section 52A was inserted into the NDPS Act precisely because the absence of a statutory procedure for handling seized contraband had led to tampering, substitution and evidentiary unreliability. The Supreme Court in *Bharat Aambale* (supra) traced this legislative history noting that different investigating officers across States were adopting different sampling procedures, compelling the Narcotics Control Bureau (NCB) to issue Standing Orders. Section 52A was subsequently inserted following India's obligations under international conventions. The Magistrate's presence is therefore not a formality but it is the safeguard Parliament considered necessary. When that safeguard is reduced to a matter of substantial compliance, the certainty Section 52A was intended to introduce is replaced by the very uncertainty it was intended to prevent. The framework also operates unequally. Before the court will even consider the non-compliance argument, the accused must first establish foundational facts either through independent evidence or by cross-examining prosecution witnesses. Once that threshold is crossed, the prosecution must prove substantial compliance or that the non-compliance did not affect its case, to the standard of proof beyond reasonable doubt.

Conclusion

The judgment in *Bharat Aambale* (supra) corrected a serious overcorrection. Courts had been treating non-compliance with Section 52A as near fatal to the prosecution. That position was unsustainable and *Bharat Aambale* (supra) replaced it with a more calibrated approach. The problem is not with the correction but with what it left undone. By holding in principle VII of *Bharat Aambale* (supra) that no hard and fast rule can be laid down, the Supreme Court left courts without criteria to apply the framework it had just created. *Manjay Kumar* (supra) is one such illustration, a court doing its best to apply *Bharat Aambale* (supra) without guidance on where the line falls. What is needed is greater clarity from the Supreme Court on when non-compliance is significant enough to affect the prosecution's case, whether by reference to the nature of the step omitted, the stage in the chain of custody at which it occurred or the availability of independent evidence establishing identity and integrity of the contraband. Until that clarity emerges, outcomes will depend on the particular court's reading of the facts rather than consistent application of law, which a provision governing the admissibility of primary evidence in prosecutions cannot afford.

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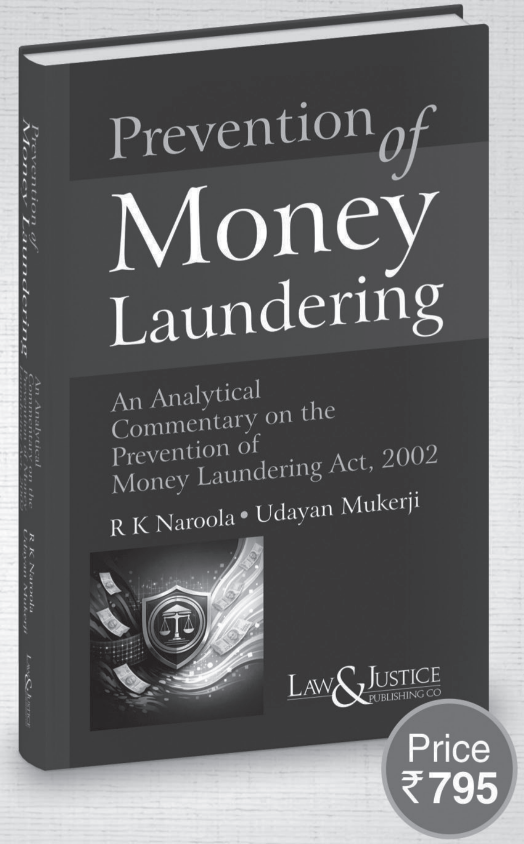

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