

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

S.B. Criminal Misc(Pet.) No. 9056/2025

Yashwant Solanki S/o Shi Ambalal Solanki, Aged About 37 Years,
R/o B -707, Dwarika Apartment, Manava Kheda, Udaipur

----Petitioner

Versus

State Of Rajasthan, Through Pp

The Inspector General Of Police, Udaipur Range, Udaipur.

----Respondents

For Petitioner(s) : Mr. Ankur Mathur
For Respondent(s) : Mr. Ramesh Devasi, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU**Order****Reportable****12/02/2026**

The present petition has been filed by the petitioner being aggrieved by the order dated 04.10.2025 passed by the learned Special Judge, NDPS Court No.1, whereby the application filed under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been rejected.

The factual matrix of the present case is that an FIR No.131/2023 was registered at Police Station Mandfiya, District Chittorgarh for the offences punishable under Section 8/22 and 8/29 of the NDPS Act. The petitioner was the seizure officer, however, he has subsequently been arraigned as an accused on the allegation that he was part of the conspiracy. After investigation, challan was filed against him and matter is pending for prosecution evidence before the learned trial court.



Learned counsel for the petitioner submits that subsequent to the incident regarding which the FIR was registered a compliant was submitted by certain individuals, namely Smt. Rekha Khatik and Shri Naresh Khatik, to the office of the Inspector General of Police, Udaipur Range, making serious allegations regarding irregularities, falsification and procedural lapses in the seizure and investigation process undertaken by the Mandfiya Police Station officials. Based upon the said complaint, the Inspector General of Police, Udaipur Range, initiated a departmental inquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 against the members of the seizure team, including the petitioner.

The said departmental inquiry is being conducted by the Deputy Superintendent of Police, SC/ST Cell, Udaipur, and in the inquiry statements of all the seizure officers, members of the patrol team, and witnesses, as well as interrogation notes of the accused persons were recorded. It is further submitted that these documents and statements are directly connected to the same incident forming the basis of the present NDPS prosecution now pending before the learned trial court.

In view thereof, an application was preferred by the petitioner before the learned trial Court under section 94 of the BNSS, seeking summoning of the record of the departmental proceedings so as to enable the petitioner to confront the prosecution witnesses during the course of trial.

It is contended by learned counsel for the petitioner that the learned trial Court has dismissed the said application without assigning any cogent or convincing reasons and on wholly





untenable grounds. It is argued that the only ground assigned by the trial Court for rejection of the application is that summoning of the departmental record may affect the departmental inquiry.

According to learned counsel, such a ground is legally unsustainable, as the mere possibility of departmental proceedings being affected cannot be a valid reason to deny the petitioner an effective opportunity to defend himself in a criminal trial.

It is further submitted that the petitioner has a valuable right to defend himself and is entitled to a full and fair opportunity to do so. Since the statements of the witnesses have already been recorded in the departmental proceedings, the same are essential for the purpose of confronting the witnesses during cross-examination.

Learned counsel further submits that the petitioner had also sought copies of the said statements from the concerned department under the provisions of the Right to Information Act, prior to filing the application before the trial court, however, the same were declined citing confidentiality. In the absence of such documents, and in view of the rejection of the application by the trial Court, the petitioner would be rendered effectively defenceless and would be unable to properly put forth his defence in the criminal case.

In support of his submissions, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in ***P Ponnusamy v. State of Tamil Nadu*** reported in **2022 INSC 1177** and ***State of Orissa v. Debendra Nath Padhi*** reported in **2005(1) SCC 568**.





Accordingly, it is prayed that the impugned order dated 04.10.2025 passed by the learned trial Court be quashed and set aside, and the application preferred by the petitioner for summoning the record of the departmental proceedings be

ved.

The learned Public Prosecutor vehemently opposes the prayer e by the petitioner.

Heard learned counsel for the parties and perused the material available on record.

The core dispute in the present matter is that for the incident forming the basis of the present criminal trial, the departmental proceedings against the petitioner are also pending. The statements of the witnesses have been recorded in the departmental proceedings and the witnesses are now being examined in the criminal trial as well. Therefore, the documents and statements being directly connected with the present trial are required by the petitioner for confronting the prosecution witnesses during cross-examination.

It is evident from the application that the petitioner had sought copies of the said record under the RTI Act, however, the same were denied. In such circumstances, the petitioner was constrained to invoke the provisions of Section 94 of the BNSS and therefore moved an application before the trial court seeking summoning of the relevant record, as the same is in the possession and control of the Departmental Authority/Inquiry Officer. In the absence of such record being called for, the petitioner would be deprived of a fair and adequate opportunity to effectively defend his case.





Section 94 of BNSS, gives power to the trial Court to summon the document or other things which are necessary for the purpose of inquiry. For the ready reference of this Hon'ble court

Section 94 of BNSS is reproduced hereunder:

"94. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, Including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, Inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order.

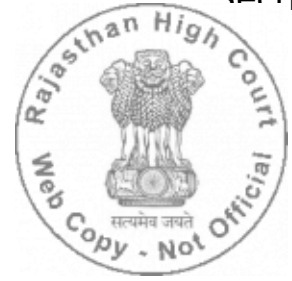
(2) Any person required under this section merely to produce a document, or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 129 and 130 of the Bharatiya Sakshya Adhinyam, 2023 or the Bankers' Books Evidence Act, 1891; or

(b) to apply to a letter, postcard, or other document or any parcel or thing in the custody of the postal authority"

It is well settled that the right to a fair trial includes the right of the accused to have access to such materials as are necessary for an effective defence and meaningful cross-examination of prosecution witnesses. Denial of access to relevant statements or documents in the custody of the authorities, which have a direct bearing on the defence, would cause serious prejudice and impair the fairness of the trial. The accused cannot be deprived of such material merely on the ground that parallel proceedings may be affected.





The learned trial Court, in the operative portion of the impugned order, has merely rejected the application on the ground that it is at the discretion of prosecution to produce the document and that summoning the entire record would delay the departmental proceedings. Such a consideration, by itself, cannot be a valid ground for dismissal of the application nor can it justify denying the fundamental right of the petitioner to put forth an effective defence.

The Hon'ble Apex Court in the case of ***P. Ponnusamy v. State of Tamil Nadu (supra)*** has categorically held that merely if the material or the evidence which favours the accused is not on record of the court it cannot disentitle the accused from accessing the material that may have exculpatory value and accused can seek appropriate order under Section 91 Cr.P.C. Although the Apex Court was dealing with the documents/report forwarded to the court under Section 173 Cr.P.C., but nevertheless the apex court has held that the right of the accused to defend to be an intrinsic part of fair trial which is guaranteed to every individual under Article 21 of the Constitution of India. The Hon'ble Apex Court held as under:-

11. Taking note of the case law in Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi⁸, this court in Manoj & Ors. v. State of Madhya Pradesh⁹, highlighted the dual role played by the public prosecutor and the court in safeguarding the accused's right to fair investigation and trial, by scrutinizing the material and ensuring fair disclosure. In light of this, and the aforementioned draft Rule 4, this court went on to hold in Manoj that:

"...In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts





in criminal trials shall ensure compliance with such rules."

12. *In addition to the decision in Manu Sharma (as noticed in Manoj), there is another decision – Manjeet Singh Khera v. State of Maharashtra - which had highlighted how the requirement of disclosure, is an intrinsic part of the right to fair trial under Article 21 of the Constitution. Relying upon its previous decision in V.K. Sasikala v. State, this court noted in Manjeet Singh Khera:*

"...In that case, the documents were forwarded to the court under Section 173(5) CrPC but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect: (V.K. Sasikala case [V.K. Sasikala v. State, (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010] , SCC p. 788, para 21) "21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view [V.K. Sasikala v. State, 2012 SCC OnLine Kar 9209] taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced."

13. *It is true that this court in V.K. Sasikala (supra) was dealing with material/documents that were forwarded to the Magistrate under Section 173 CrPC, but were not being relied upon by the prosecution. However, it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically sub-section (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text*





of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in the possession of the prosecution, regardless of whether the prosecution plans to rely on it. The facts in *Manoj*, having reflected such a situation (of suppression of evidence that favoured the accused) similarly, necessitated elaboration of this right.

14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.

The power to summon documents at the stage of trial is circumscribed by the requirement that the Court must be satisfied about the necessity and desirability of such production for a just decision of the case.

Reliance can be placed upon the judgment of the Hon'ble Supreme Court in ***State of Orissa v. Debendra Nath Padhi*** (*supra*)

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the





party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation, Inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

The Hon'ble Supreme Court in the aforesaid Judgment has held that the expression "necessary or desirable" occurring in Section 91 CrPC (now Section 94 BNSS) has to be examined with reference to the stage at which such a request is made. The Court further held that the accused cannot invoke the said provision at the stage of framing of charge to produce defence material. However, once the trial has commenced and the matter has progressed to the stage of recording of evidence, the Court is competent to exercise its powers under Section 94 BNSS if the document sought is necessary or desirable for a just decision of the case. In such circumstances, the Court may summon the relevant material in exercise of its judicial discretion depending upon the facts and circumstances of each case.

This issue was considered by the Coordinate Bench of this Court in the case of **Ratti Vs. State of Rajasthan & Ors. (S.B. Criminal Misc. Petition No.3842/2020 decided on 01.02.2024)**. The Court observed as under :-





"17. Thus, in such factual backdrop of the present case and considering the nature of things, sought to be collected/summoned, it was not justified for the trial Court to dismiss or defer the application filed by the accused person, merely on the ground that same can be considered only at the stage of defence evidence of accused persons and not prior thereto. More so, when the language of Section 91 CrPC itself does not put any bar for the accused person to invoke provision of Section 91 CrPC and as per ratio decidendi expounded by the Division Bench of Madhya Pradesh High Court in case of Umesh Tiwari (supra), the accused can invoke power and jurisdiction of Court, Section 91 CrPC after filing of the charge-sheet by the police before the Court. Thus, this Court does not find any illegality or jurisdictional error in exercising powers by the trial Court to direct to produce such material before the Court and the impugned order dated 27.02.2020 does not warrant any interference by this Court, within scope of Section 482 CrPC. The sustenance of impugned order neither leads to any illegality nor the impugned order is found, against mandate of law nor same leads to any miscarriage of justice. Undisputedly, the State/prosecution has not challenged the impugned order, meaning thereby it is not averse to produce the material as directed by the learned trial Court."

It will be relevant to state here that Section 94 of the BNSS, 2023 is *pari materia* to Section 91 Cr.P.C., and therefore the judicial principles governing Section 91 CrPC would equally apply while exercising powers under Section 94 BNSS.

In the present matter, the departmental proceedings arise out of the same incident which forms the basis of the NDPS prosecution presently pending before the learned Special Court. The petitioner has been arraigned as an accused in the criminal case and, in respect of the very same incident, disciplinary proceedings are also pending against him, wherein the statements of the seizure officers, members of the patrol team and witnesses have been recorded. Such material forming part of the departmental inquiry has a direct bearing on the credibility and reliability of the prosecution witnesses, whose statements have been recorded in the departmental proceedings. The said material





is therefore relevant and necessary for the petitioner to effectively put forth his defence and to confront the prosecution witnesses during cross-examination. Denial of access to such material would seriously prejudice the defence of the petitioner and would deprive of a fair opportunity to defend himself in the criminal trial.

It is well settled that a fair trial is an integral facet of Article of the Constitution of India and includes the right of the accused to effectively cross-examine the prosecution witnesses and to rely upon relevant material which may assist in his defence. Any denial of access to such material would therefore amount to a violation of the principles of a fair and just trial. The petitioner, being an accused, is entitled to effectively defend himself in the criminal proceedings, which necessarily includes the right to seek production of relevant documents and to cross-examine the prosecution witnesses. Such a right cannot be curtailed on mere administrative considerations.

Further, the trial in the present case has already reached the stage of recording of prosecution evidence. The documents sought to be summoned are for the purpose of confronting and contradicting the said witnesses with their previous statements during the course of cross-examination. Hence, it cannot be said that it is not the appropriate stage to call for the relevant documents and the same should be deferred till the stage of defence is reached, as the same would defeat the very purpose of summoning the required documents. Further, the language of Section 94 BNSs itself does not put any such bar and the





discretion is to be exercised by the court considering the stage of trial.

In view of the aforesaid discussion and the settled principles of law, this Court finds merit in the present petition. The documents/record sought by the petitioner by way of an application under Section 94 BNSS are necessary and desirable for just and proper adjudication of the present trial and therefore the application deserves acceptance.

Accordingly, the present misc. petition is allowed. The impugned order dated 04.10.2025 passed by the learned Special Judge, NDPS Court No.1 is set aside, and the application filed by the petitioner under Section 94 BNSS stands allowed.

The learned trial court is directed to summon the relevant record of the departmental proceedings, including the statements of witnesses, from the concerned department in exercise of powers under Section 94 of the BNSS.

The trial court shall retain certified copies of such documents as may be required for the purposes of the trial and shall return the original record to the concerned department immediately thereafter.

It is further directed that the examination of the witnesses shall be conducted expeditiously so that the departmental proceedings are not unduly delayed.

(BALJINDER SINGH SANDHU),J

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