



*Special Edition*

# JURIS RAY

*Covering*

**Seminar on NDPS Act, 1985**

**at Bihar Judicial Academy**

**on 7<sup>th</sup> & 8<sup>th</sup> September 2019**



*Organized by*  
**BIHAR JUDICIAL ACADEMY**  
*under the aegis of*  
**PATNA HIGH COURT**





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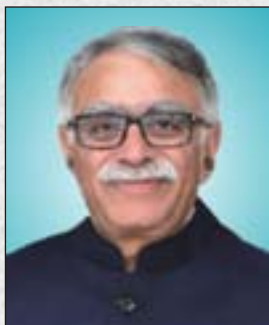
**on 7<sup>th</sup> & 8<sup>th</sup> September 2019**

ORGANIZED BY

**BIHAR JUDICIAL ACADEMY**

UNDER THE AEGIS OF

**PATNA HIGH COURT**



**Hon'ble Mr. Justice  
Sanjay Karol**  
Chief Justice, Patna High Court  
-cum-  
Patron-in-Chief, Bihar Judicial Academy



**Hon'ble Mr. Justice  
Hemant Kumar Srivastava**  
Judge, Patna High Court -cum-  
Chairman, Bihar State Legal Services Authority



**Hon'ble Mr. Justice  
Shivaji Pandey**  
Judge, Patna High Court  
-cum- Chairman, Bihar Judicial Academy

## Hon'ble NDPS Committee, Patna High Court



**Hon'ble Mr. Justice  
Ashwani Kumar Singh**  
Judge, Patna High Court-cum-  
Chairman, NDPS Committee  
Patna High Court



**Hon'ble Mr. Justice  
Rajendra Kumar Mishra**  
Judge, Patna High Court-cum-  
Member, NDPS Committee  
Patna High Court

## Hon'ble Board of Governors



**Hon'ble Mr. Justice  
Shivaji Pandey**

Judge, Patna High Court

-cum-

Chairman, Bihar Judicial Academy



**Hon'ble Mr. Justice  
Ashutosh Kumar**

Judge, Patna High Court



**Hon'ble Mr. Justice  
Birendra Kumar**

Judge, Patna High Court



**Hon'ble Mr. Justice  
Anil Kumar Upadhyay**

Judge, Patna High Court



**Hon'ble Mr. Justice  
Mohit Kumar Shah**

Judge, Patna High Court

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**Justice  
Sanjay Karol**  
The Chief Justice  
Patna High Court  
-cum-  
Patron-in-Chief,  
Bihar Judicial Academy

## MESSAGE

Narcotic Drugs are a spectre that is haunting our nation. The status of Narcotics has been ambivalent; the debilitating effect of these substances on the socio-economic parameters of the Nation and ill effects on citizen's health is contrasted with the use of these substances for spiritual practices and for pharmaceutical purposes as soporific and general analgesic. The NDPS Act, 1985, was enacted to consolidate the previous enactments relating to control of Narcotics such as the Opium Act 1857, The Opium Act 1878, and The Dangerous Drugs Act 1930, which were in force at that time. The Act aimed to fine tune the statutory provisions relating to Narcotics, in line, with International Conventions to curb the growing menace of trafficking and consumption of illegal narcotics and psychotropic substances.

Alarming growth in the scourge of drug abuse, and its proliferation, inspite of frequent Amendments, and stringent statutory provisions relating to bail, reverse burden of proof and harsh penalties, is an indictment on the implementation and understanding of the Act. It was in this backdrop that the two-day Seminar was organized by the NDPS Committee of the Patna High Court in Bihar Judicial Academy on 7th and 8th September, 2019. The Seminar was unique as it was for the first time that all the stakeholders involved in the implementation of the Act, right from the Judges to Senior most Police & Narcotic Bureau officers, and Prosecutors, assembled under one roof to deliberate upon the subtle

nuances of the Act. Speakers of National repute, came from all over the Country to facilitate better understanding and implementation of the Act. Learning being a continuous process, it cannot be allowed to remain caged, cribbed and confined by external fetters as pandemic and consequent lockdown. The learning process which started with the Seminar finds culmination in the publication of this Special Edition of Juris Ray on Seminar.

The indefatigable effort of former and present chairmen of Bihar Judicial Academy Brothers Justice Hemant Kumar Srivastava and Justice Shivaji Pandey, Judges, Patna High Court and Brother Justice Dinesh Kumar Singh, Former Judge, Patna High Court, in organizing the Seminar and publication of Journal deserve felicitation. I congratulate them for their efforts.

The Seminar and this Journal are flagship project of the then NDPS Committee of Patna High Court. The chairman and member of the NDPS Committee, as it then existed, Brother Justice Ashwani Kumar Singh, and Brother Justice Ashutosh Kumar deserve special accolades for conceiving and organizing the seminar. I also felicitate all the brother judges of the Patna High Court, who moderated the sessions and gave their precious two days to the seminar.

Words cannot thank enough the speakers for their probing insights, and erudite speeches. The wealth of knowledge gained by the lifetime of experience was shared in the six sessions spread over 2-days.

Bihar Judicial Academy deserves praise for organizing the seminar and bringing out this special edition of the Juris Ray.

I sincerely hope that the efforts of the committee and the Academy will bring about positive change in the ground realities and help eradicate the bane of drugs. These activities and initiatives will help society in meeting the challenges posed to the present and also the future generation in evolving into a healthy nation; with high standards of living, improved public health and help India become a global leader.

Thank You,

**(Sanjay Karol)**  
Chief Justice  
Patna High Court



**Justice**  
**Hemant Kumar Srivastava**  
Judge  
Patna High Court

## MESSAGE

It is a matter of pride to pen down the message for the special edition of Juris Ray, journal of Bihar Judicial Academy, on NDPS Act. My heart fills with immense pleasure as I perceive the progress being made by the Academy.

The special edition of the Juris Ray would ensure that the fruits of two-day exhaustive seminar on NDPS Act, will benefit officers other than the participants, too. There are far too many instances where the offenders committing offence under the NDPS Act have taken advantage of the loopholes in investigation and trial of the offences. The seminar was an effort on the part of the Academy to sensitise and to train the prosecutors, the law enforcement authorities and also the judicial officers. This special edition of Juris Ray would ensure that awareness amongst the various stake-holders dealing with NDPS Act would increase and, consequently, there will be improved enforcement of the Act.

I appreciate Hon'ble NDPS Committee of Patna High Court for visualizing and organizing the Seminar.

I am also thankful to the Resource persons of the seminar who came from all over the country and enlightened the participants.

Finally, I felicitate learned Director, Bihar Judicial Academy and all learned Members of the Directorate for their hard work in organizing the seminar and coming out with this special edition of Juris Ray.

I hope that the special edition will benefit not only the Judicial officers but also the other stake holders involved in implementation of NDPS Act.

Thank You,

**(Hemant Kumar Srivastava, J.)**



**Justice  
Shivaji Pandey**  
Judge  
Patna High Court  
-cum-  
Chairman  
Bihar Judicial Academy

## MESSAGE

It is heartening to note that Bihar Judicial Academy is coming out with a special edition of Juris Ray on the 2 day seminar held at the Academy on NDPS Act. The Academy organized the seminar on 7<sup>th</sup> & 8<sup>th</sup> September 2019, under the aegis of the NDPS Committee of the Patna High Court, to throw light on various aspects of NDPS Act to ensure proper investigation, and fair trial.

Drug trafficking and abuse is not only a law and order problem but also a socio-economic evil. Drug addiction and trafficking has many faces having offshoots in terrorism financing, money laundering, and various other blue collar crimes. Coupled with cultural sanction in worship, and medicinal use, the menace assumes a challenge of colossal proportions for law enforcement agencies. NDPS Act, 1985, was enacted to comprehensively counter this menace of substance abuse. Under the Act, heavy burden is set out on the accused to prove his innocence and it is due to this that the Act is sometimes called as Draconian. However adequate measures have also been provided in the Act, which if properly

complied with, would check any arbitrary misuse of these provisions. Through a series of decisions the Hon'ble Apex Court has emphasized the mandatory compliance of these provisions. The Seminar was aimed at creating awareness about these nuances of the NDPS Act so that innocent may not be victimized and at the same time the guilty are not let free due to technical lapses.

As Chairman of the Academy, I am grateful to Hon'ble Mr Justice Sanjay Karol, the Chief Justice, Patna High Court, cum Patron in Chief, Bihar Judicial Academy, for his exemplary leadership and visionary guidance to the Academy.

Hon'ble Mr. Justice Amreshwar Pratap Sahi, the then Chief Justice, Patna High Court cum Patron in Chief, Bihar Judicial Academy, sat through the entire two day of the seminar and inspired the participants. His engaging participation enlivened the seminar and made it memorable for every one present.

The NDPS Committee of the Patna High Court deserves all credit for visualizing and organizing the Seminar as do all the Hon'ble Judges of Patna High Court who moderated various sessions and attended the seminar.

The Resource persons for the seminar came from all over the country, and enlightened the participants. The event would not have been possible but for their cooperation. Finally, I felicitate The Director, Bihar Judicial Academy and all members of the Directorate for their hard work in organizing the seminar, and coming out with this special edition of Juris Ray.

I hope that the special edition will benefit not only the Judicial officers but also the other stake holders involved in implementation of NDPS Act.

Thank You,

**(Shivaji Pandey, J.)**



**Justice  
Ashwani Kumar Singh**

Judge  
Patna High Court  
-cum-  
Chairman, NDPS Committee  
Patna High Court

## MESSAGE

It is a matter of great pleasure that Bihar Judicial Academy, Patna, is coming out with a special edition of Juris Ray on the Seminar held on NDPS Act. The seminar was attended by all the District Judges, Special Judges, Magistrates, and senior Police Officials. The seminar assumes significance as the Hon'ble Supreme Court had expressed its desire that such a seminar should be conducted to sensitise, to educate, and to train the judges and police officers on the issue of NDPS Act.

The increase in the volume of drugs seized, and the growing number of cases under the NDPS Act is a grim reminder that we are yet to completely meet the challenges posed to us by the drug offenders. The menace of drugs related offences pose a challenge to the moral and social fabric of the state. Also it was long felt that the jumble of laws, rules and regulations relating to storage of the Narcotics be simplified and that it should be made uniform. Pilferage of narcotics from the drug storage facilities and its subsequent sale in the market was also reported.

Accordingly the seminar addressed a number of issues ranging from the general application of the NDPS Act, speedy trial to the proper storage of the narcotics with a focus on the increasing the efficiency of the courts dealing with the NDPS matter and also the law enforcement agencies.

This special edition of Juris Ray has documented the presentations and the papers discussed in the seminar along-with some relevant case-laws. I am confident that the special edition of Juris Ray will help the drug law enforcement agencies, and the law courts in better implementation of the NDPS Act. My best wishes to the academy and the editorial team of the Juris Ray.

Thank You,

**(Ashwani Kumar Singh, J.)**



**Justice  
Dinesh Kumar Singh**  
Former Judge  
Patna High Court

## MESSAGE

Illicit trafficking and abuse of illicit drugs poses a serious threat to the society at large. It does not only affect the security and welfare of human beings but also shakes the economical, political and cultural foundation of the nation. Being a signatory party to three Conventions i.e. Single Convention on Narcotic Drugs (1961 Convention), Convention on Psychotropic Substances (1971 Convention) and Convention against Illicit Traffic in (1988 Convention), Indian Parliament passed the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Thus, Narcotic Drugs and Psychotropic Substances Act came into existence on 14 November 1985.

Main agenda of the Act is to have a control on manufacture, possession, sale, distribution and transport of such narcotic and psychotropic substances. The Act bans around 200 psychotropic substances resultant upon these drugs are not available over the counter for any walk in individual.

Considering the importance and the threat of drug- abuse in the society, Bihar Judicial Academy organised a seminar on the issue of effective implementation of Narcotic Drugs and Psychotropic Substances Act, 1985 on 7th and 8th September 2019, wherein deliberations were made with regard to the effective implementation of the Act. To come out with a concrete plan of action for the implementation of the Act, Patna High Court decided to publish the deliberations made in the seminar.

I hope that the compilation of the deliberations made during the seminar along with the latest judgements and orders of the Govt. of India would definitely benefit the enforcement agencies, Judicial officers and members of the Bar to make a joint effort to curb out the menace of drugs and make our society a drug-free society.

Best Wishes

**(Dinesh Kumar Singh, J.)**



**Jitendra Kumar**  
**Director**  
Bihar Judicial Academy  
Gaighat, Patna

## MESSAGE

The two-day seminar on the NDPS Act, organized under the guidance of Hon'ble NDPS Committee of Patna High Court, was intended to sensitize the stakeholders to the need of strict compliance and enforcement of all the provisions of the Act. It was also intended to ensure that the police, prosecutors and judicial officers are better acquainted with the nuances of the Act so that the object of the Act could be better achieved.

The Act was enacted to save the nation from misuse and abuse of narcotic drugs and psychotropic substances having deleterious effect on the health of the people and economy of the nation, providing for stringent provisions to detect crimes and punish criminals. But there are equally strong safeguards provided in the Act to prevent false implication and wrong conviction of innocent persons, violation or non-compliance thereof leads to acquittal of the accused irrespective of merit of the case. Hence better understanding of the Act and strict enforcement of different provisions thereof are sine quo non for achieving desired results of the Act.

During the seminar, the addresses/deliberations of Hon'ble speakers and resource persons were highly illuminating and enlightening on different facets of the Act to the immense benefits of the participants. Needless to say that the object of the Act could be now better achieved.

In view of the relevancy and utility of the deliberation of the seminar, publication of special edition of *Juris Ray*, covering the seminar, was conceived so that the deliberation could be further disseminated even among those stakeholders who could not attend the seminar.

For publication of this journal, we have received insightful guidance and all out support from Hon'ble the Chief Justice-cum-Patron-in-Chief, Hon'ble the Chairmen and Hon'ble the Board of Governors of Bihar Judicial Academy and Hon'ble the NDPS Committee and all other Hon'ble Judges of Patna High Court. My sincere gratitude to their lordships.

The Academy is deeply indebted to Hon'ble speakers and resource persons who have given their kind consent to compile their addresses in this journal for private circulation among the stakeholders. The Members of the Directorate of the Academy also deserve thanks for the sincere and hard work they have put in compiling leading case laws, proof reading and other incidental works. My sincere thanks also goes to all the staff of the Academy for their contribution in their own way.

With warm regards

**(Jitendra Kumar)**

## About the Seminar

—Saba Alam

Assistant Director (Research & Training)  
Bihar Judicial Academy



A two-day state level seminar on NDPS was organized on the 07th and 08th of September 2019; at Bihar Judicial Academy which was attended by stakeholders from the judiciary, police, academia and the officers of Narcotics Control Bureau. The seminar was first to have been organized in the state by the NDPS Committee, Hon'ble Patna High Court, under the kind guidance of Honorable Mr. Justice Ashwani Kumar Singh as the Chairman, and Hon'ble Mr. Justice Ashutosh Kumar as member of the Committee.

It was for the first time that legal luminaries, scholars and professionals from across the country had an enriching discourse on the subject focusing primarily on the lacunae that impede the effective implementation of the provisions of the NDPS Act. The legal literature was unfolded bit by bit; delving deep into the intricacies of the Act.

### Scheme of the Seminar

The seminar was divided into six technical sessions. Each session was chaired by Honorable Judges from the Hon'ble Patna High Court and had academicians & officers of the Police, Revenue & Excise as guest speakers. The programme began with the introductory address by Honorable Mr. Justice Ashwani Kumar Singh, Judge, Patna High Court cum Chairman NDPS Committee, Patna High Court. It was followed by the address of Honorable Mr. Justice

Dinesh Kumar Singh, Judge, Patna High Court cum Chairman Bihar Judicial Academy. The presidential remarks for the inaugural session were delivered by Hon'ble Mr Justice Amreshwar Pratap Sahi , Chief Justice, Patna High Court cum Patron-in-chief Bihar Judicial Academy. Hon'ble the Chief Justice expressed his concern over the menace of drugs and reaffirmed the importance of the role of executive and the Judiciary in countering the same.

The following were the topics for the six sessions of the Seminar:

- Overview of the functioning of NDPS Act and Critical Role of Special Courts
- Fair and Proper Investigation: Issues and Challenges
- Safe Storage and Disposal of Seized Contraband: Issues and Challenges
- Proper Search, Seizure, Sampling, Documentation and Cultivation: Issues and Challenges
- Speedy Trial of NDPS Cases: Issues and Challenges
- Financial Investigation and Forfeiture of Property

### **The First Session**

The First technical session was chaired by Hon'ble Mr. Justice Chakradhari Sharan Singh and Hon'ble Mr Justice Partha Sarthy, Judges, Patna High Court. The topic of the Session was 'Overview of the functioning of NDPS Act and Critical Role of Special Courts' and Dr. Jyoti



Dogra Sood, Associate Professor, IIL, New Delhi and Hon'ble Mr. Justice (Retd.) K. Abraham Mathew, Judge, Kerala High Court were Keynote Speakers. The discussion in the session primarily focused on the legislative intent behind the enactment of the NDPS Act and how the enforcement agencies have been able to fulfill the same. It was asserted that the legislature has merely enacted the Act but it is the judiciary that has to ensure effective implementation of the Act vis-a-vis the constitutional ideals.

## Second Session

The genesis of a fair trial rests primarily on proper investigation. Considering the importance of investigation in criminal trials, second technical session was titled 'Fair and Proper Investigation: Issues and Challenges'. The Session was chaired by Hon'ble Mr. Justice Dinesh Kumar Singh, Hon'ble Mr. Justice Anil Kumar Upadhyay and Hon'ble Mr. Justice Sanjay Kumar, Judges, Patna High Court. The session had Dr. J.N. Barowalia, Principal Secretary (Law) (Retd.) Govt. of Himachal Pradesh as speaker. Dr. Barowalia has authored several books on the NDPS Act and has deep understanding on the subject. It was asserted that there must be strict compliance of the mandatory provisions of the Act in consonance with the constitutional philosophy.



### Third Session

The Hon'ble Supreme Court in *UOI V. Mohanlal* (2016)3 SCC 379 had laid down extensive guidelines for the storage and disposal of seized contraband considering that the seized articles pilfer into the open market creating bigger dangers of addiction. With this idea in mind the topic for the third session was titled "Safe Storage and Disposal of seized Contraband: Issues and Challenges. The session was chaired by Honorable Mr. Justice Ahsanuddin Amanullah, Hon'ble Mr. Justice P.C. Jaiswal and Honorable Mr. Justice Anjani Kumar Sharan, Judges, Patna High Court and had Mr. J.S. Gangwar, ADG, Special Branch, Patna and Mr. Vishwajit Dayal, Add. S.P. EOU, Patna as key speakers. The judgment was elaborately discussed and future course of action was also elucidated. The speakers also dealt with the challenges faced by the investigative agencies in storing and disposing of the seized contraband.



## Fourth Session

It is well known that the NDPS act does not prohibit complete use of narcotics instead it provides for controlled use of narcotic substances for medicinal and like purposes. This sometimes causes diversion of controlled substances to the commercial market culminating into an illegal but profitable business. This has become an area of grave concern for the enforcement agencies and hence the fourth technical session titled "Proper Search, Seizure, Sampling, Documentation and Cultivation: Issues and Challenges" centered around this major issue. The session was chaired by Hon'ble Mr. Justice Aditya Kumar Trivedi, Hon'ble Mr. Justice Anil Kumar Sinha and Hon'ble Mr. Justice Prabhat Kumar Singh, Judges, Patna High Court. Mr. Subrata Biswas, Special Excise Commissioner (Enforcement) Department of Finance, Government of West Bengal was the keynote speaker who discussed the procedural intricacies as well as constraint in the process of search and seizure and also shared a handbook for officers conducting search and seizure and sampling of seized contraband. Hon'ble Mr. Justice Aditya Kumar Trivedi drew the attention of the participants to the recent amendments in section 50 of the NDPS act.



## **Fifth Session**

Speedy trial is now envisaged as an integral part of the right to life and liberty enshrined under article 21 of the Constitution of India. It is however observed that persons accused under the NDPS act keep languishing in Jails awaiting trial. The fifth session was therefore related to the topic "Speedy Trial of NDPS cases: Issues and Challenges". The session was chaired by Hon'ble Mr. Justice Birendra Kumar and Hon'ble Mr. Justice Anil Kumar Upadhyay, Judges, Patna High Court. Dr. J.N. Barowalia was the keynote speaker for the session. It was pointed out that special Courts have been constituted for the purpose of providing speedy trial to the under trials of NDPS cases and the need to expedite the trials in the interest of justice was impressed upon all the participants.



## Sixth Session

One of the effective ways of combating offences under the NDPS Act is to curb the flow of illegal money earned from illicit drug trafficking. The sixth and last session titled "Financial Investigation and Forfeiture of property" emphasized on this aspect of NDPS Act. The Session was chaired by Hon'ble Mr. Justice Prabhat Kumar Jha, Hon'ble Mr. Justice Rajeev Ranjan Prasad and Hon'ble Mr. Justice Madhuresh Prasad, Judges, Patna High Court and had Shri P.K. Prusty, IRS, Competent Authority and Administrator, NDPS Act, 1985 and SAFEM (FOP) Act, 1976, Department of Revenue and Mr. D.S. Bisht, Joint Commissioner, Competent Authority and Administrator, NDPS Act, 1985 and SAFEM (FOP) Act, 1976 as key note speakers. It was emphasized that curbing the illegal flow of money was an effective way to check the menace of drugs. However, considering that the scope of financial investigation is wide and far reaching, utmost caution must be exercised in enforcing the same.





### **Conclusions and Suggestions**

The Seminar on NDPS Act proved to be an all-encompassing discourse on the subject and it was concluded that though the legislature has enacted a law in consonance with the international norms; the implementation of the Act requires greater diligence and consideration.



**Hon'ble Mr. Justice  
Amreshwar Pratap Sahi**  
**The Then Chief Justice**  
Patna High Court  
-cum-  
Patron in Chief, BJA

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## ADDRESS

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Hon'ble Chairman of the Bihar Judicial Academy Justice Dinesh Kumar Singh, Chairman of NDPS Committee Justice Ashwani Kumar Singh, all my esteemed colleagues who have spared their valuable time for this seminar today, the officers of the Government, Judicial officers, respected advocates ladies and gentlemen- it is said that whatever is divine has to be consumed. I was a witness to such consumption in the august presence of none else than a police officer of the rank of Deputy Inspector General of Police and of none else than the District Judge of district- myself occupying a constitutional office of a Chief Justice of a province-when not long ago I went to Ujjain and had darshan of bhasma arti of deity of Mahakal and also that of Kaal Bhairav very nearby. When the origin is religious, when the roots are so embedded, a modern democratic law to uproot the same and to eradicate its evil will also have to be seen and perceived in that context. Whether it was the Incas or the Maya or the Egyptians or the Mesopotamians or even our oriental civilization the recreational consumption of drugs has its deep roots in History. The showering of cannabis plant and the very decoration of the idol of Mahakaal are living testimony to the use of narcotics for religious purposes, where quantity, often huge and unweighted, is completely immaterial.

Nonetheless, what we are fighting against are the evils and ills that have cropped in the society and what we now witness as real challenge in governance. Brother Dinesh Kumar Singh shared his personal experience on

the bench. I have shared my personal experience with a religious priest of Mathura who made me visit his small cellar which contained 6 quintals of Ganja which he consumes throughout the year. Another priest across the river in Mathura had 3 quintals of Bhang with no legal or formal check on him because he has the religious protection of the almighty. There was a bench secretary in the Allahabad High Court, I distinctly remember his name Mr. Shaivaji Shukla, and he was the PPS of the then Chief Justice MC Desai who was a very senior ICS and joined the Bench. His command over the language was such that every word that fell from his mouth was grammar and literature combined with poetry and Mr. Shukla had to take down his note. One fine morning when I visited his place, he was busy with his typing, tremendously involved in it, and he flew out with a 30-page judgment and when I asked him that how he manages it then he said please come in the evening and I will tell you how. When I visited him in the evening, he had kept aside his type writer and then he had a silbitta on his table and with a huge bowl of about 150 grams of bhang he began his time table at dusk. Then I asked him how do you manage the court and the language of Justice Desai and he very frankly said unless I have this, I hardly know what English is. There are many of us who in our daily lives are not hypocrites and we claim that our intelligence enhances by consumption. I am sharing this because my judicial officers should know that apart from criminality of the NDPS Act and its control there is an aspect of illegitimate consumption which should not be forgotten when you are considering bail application. I remember this because one of Judges of the Hon'ble Supreme Court when he went to Gujarat then before he went to a party, he was called upon to fill up a form for consumption and the form says "*Sharrab peene wale ka naam aur kab se iski adat padi hai*". The Judge very candidly said "*aaji ye to bachpan se mera kaam hai*" But he refused to sign the form. *These are some practical aspects which you have to keep in mind when you are granting bail. This is where the quantity and quality come in, as explained by Brother Dinesh Kr. Singh. We are all living in a practical society. If you remember history and if you remember the name of Andrew Walsted....who was responsible for bringing the Walsted law which is nothing else but the 18th Amendment to US Constitution relating to prohibition. When he himself was asked how do you manage your evening? He said 'without complying with the provisions of law'. So, this is the society where we live in and we cannot alter the laws of the Nature. I am emphasizing this time and again to encourage your perception on the practical sides of life.*

*I am impelled to inform you that recently one of my colleagues, a colleague who is present here, Dr. Justice Anil Kr. Upadhyay while delving with law of prohibition in Bihar has given some very alarming data with regard to fall out of law of prohibition-2 lakhs arrest in a year, 2 lakh investigations and God knows how many lakhs of cases. The laws should be so interpreted that they deal with the practical aspect of it and it is here that I would again repeat quantity and quality and the time period for which a person is detained cannot be*

overlooked because it is a matter of prime concern for all that we uphold the Fundamental Right guaranteed under Article 21 of Constitution of India. One cannot claim a license to be addictive- that has to be checked. You have seen Punjab very recently. Data are available at your fingertips and on your internet. Please borrow the lessons from such states where you have been finding some solace in tackling this problem. Punjab is also a bordering state and so is Bihar. Drug Trafficking and financial trafficking are both very near to you. Your borders therefore are very unsafe. You have to check it and for that checking it is the implementation of the law, the enforcement agency, the deputation of forces and not only forces but trained forces devoted forces who are able to understand the law and implement it. Many a times you find that the official and this comes up in every case, almost every case relating to NDPS that the accused is being investigated for some other offence and the investigating officer comes upon certain evidence relating to Narcotics.

It is here that the Supreme Court has come to our aid and has explained that this should not deter the investigation or the process even if you have fallen upon an accused who involved in another crime is found to be involved in narcotics offence. The fall out of all of this is that we have to discuss not only the local impact but also the global impact that we are witnessing. Your challenge is to arrest this so that you can reduce the global impact and you have seen it in many cases particularly in Northern district in Bihar that this drug trafficking which has emanated from our state and has traveled across either South where terrorist activities are going on or has traveled across the Border to Nepal. When it comes to implementing it, please remember procedure is the handmaid of Justice and the hallmark of implementation of any procedure which causes an impediment in implementation of laws has to be tested on the anvil of prejudice to the accused. While doing so and while dealing with such matters, your emphasis should be to find out as to whether it has caused prejudice to the accused or not. You have to strike a balance between the prejudice of the accused and the interest of the society. We have to ensure that fundamental rights of the accused are guaranteed, his legal rights protected but at the same time he is not allowed to slip out on the pretext of any procedural lapse.

The Act is comprehensive and is sufficiently backed up by rules. There are loopholes no doubt but these loopholes are created right at the inception of investigation and then at the stage of leading of evidence. Reason for lesser rate of conviction is on account of these lapses and I believe that the seminar will throw light on these issues in the respective sessions. The procedure which has been prescribed in order to enforce these laws has to be followed meticulously and this seminar tells the investigating officers, the Judicial officers, and also all the other functionaries about the finesse of the loopholes. A better understanding of it comes out from the implementation part of it where you find specific rare cases and therefore I request you that during the seminar as we are discussing our personal experiences make it

point to illustrate whatever you are going to talk about by specific instances because that will really help the Judiciary in trying to understand and give you a solution to that problem. The seminar should not indulge in only telling problems but also those specific instances of those problems which require an immediate redressal.

The Judiciary is there to interpret the law and therefore all the officers who are to attend the seminar are requested that they should give their maximum inputs to be debated and deliberated upon and to assist this seminar we have the august presence of eminent academicians and Judges. Dr. Sood is there from Indian law institute who has been kind enough to accept our request and join this seminar. Justice Mathew and Mr. Barowalia are here. They had put in immense labour and have given their life time to understand the fine points of law. They will be an asset to this seminar and I believe that any such input will be of great use to us in understanding the implementation of law. This social problem which has engulfed us far and wide has to be checked because an internal problem of drug abuse inside the state and of drug trafficking across the border and touching terrorism are our immediate concern. The disposal part is most important. I would like to add here that as suggested, and law also contains this, disposal with regard to the legitimate use of such seized articles which are for industrial or medicinal purposes should be carefully dealt with. The reason is that even though it is outcome of evil but it may be bane for other purposes. It is this part which should be studied carefully and dealt with during the seminar with suggestions as to how to put these seized articles to the best use for the benefit of the society. We all know that laws clamped with the force of authority is not sufficient to bring about the change. A social change is also warranted may be through the law. Awareness merely through advertisement will not suffice. In every village, in every nook and corner, we have kiosks selling tobacco and gutkha and under their cover selling drugs. Thus, implementation of the law should therefore be from the grass root level and trying to find out as to how the rural area is affected and how it has traveled up to the urban agglomerations. I believe that with all the inputs that all of us have gathered together the seminar will be fruitful and we will go out far more educated and far more equipped to fight this menace.



**Hon'ble Mr. Justice  
Dinesh Kumar Singh**

Former Judge Patna High Court  
-cum-  
The Then Chairman,  
Bihar Judicial Academy

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# ADDRESS

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Hon'ble the Chief Justice Patna High Court and Patron-in-Chief Bihar Judicial Academy

Hon'ble Mr. Justice Ashwani Kumar Singh, Chairman NDPS Committee, Patna High Court

Hon'ble Mr. Justice Ashutosh Kumar, Member, NDPS Committee, Patna High Court

My Brother & Sister Judges present in the auditorium

The Resource Persons/Speakers

DGP, Govt. of Bihar

Director, Bihar Judicial Academy, Judicial Officers, Officers from Narcotic Control Bureau

Officers of the department of Revenue & Intelligence, Public Prosecutors, other officials of the Academy and Registry, Patna High Court

On behalf of the Academy, I welcome all the persons present in this auditorium. I am really thankful to the Chairman and Member of NDPS Committee, Patna High Court, who organized this seminar to give effect and facilitate the guidelines given by the Supreme Court in the case of Union of India vs. Mohan Lal [(2016)3 SCC 379], which was confined only to storage, safety and disposal of seized contraband but the Committee decided to enlarge the scope of the seminar to the extent of discussing the issues relating to investigation, trial, role of special courts.

With the evolution of Mankind from primitive stage to the stage of Social Welfare State, the Administration of Criminal Law has assumed great importance. As long as

Human beings were “God fearing and had faith that their actions are being watched by the ALMIGHTY, the need for Administration of Criminal Justice was not felt. However, by the passage of time and the people becoming more materialistic, a Section of Society consisting of misguided and disgruntled human beings lost faith in the ALMIGHTY and started thinking that their actions could not be seen by anybody. These misguided persons indulged in Criminal activities which led to the necessity for administration of Criminal justice. In addition, the activities to be turned as “Criminal Activities” have also under gone sea change with the passage of time. What was regarded not harmful or nefarious some fifty years ago has become the greatest evil of the day in view of change circumstances, new researches, new thinking and the advent of the modern times.

Drug addiction has become one of the curses of our times a menace which threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, whose consequences spread to crime and lawlessness. One of its tragedies lies in its morbid assault on youth resulting more often than not in mental disorientation and emotional derangement, pushing the victim towards a fate from which there is seldom any hope of recovery. The evil is insidious and operates secretly and it often comes to be known to others only after the addict has crossed the point of no return. The consequences are far reaching because in attacking the younger generation of a country, it destroys the flower of a nation's future. History provides many examples of the willful subversion of a nation's culture-its social values and its integrity by the systematic corruption of its youth through smuggled drugs. The dangers following illicit traffic in narcotic drugs have been recognized worldwide, and so agitated is the conscience of the world community that they are now the subject of International Convention.

The problem of drug menace has taken a catastrophic effect on the life of mankind. It is eating not only the family life of a person but also the societal, economic, cultural life of human being. This menace has crossed the geographical boundaries, created by human beings and has affected the life of human being in each and every corner of the world, whether it is Latin American, West African or European Countries. This drug trafficking has created a silk web around the world, which has forced the comity of nations to act in unison in order to conquer the challenges posed to the whole civilization.

The swiftness in global response could be very well found in conclusion of several conventions on Narcotic Drugs viz Convention on Narcotic Drugs, 1953, Convention on Psychotropic Substances, 1971 and Convention against Traffic in Narcotic Drugs and Psychotropic Substances, 1988. These conventions made the skeleton framework of war against the menace of drug abuse.

Though initially India was opposed to the Single Convention on Narcotic Drugs, 1953 but later on it not only became a party to it but also to the other Conventions which followed and

it subsequently ratified all these Conventions. Therefore, Indian response to the menace of drug abuse has been swift and substantial even though it was a country signified by the power of Lord Shiv, which in a manner symbolized and sanctified the purposive use of cannabis and other substances.

## **Constitutional Obligation**

India not only marched along with other nations in its strive to eradicate the menace of drug abuse but so great and visionary were our founding fathers of the Constitution that even before the first Convention on drug abuse was held globally in 1961, they had inserted Art. 47 in our Constitution in Chapter IV pertaining to Directive Principles of State Policy, which enjoins the state to endeavor to bring about prohibition and consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes.

To further this objective, the NDPS Act, 1985 was legislated which came into force on 14th November, 1985 replacing the Opium Acts and Dangerous Drugs Act. However, the Drugs and Cosmetics Act, 1940 continued to apply. The very purpose behind the legislation of NDPS Act, 1985 was to provide the adequate penalties for drug trafficking, strengthen the enforcement power, implement international conventions and enforce controls over psychotropic substances. This Act was amended in 1988, 2001 and recently in 2014. However, after coming into force of NDPS Amendment Act 9 of 2001, the contravention of Narcotic Drug & Psychotropic Substances Act has been categorized for the purpose of sentencing into - (a) small quantity, (b) quantity more than small but less than commercial, (c) commercial quantity and the Act prescribes most stringent and severe punishment to Drug traffickers dealing in commercial quantity and in exercise of power conferred under clause VII(a) and XXIII (a) of section 2 of NDPS Act, 1985, a table is appended to the Act of which column (5) prescribes the small quantity of NDPS and column (6) prescribes the commercial quantity.

## **Position in India**

India is one of the worst hit countries as far as the drug abuse and its adverse fallouts are concerned. It is not a mere co-incidence but it's geo-spatial location has a significance role to play. India is located in proximity with Golden Crescent towards its north-western frontier and Golden Triangle towards its north eastern frontier and both these regions characterized as one of the major producers of raw drugs across the globe. India being a populous country provides an enormously huge market at a very less distance.

As per a Government estimate the major abused substances in India is constituted by Ganja followed by Opium and Hashish with a substantial quantity of Heroin at the tail.

## **Major Bottlenecks in the Execution of NDPS Act in its Spirit**

Though the legislators have tried to come up with a comprehensive legislation and also

suitably amended it to the growing needs in order to add tooth to this Act, yet the results fall short of our expectations and there exist a mismatch between the aspirations and reality.

Section 37 of the Act inserted by Act 2 of 1989 mandates all the offences under the Act to be cognizable and non-bailable. It starts with non-obstante clause stating that notwithstanding anything contained in the Cr.PC, 1973, no person accused of an offence punishable under section 19 (punishment for embezzlement of opium by cultivators), section 24 (Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12) and section 27-A (Punishment for financing illicit traffic and harbouring offenders) and also for the offences involving commercial quantity of recovery, the accused shall not be released on bail unless - a) public prosecutor has been given an opportunity to oppose the application for such release (b) where the public prosecutor opposes the application the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Thus, on the one hand, the court has to have retrospective satisfaction that the accused did not apparently commit the offence and on the other hand, it has to somehow satisfy itself about the prospective behavior of the accused which is a difficult proposition for a Judge to form.

The court can record the retrospective satisfaction of accused being not guilty of the offence if from the accusation it appears to the court that the accused prima facie has not committed the offence or the accusation does not constitute the offences under section 19, 24 or 27-A or if the recovery is actually not of commercial quantity. So far as prospective satisfaction is concerned, with regard to the accused-not likely to commit any offence while on bail, the court has to look into the criminal antecedents, family background, chronological history of the family relating to criminal activities, educational qualifications of the accused and the family or if the accused shows sufficient remorse for his act. These are some of the illustrative grounds to be taken into account by the court to reach to the prospective satisfaction.

Another serious bottleneck is the "information" attracting sec.41/42 of NDPS Act and consequences of its non-compliance. Where "prior information" related to the commission of an offence under chapter IV of NDPS Act is concerned, there is time for obtaining warrant or authorization, efforts should be made to obtain such warrant and authorization from the Magistrate or the Gazetted Officer. Such information should be recorded in writing and a copy thereof be send to the immediate superior officer. Search and seizure can be affected between sunrise and sunset even without obtaining such warrant. Hon'ble Supreme Court in *State of Punjab vs. Balbir Singh* [1994 Cri.LJ 3702] has held that under sec. 41 (1) only an empowered magistrate can issue warrant for arrest or search in respect of offences punishable under chapter IV of the Act. When such warrant for arrest or for search issued by a Magistrate who is not empowered then such search or arrest would be illegal. Likewise, only empowered officers or duly authorized officers as enumerated in sec. 41 (2) and 42 (1)

of NDPS Act can act. If any search or arrest is made under these provisions by any person other than these officers, the same would be illegal.

For application of section 42 of NDPS Act it is necessary that the empowered officer, before the exercise of his right, has reason to believe from his personal knowledge or any information received regarding the movement of narcotic drug and psychotropic substances.

Another reason behind series of acquittals in NDPS cases is the non-effective compliance/non-compliance of the mandate of section 50 of this Act which provides a sacrosanct right to the accused of being informed of his right to apply and get searched in the presence of a Gazetted officer or a Magistrate. The investigating and prosecuting agencies and its personnel are either ignorant of the wide ramifications of non-compliance of this provision or they have reckless disregard for its effective compliance. The violation of this right leads to the search being declared as illegal and inadmissible due to which the conviction cannot sustain. The legal position in this regard has been made very clear by the pronouncement of the Hon'ble Supreme Court in *State of Punjab vs. Baldev Singh* [(1999) 6 SCC 172], wherein it has been held that the failure to inform the concerned person about the existence of his right to be searched before a Gazetted Officer or a Magistrate causes serious prejudice to the accused and renders the recovery of illicit article suspect and vitiates the conviction and sentence.

Amendment Act 2 of 1989 introduced section 31-A of the NDPS Act which provides death penalty for the accused who has been previously convicted of commission of or attempt to commit or abet or indulge in criminal conspiracy to commit any of the offences u/s 19, 24, 27-A and for offences involving commercial quantity of any Narcotic Drug and Psychotropic Substances. But I am yet to come across any such case where death penalty has been awarded to a previously convicted accused, which would otherwise would have acted as a big deterrence.

Further, in respect of forfeiture of property under the NDPS Act, the judgments pronounced by the Hon'ble Apex Court in the case of *Aslam Mohd. Merchant vs. Competent Authority & Ors.* [Criminal Appeal No. 1053 of 2003] is a path bearer.

Chapter V-A of the NDPS Act provides for forfeiture of property. Such property, must be derived from or used in illicit traffic. It includes only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration, wholly or partly traceable to any property referred to in subclause (i) or the income or earning from property.

However, when the actual order of forfeiture of such illegally acquired property is passed, issuance of a notice to show cause is essential so as to fulfil the requirements of natural justice. Such a notice is to be issued by the Authority having regard to:

- (i) The value of the property held by the person concerned,
- (ii) His known source of income, earning or assets,
- (iii) Any other information or material made available as a result of a report from any officer making an investigation under Section 68-E of the Act or otherwise.

Thus, for such forfeiture a show cause notice is essential. However, it has been observed that the non-compliance of the provisions of section 68-A to 68-Z generally makes the forfeiture of property as illegal.

Now, coming to one of the concerns which we are facing since the date of enactment of NDPS Act is that often it has been tagged as harsh law. By saying harsh law, I mean that the presumption is against the accused in NDPS cases for ex. under sec. 35, 54 and 66 of NDPS Act.

To start with section 35 of NDPS Act, it states that

"In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution".

On perusal of section 35 NDPS Act read with section 4 of Indian Evidence Act, it is clear that it is rebuttable presumption.

Similar is the case of section 54 of NDPS Act which states that:

"In trials under this Act, it may be presumed, unless and until contrary is proved, that the accused has committed an offence under this Act....."

Thus, the presumption under section 54 of NDPS Act is rebuttable. Finally, presumption as to the documents under section 66 of NDPS Act also bears the same rebuttable presumption.

As a result, considering the presumptions mentioned in the Act, it may be said that even if the NDPS Act inculcates the reverse burden of proof, however, the accused persons still have the right to rebut the same.

Now coming to the actual scenario of pendency of NDPS cases in the State of Bihar. The figure of institution, pendency and disposal of cases in NDPS cases do not represent a rosy picture. On 31.8.2019 the pendency of NDPS cases were 6824 and from 01.01.2019 to 31.08.2019, only 464 cases have been disposed of, while 764 cases have been instituted in the said period. Out of the total number of 6824 cases while 5144 cases are at the stage of trial, rest 1680 cases are still at the stage of investigation. The number of cases which are more than 5 years old is quite sizable in number i.e. 2562. The basic reason for such pendency is callous manner of investigation, non-production of witnesses or absence of or defective FSL reports etc.

The practical difficulty in the implementation of NDPS Act, particularly following the procedural safeguards prescribed is that the investigating agencies are not adequately trained to investigate/inquire the offences under such stringent Act. It is well settled law that more stringent is the Act, the more meticulously the procedural safeguards to be followed.

## **Experience Sharing:**

I was surprised while hearing a bail application, which was registered in the Jakkanpur PS in 2011-2012, where the recovery was of 6 sachets of Heroin, but the weight of the seized contraband was neither mentioned in the FIR nor it was ascertained during investigation. When I asked for an affidavit, for such a lapse, from the prosecuting agency, particularly from the informant, then the SHO of the Jakkanpur PS being the IO of the case filed an affidavit, that he had no weighing equipment in the Police Station for measuring such small quantity. I directed to forward the said affidavit to the then DGP, Govt. of Bihar, but I am not surprised that even today all the Police Stations in the State of Bihar still don't have weighing equipment particularly the electronic one.

In another case the informant weighed the seized contraband by taking the weighing equipment of the vegetable seller at the pavement- a lady. The weighing equipment was not seized but she deposed during the trial to the effect that she used to weigh the vegetables with broken bricks and pieces of stone and the seized contraband was also weighed in the similar manner.

Alike is the fate of seizure, sealing, collecting of samples, transmitting the samples to the FSL and obtaining the report thereof. This is my personal experience as a counsel and a judge that in numerous cases the investigation is concluded without obtaining FSL report and in some of the cases in-spite of several reminders the trials were concluded without any FSL report. The basic reason is the callous attitude of the investigating officer as well as the supervising officer.

Since the State of Bihar has now bifurcated the investigating wing of the Police from that of law and order, I hope and trust that the situation will now improve.

I hope that these are the illustrative lacking areas where the speakers/resource persons will suggest the means to mitigate the challenge and all the stake holders will utilize this occasion to improve the pathetic situation.

Finally, I would conclude my address by saying-

“A fair trial is one in which the rules of evidence are honoured, the accused has competent counsel and judge enforces the proper court room procedures- a trial in which every assumption can be challenged.”

With these words I wish all success for this seminar.



**Hon'ble Mr. Justice  
Ashwani Kumar Singh**  
Judge Patna High Court  
cum  
Chairman, NDPS Committee

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# ADDRESS

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A very good morning to everyone,

Hon'ble the Chief Justice, Amreshwar Pratap Sahi

Hon'ble Mr. Justice Dinesh Kumar Singh, Chairman  
Bihar Judicial Academy

Hon'ble Mr. Justice Ashutosh Kumar, Judge-cum-  
Member, NDPS Committee, Patna High Court

All the brother and sister Hon'ble Judges of Patna High  
Court

Judges of Bihar Judiciary, Members of the Registry,  
Patna High Court

And all the dignitaries present here

Before addressing the session, I would like to quote the  
lyrics of a song sung by famous Canadian singer Neil  
Young in 1970s.

**"I have seen the needle and the damage done**

**A little part of it in everyone**

**For every junkie's**

**like the setting sun....."**

Even today these lines convey us more convincingly  
the damage done by the needle, what they conveyed  
four decades earlier, when Neil Young wrote these  
lines. The increased dimensions in the field of drug  
menace which has become a global phenomenon  
today, is being witnessed since ages. And the youth-  
the biggest victim of the conspiracy is left with no options  
but to face the curse of the times. Horribly, a generation  
is going to sleep with sedatives forever.

One of the reasons for phenomenal increase in drug trafficking is that the countries which were once traders have now become the consumers. According to the statistics given by United Nations, United States is the largest consumer of drugs. The depth of the problem can be easily understood by the fact that the measures adopted by the United States in fighting against drug menace is costing over billions of dollars. The position is worse in Latin American Countries like, Columbia, Bolivia etc.

In India too, the drug menace is growing and an ever-increasing number of youths are getting addicted. The organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into India, and illegal trafficking in such drugs have led to the drug addiction amongst a sizeable section of the society, particularly the adolescents and students of both sexes. The menace has assumed serious and alarming proportions in recent years. Recently, All India Institute of Medical Sciences has submitted a report on "**Magnitude of Substance use in India, 2019**" to the Ministry of Social Justice and Empowerment, Govt. of India. The reports are shocking. According to the reports-

- After Alcohol, Cannabis and Opioids are the next commonly used substances in India. About 2.8% of the population (3.1 crore individuals) reports having used any cannabis product within the previous year. Use of these cannabis products was observed to be about 1.2% (approximately 1.3 crore persons) for illegal cannabis products, ganja and charas.
- About 2.1% of the country's population (2.26 crore individuals) use opioids which includes Opium (or its variants like poppy husk known as doda/phukki), Heroin (or its impure form-smack or brown sugar) and a variety of pharmaceutical opioids. Nationally, the most common opioid used is Heroin (1.14%) followed by Opium (0.52%).
- The survey indicates that a sizeable number of individuals use Sedatives and Inhalants. About 1.08% of 10-75 years old Indians (approximately 1.18 crore people) are current users of sedatives (non-medical, non-prescription use).
- Inhalants (overall prevalence 0.7%) are the only category of substances for which the prevalence of current use among children and adolescents is higher (1.17%) than adults (0.58%)
- Other categories of drugs such as, Cocaine (0.10%) Amphetamine Type Stimulants (0.18%) and Hallucinogens (0.12%) are used by a small proportion of country's population.

Coming to the amount of Narcotic Drugs and Psychotropic Substances seized in the State of Bihar, the data placed by the Ministry of Home Affairs before the Lok Sabha in Feb.'2019 is alarming. The data reflects the quantity of drugs existing in the State of Bihar, and this data is

only of seized contrabands excluding un-accounted and un-seized contrabands.

Year	Ganja (in kg)	Hashish (in kg)	Heroin (in kg)	Opium (in kg)	CBCS* Codeine Based Cough Syrups. (bottles)
2016	10800.01	115.81	0.04	14.98	20200
2017	28887.62	243.51	7.56	328.85	0
2018	13897.09	251.43	3.2	5.5	1446

This issue is complex and multifaceted requiring both health measures and efforts to control trafficking/smuggling and manufacture of illicit drugs. A reduction in the demand of drugs of addiction both legal and illegal is required. India is the biggest supplier of licit demand for opium required primarily for medicinal purposes. Besides this, India is located close to the major poppy growing areas of the world, with "**Golden Crescent**" on the Northwest and "**Golden Triangle**" on the North-East. This geographical location of India makes it vulnerable to drug abuse particularly in poppy growing areas along the transit/trafficking routes.

The war on drugs has resulted in more sensitive issues than any other phenomenon in our history. It may be the cause of crimes ranging from white collar crimes to blue collar crimes. It is a matter of serious concern, as in the era of Narco- Terrorism, these drugs are the major source for funding terrorist activities in India and all over the world.

India's approach towards Narcotic Drugs and Psychotropic Substances is enshrined in Article 47 of the Constitution of India which mandates that the "State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health". The statutory control over narcotic drugs was exercised in India through a number of Central and State enactments. The principal Central Acts, namely, the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted long time ago. However, with passage of time and the developments in the field of illicit drug traffic and drug abuse, a comprehensive legislation was required to curb out the menace of Narcotic Drugs and Psychotropic Substances. Accordingly, Narcotic Drugs and Psychotropic Substances Act 1985 was enacted.

With this brief background and in the light of Hon'ble Apex Court Judgment in the case of Union of India vs. Mohan Lal & Anr., we all have assembled here in this two-day Seminar on NDPS Act, 1985, to focus on the core issues of NDPS Act, 1985. For this two-day seminar the NDPS Committee, Patna High Court has identified certain issues which will be discussed in 6 different sessions.

To start with the first session a brief overview of the functioning of NDPS Act would be

discussed focusing on the critical role of the Special Court established under the Act. In this session the speakers will discuss the functioning of the NDPS Courts in the State of Bihar to comprehend the bottlenecks and the issues of concern in the adjudication of NDPS cases. This session is aimed to discuss the core objectives and purpose of establishing NDPS Courts. Not only this, the role of NDPS Courts in curbing the menace of drug trafficking, under the NDPS Act will be the highlight of this session followed by an interactive session.

In the second session of the seminar, there will be discussion regarding the Importance of fair and proper investigation in NDPS cases. The importance of fair and proper investigation from the point of view of an accused as a guaranteed constitutional right under Art. 21 of the Constitution of India, cannot be overlooked. In this regard, recently in the case of Mohan Lal vs. The State of Punjab [AIR 2018 SC 3853]\* Hon'ble Supreme Court held that in cases specially under NDPS Act and similar laws carrying reverse burden of proof "a complainant being a Police Officer cannot be an Investigating Officer". The directions issued by the Hon'ble Supreme Court needs to be strictly followed. However, this judgment needs to be read together with another judgment of 3 judges bench of Hon'ble Supreme Court i.e. Virendra Kumar vs. State of Himachal Pradesh [(2020)3 SCC 321]\*, wherein Hon'ble Supreme Court held that "all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal shall continue to be governed by the individual facts of the case." Further, Standing Orders issued by the Narcotics Control Bureau prescribes various measures ensuring fair and proper investigation, which needs to be adhered by the investigating agencies. Further irregularities in mode and time limit for dispatch of samples to laboratory, disposal of articles seized, restrictions and procedural compliance by the investigative agencies under section 42-45 and 49-52 of the NDPS Act etc. will be major concerns for this session.

The third and last session for today's discussion is related to Safe Storage and Disposal of seized Contraband. In this session the discussion would comprise of the methodology to be adopted by the concerned agencies for the purpose of safe storage and disposal of seized Contraband. The data as provided to the Hon'ble Supreme Court in the case of Union of India vs. Mohan Lal & Anr. is really alarming. Though except section 55 of NDPS Act no other provision of the said Act deals with the custody of contraband substances, however, the importance of adequate storage facilities for safe deposit and storage of contraband material has been recognized by the Govt. in Section III of its Standing Order No. 1/89, dealing with "Receipt of Drugs in Godowns and Procedure". Further, notifications issued by the Ministry of Finance (Department of Revenue) dated 16th January 2015 lays down a comprehensive guideline on the disposal of narcotic drugs and psychotropic substances. The procedure laid down by such notification need to be strictly followed by the concerned agencies.

*\*Overruled in Mukesh Singh v. State, (Narcotic Branch of Delhi) [Manu/SC/0660/2020], decided on August 31, 2020*

On the second day of the seminar there will be three sessions comprising of session 4, 5, and 6. In the fourth session discussion will be on the topic of “*Proper Search, Seizure & Sampling: Issues and Challenges*”. The key objective of this session is to discuss the powers of entry, search & seizure under chapter V of the NDPS Act, procedural safeguards in exercising powers of search and seizure, powers and functions of the NDPS Courts vis-a-vis search and seizure. Further, discussion would also include the procedures laid down in section 52-A (2) and compliance of directions given in the case of Union of India vs. Mohanlal. The scope of section 42 (1) & (2) as laid down in its Constitutional Bench judgments by the Supreme Court in the case of Karnail Singh vs. State of Haryana [(2009)9 8 SCC 539] along with the strict compliance of procedure established under section 50 of NDPS Act, as discussed in its another Constitutional Bench judgments of Supreme Court in the cases of Vijaisinh Chandubha Jadeja vs. State of Gujrat [(2011)1 SCC 609], State of Punjab vs. Baldev Singh [(1999)6 SCC 172], will also be discussed in this session. Similarly, Section II of the Standing Order No. 1/89 lays down the general procedure for Sampling and Storage, which would be essentially discussed in this session. Last but not the least the importance of exact and definite compliance of section 42, 43 and 50 of NDPS Act will also be discussed in this session.

The fifth session would be restricted to the issue of Speedy disposal of NDPS cases. This session would comprise of the tools and techniques for speedy disposal of NDPS case and would also bring out the major bottlenecks in speedy disposal of such cases. Discussion would comprise of various provisions of NDPS Act. For the success of any justice delivery system, fair and speedy trial are the foundation stones. As an integral part of due process of law, the right to speedy trial needs to be protected. In this context, observation made by Justice P.N. Bhagwati in Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar cannot be flouted. His Lordship stated that - "Speedy trial is the essence of criminal justice and there can be no doubt that delay in trial is denial of one of the constitutionally guaranteed rights...". No doubt, at present, delay by the accused is best known tactic. However, there are situations where the prosecution, for whatsoever reason, also delays the proceeding. Non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution. On their part, the Courts too need to speed up the judicial process with minimum adjournments. Further, Directions issued by the Hon'ble Supreme Court in the case of Thana Singh vs. Central Bureau of Narcotics [(2013)2 SCC 590] have to be strictly complied by the Courts conducting trials of NDPS cases.

Finally, the last session (sixth session) of this two-day seminar would be on the issue of Financial Investigation and Forfeiture of Property. In recent times, war on drugs has resulted in more sensitive issues than any other phenomenon in our history. It may be the cause of crimes ranging from white collar crimes to blue collar crimes. In the era of terrorism drugs are a way of producing funds for terrorist activities and it is a very important area which should

be taken into consideration. Keeping in view of the changing trends of drug trafficking and the concept of Narco- Terrorism coming into picture, the investigating agencies need to be well equipped and effectively trained. In this aspect the financial investigation becomes relevant in NDPS cases. The methodology to be adopted by the investigating agencies in NDPS case will be the major concern for this session. In this session there will also be a comprehensive discussion on Chapter V-A including section 68-A till 68-Z. On the given topic the guideline issued by the Hon'ble Supreme Court in the case of Aslam Mohd. Merchant vs. Competent Authority & Ors. is of paramount importance for the concerned authorities for any forfeiture of property.

Thus, this two-day seminar has been scheduled in a way that all the vital issues under the NDPS Act can be discussed in different sessions followed by an interactive session. Now without taking much time, I wish you all a very healthy academic discourse ahead and I have every faith that we are really privileged as we have this opportunity to make ourselves enlightened by this discourse. I hope that this seminar will be useful and fruitful for all of us being the stake holder of the justice delivery system.

Thank You.



## AN ENCAPSULATED OVERVIEW OF NDPS ACT, 1985

**Hon'ble Mr. Justice K. Abraham Mathew**  
Former Judge, Kerala High Court

### ILL Effects of Narcotics :

Consumption and trafficking in Narcotics and Psychotropic Substances had a debilitating effect on almost all the socio-economic and wellbeing parameters which can be explained through a history of rise and fall in these parameters. It leads to :

1. Rise in
  - Violence in family
  - crime in society
  - corruption in government
2. Fall in
  - health of people
  - morality of youngsters
3. Adversely affects
  - cultural
  - political
  - economic

&

security of the nation

} foundation of society

### Common Narcotics & Drugs and their consumption pattern:

- |                    |   |  |
|--------------------|---|--|
| Cocaine            | - | obtained from coca 40% consumption U.S. 30% Europe.  |
| Morphine & heroine | - | This obtained from opium poppy.<br>Poppy production 7700 MT.<br>90% Afghanistan (7000 MT). |
| Charas & hashish   | - | obtained from cannabis. Cannabis is cultivated in 20/33                                    |

provinces in Afghanistan.

In India cultivated in Kerala, A.P. and Odisha.

## **International Conventions & National Laws Dealing with Menace of Narcotics and Psychotropic Substances :**

1. Single Convention on Narcotic Drugs, 1961
2. Convention on Psychotropic Substances, 1971
3. U.N. Convention against Illicit Traffic in NDPS (Vienna Convention)
4. Arab Convention against Illicit Trafficking in NDPS, 1994
5. NDPS Act, 1985
6. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
7. Prevention of Illicit Traffic in NDPS, 1998
8. The Illegally Acquired Property (Receipt, Management and Disposal) Rules, 1989
9. Appellate Tribunal for Forfeited Property (Procedure) Rules, 1989
10. Appellate Tribunal for Forfeited Property (Conditions of Service of Chairman and Members) Rules, 2016
11. Appellate Tribunal for Forfeited Property (Fees) Rules, 1989
12. Article of the 22(4) Constitution of India
13. Customs Act, 1962

## **Narcotic Drugs and Psychotropic Substances Act**

### **Application of the Act**

The Act applies to narcotic drugs and psychotropic substances.

### **Schedules**

1. There is a schedule attached to the Act. It gives the list of psychotropic substances to which the Act applies.
2. There is another schedule attached to the Rules. This relates to the import and export of narcotic drugs and psychotropic substances (Rule 53) and issuance of licence to manufacture psychotropic substances (Rule 64).
3. There is a Table given in Rule 52A. It contains the list of essential drugs (Sec 2 viiia) a registered medical practitioner can possess for use in his practice.

## **Narcotic Drugs (Sec. 2XIV)**

Narcotic drugs relate to 3 plants

1. Cannabis
2. Opium Poppy
3. Coca Plant

Narcotic drugs means coca leaf, cannabis, opium, poppy straw and includes manufactured drugs. Manufactured drugs mean :

- Derivatives of coca (Sec.2v)
- Derivatives of opium (Sec.2xvi)
- Medicinal cannabis (Sec.2xii)
- Poppy straw concentrate (Sec.2xix)
- Any narcotic substances or preparation the Central Government may notify.

By S.O.1431E dated 21.06.2011 the Central Government have notified 5 items as narcotic drugs.

## **Psychotropic Substances (Sec.2xxiii)**

Psychotropic Substances are

1. Natural or synthetic substances
2. Natural material
3. Salt of 1 or 2
4. Preparation of 1 or 2 included in the list in the Schedule to the Act.  
(Preparation is defined in Sec.2(xx) eg. Entry no. 111 in the Schedule)

## **Classification of Offences (Chapter IV)**

There are three classes of offences where the quantity of contraband matters:

1. Offences involving small quantity (Sec.2xxiia)
2. Offences involving commercial quantity (Sec.2viia)
3. Offences involving interim quantity ie, lesser than commercial quantity, but greater than small quantity.

Neither the Act, nor the Rules specify the quantity. The Act has empowered the Central Government to specify it. Accordingly, the Central Government has specified the quantity. (S.O.1055(E) dated 19.10.2001).

It is not the quantity shown against each entry in the Table given in the S.O. that is specified as small quantity or commercial quantity.

Small quantity is lesser than the quantity shown in the column for the small quantity. Likewise, commercial quantity is greater than the quantity shown in the column for the commercial quantity.

Thus in fact, it is the minimum and maximum of the intermediate quantity that is shown in the Table.

eg.

Entry No.56 - Heroin

Small Quantity	Commercial Quantity
5gm	250gm

Anything less than 5gm is small quantity, and anything greater than 250gm is commercial quantity. So from 5gm to 250gm it is intermediate quantity.

## Investigation, Enquiry and Trial

Police investigates into offences. The general penal law of India is the Indian Penal Code.

The investigation shall be in accordance with the provisions contained in the Code of Criminal Procedure (Sec. 4(1)) of the Code. The Code is the general law. But this is subject to the provisions in a special or local law.

Criminal courts enquire into or try offences in accordance with the provisions in the Cr.PC. The rules of evidence applicable in the trial are found in the Indian Evidence Act, which again is only a general law.

If a special statute provides a procedure different from the procedure prescribed in Cr.PC for investigation, enquiry or trial, it shall be followed.

Police collect evidence and place it before the court. The court ascertains the existence or non existence of those facts at the trial. The Indian Evidence Act contains provisions as to the facts which may be placed before the court and the manner in which they should be placed. So the police should know the rules of evidence. They cannot place any fact in any manner.

Special statute may contain special rules of evidence.

NDPS Act is a special statute containing special provisions for investigation, trial and special rules of evidence for trial.

## Investigation

### Special Provisions in the Act relating to investigation :

The powers of an investigating officer under Cr.PC are

1. Arrest
2. Summoning of document/thing
3. Seizure
4. Local inspection
5. Summoning and examination of persons
6. Search
7. Filing reports

In the NDPS Act there are special provisions relating to warrant, arrest, search and seizure. They are :

- a) Arrest warrant by Magistrate (Sec.41(1))
- b) Authorisation by empowered officer to arrest (Sec.41(2))
- c) Search warrant by Magistrate (Sec.41(1))
- d) Authorisation by empowered officer to search (Sec.41(2)) (These officers have the power of entry, search, seizure, detention and arrest given under Sec.42.(Sec.41(3))
- e) Power of entry, search, seizure, detention and arrest by empowered officer (Sec.42)
- f) Power of seizure and arrest in public place (Sec.43)
- g) Power of entry, search, seizure, detention and arrest in the offences relating to coca plant, opium poppy and cannabis plant (Sec.44)
- h) Power of attachment of crop (Sec.47) by Magistrate and empowered officer (Sec.48)
- i) Power to stop and search conveyance by authorised officer (Sec.49)
- j) Power to undertake controlled delivery (Sec.50A)
- k) Disposal of persons arrested and articles seized (Sec.52)
- l) Conditions under which search of persons shall be conducted (Sec.50)
- m) Disposal of seized narcotic drugs and psychotropic substances by specified officer (Sec.52A)

The provisions in Cr.PC shall apply in so far as they are not inconsistent with the provisions in the Act to all warrants issued and arrest, searches and seizures made under the Act (Sec.51).

## **Forfeiture of properties (Chapter VA)**

The Act contains provisions for forfeiture of illegally acquired properties.

## **Constitution of Special Courts (Sec.36)**

Special courts are constituted for trial of offences punishable with imprisonment for a term of more than three years (Sec.36A).

Special courts are deemed to Sessions Courts (Sec.36e). They have power to take cognizance without committal. (Sec.36A(1)(d)). Provisions in Cr.PC apply except as provided in the Act (Sec.36e).

## **Pre-conviction Bail (Section 37)**

If the offences are punishable under Sections 19, 24 or 27A or involve commercial quantity, bail can be granted, only if the following conditions are satisfied.

1. Prosecution has been given an opportunity to oppose the application, and
2. In case the prosecutor opposes, the court is satisfied that
  - a). There are no grounds for believing that the accused is guilty, and
  - b) He is not likely to commit any offence while on bail.

The limitations for granting bail specified in Cr.PC also shall apply (Sec.37(2)). Principles of granting bail discussed – Satpal Singh v. State of Punjab (2018) 13 SCC 813.

## **Non applicability of the Section**

Sec.37(1)(b) does not apply to default bail.

Union of India v. Thamisharasi(1995) 4 SCC 190.

## **The prosecutor does not oppose - Meaning**

It means the prosecutor should agree.

Merely delay in trial is no ground to grant bail

**Union of India v. Abdul Momin (2005) 13 SCC 144**

**Narcotic Control Bureau v. Raju (2006) 9 SCC 712**

**Union of India v. Saurabh Chatterji (2006) 9 SCC 759**

## **Modification of Section 167(2) Cr.PC**

Section 36A(4) modifies Section 167(2) Cr.PC. 90 days in Sec.167(2) should be read as 180 days.

The period 180 days can be extended by one year, for which the prosecutor has to file a report indicating the progress of the investigation.

#### **Post-conviction Bail (Sec.32A)**

The sentence awarded under the Act (other than Section 27) shall not be suspended, remitted or committed. This provision is inconsistent with Sec.389 (3) Cr.PC.

#### **Applicability of Section 360 Cr.PC or Probation of Offenders Act (Sec.33)**

Section 360 Cr.PC or PO Act is not applicable except in the cases of the offences punishable under Sec.26 or 27 or where the convict is a juvenile.

#### **Summary Trial (Sec.36A(5))**

Offences punishable with imprisonment for a term not exceeding three years may be tried summarily.

#### **Special Penal Provisions**

1. Not only attempt to commit the offences under Chapter IV, but attempt to cause the offences committed also is an offence (Sec.28).
2. Preparation to do, or omission to do anything which constitutes an offence under certain provisions of the Act and an offence involving commercial quantity are offences (Sec.30).
3. The Act authorizes to impose fine higher than the maximum (proviso to Sec.30)
4. Acquisition of properties knowingly, in relation to which proceedings under Chapter VA are pending is an offence (Sec.68Y).

#### **Special Rules of Evidence**

1. Presumption of mens rea (Sec.35)
2. List of samples drawn under Sec.52A(1), inventory certified by Magistrate under Sec.52A(2)(a), and photographs taken under Sec.52 A(2)(b) are deemed to be primary evidence.
3. Statements made under Sec.53 to officers of certain departments in certain circumstances are made relevant (Sec.53A).
4. Possession of illicit articles leads to presumption of guilt (Sec.54)
5. There is presumption of genuineness of signature, handwriting, execution and attestation of certain documents (Sec.66(a))
6. Not duly stamped documents have been made admissible (Sec.66(b)).
7. There is presumption of truth of the contents of certain documents (Sec.66(c))

8. Burden of proof is shifted in the proceedings in respect of illegally acquired properties (Sec.68J).

## **ARREST, SEARCH, SEIZURE UNDER SECTION 41**

Sec.41 should be read with Sec.42 because Subsection 3 of Sec.41 provides that the officer acting under subsections 1 and 2 shall have all the powers of an officer acting under Sec.42.

### **Powers conferred by Section 41 r/w Section 42**

1. Power of entry into and search of building, conveyance or enclosed place.
2. Power to break open door and remove obstacle to gain entry.
3. Power to seize contraband, documents, articles etc.
4. Power to detain, search and arrest the offender.

### **Officers who may exercise the powers**

1. Officer empowered by Magistrate by warrant under Sec.41(1)
2. Gazetted officer empowered by Sec.41(2)
3. Officer (above the rank of peon, sepoy or constable) authorised by the empowered gazetted officer under Sec.41(2).

### **Condition for the Gazetted Officer to Exercise the Powers**

Such officers may exercise the power conferred by the section if from personal knowledge or information given by any person he has reason to believe that:

1. A person has committed an offence under the Act.
2. Any narcotic drug, psychotropic substance or controlled substance is kept or concealed in any building, conveyance or place.
3. Any document or other article which may furnish evidence of any offence under the act is kept in any building, conveyance or place.
4. Any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure under Chapter VA or the act is kept or concealed in any building conveyance or place .

### **Duty of the Gazetted Empowered Officers**

He should reduce the information into writing. Oral evidence of the receipt of information is not sufficient. [Babubhai Odhavji Patel, v. State of Gujarat AIR 2006 SC 102]

But where oral evidence was given and was not challenged in cross-examination, Supreme Court accepted it. [Saikou Jabbi vs. State of Maharashtra (2003) 9 JT 609]

The search, seizure, arrest by incompetent officer is illegal. [Dilip v. State of MP AIR 2007 SC 369.]

Only information and not personal knowledge is required to be reduced into writing [Saikou Jabbi vs. State of Maharashtra AIR 2006 SC 102].

### **Non applicability of the Section**

The Section is not applicable

1. Where there is no prior knowledge or information
2. In case of search, arrest and seizure at public place.

## **SEARCH, SEIZURE, ARREST UNDER SECTION 42**

### **Powers conferred by the Section**

1. Power of entry into and search of building, conveyance or enclosed place.
2. Power to break open door and remove obstacle to gain entry.
3. Power to seize contraband, documents, articles etc.
4. Power to detain, search and arrest the offender.

### **Officers who may exercise the power**

Any officer empowered by Section 42 and by the Central or State Government.

### **Condition to exercise the power**

If from personal knowledge or information given by a person he has reason to believe that :

1. A person has committed an offence under the Act.
2. Any narcotic drug, psychotropic substance or controlled substance is kept or concealed in any building, conveyance or place.
3. Any document or other article which may furnish evidence of any offence under the act is kept in any building conveyance or place.
4. Any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure under Chapter VA or the act is kept or concealed in any building, conveyance or place .

The term reason to believe was explained in the case of State of Punjab v. Balbir Singh AIR 1994 SC 1872 wherein it was held that even positive suspicion is not sufficient, there must be reason to believe.

### **Duty of the empowered officer**

1. He should reduce the information into writing. Only information and not personal

knowledge is required to be recorded. [Saikou Jabbi vs. State of Maharashtra AIR 2006 SC 102]

The person who received the information should record it (Directorate of Revenue v. Mohammed Nisar Holia (2008) 2 SCC 370).

Oral evidence of receipt of information is not sufficient. [State of Karnataka v. Dondusa Namasa Baddi (2010) 12 SCC 495]

Registration of FIR and sending its copy to the superior officer is not sufficient. [Darsan Singh v. State of Haryana (2016) 14 SCC 358.]

Sending wireless message is not sufficient. [Rajinder Singh v. State of Haryana (2011) 8 SCC 130.]

2. The officer shall send a copy of the recorded information to his immediate superior officer within 72 hours (Sec.41(3)). This is not applicable to gazetted officers [G Srinivas Goud v. State of AP (2005) 8 SCC 183].

### **Period during which the power may be exercised**

The power may be exercised only between sunrise & sunset unless the officer has reason to believe that delay in obtaining warrant or authorization will defeat the purpose (2nd Proviso to Sec.42(1)). Copy of the record of the grounds of belief shall be sent to the immediate superior officer within 72 hours (Sec.42(2)).

### **Non compliance with Subsection (2)**

The provisions of the Act being harsh in nature, procedural safeguards contained in the Section must scrupulously be complied with.

**Sarju @ Ramu v. State of UP JT 2009 (11) SC 156.**

**Ritesh Chakravarti v. State of MP (2006) 2 Cr LR 645.**

**Directorate of Revenue v. Mohammed Nisar Holia 2008 (1) JCC (Narcotics) 1 (SC).**

Non compliance of provision of section 42 vitiates the trial. The relevant case laws are as follows

Abdul Rashid Ibrahim Mansuri v. State of Gujarat(2000) 2 SCC 513

Koluttumottil Razak v. State of Kerala(2000) 4 SCC 465

Beckodan Abdul Rahiman v. State of Kerala(2002) 4 SCC 229

Chhunna v. State of M.P(2002) 9 SCC 363

State of Rajastan v. Babulal JT (2009) 7 SC 514

In **Narayanpuri v. State of Rajastan (2010 (2) EFR 570)** it was held that non recording of the information only makes the action doubtful.

### **Effect of delay in sending the information**

Delay in sending the information may be explained.

State of Punjab v. Balbir Singh AIR 1994 SC 1874

Karnail Singh v. State of Haryana (2009) 8 SCC 539

Substantial compliance is sufficient. Where the officer was away from the police station and he sent a wireless message to his superior officer it was held to be sufficient compliance.

Dalel Singh v. State of Haryana (2010) 1 SCC 149.

A railway officer got the information on the railway platform. He recorded the information and searched the baggage. Thereafter he sent the copy of the information to his superior officer. That was held sufficient. [Rajendra and another v. State of M.P. AIR 2004 SC 1103]

### **Non applicability of the Section**

The provision of the section are not applicable in the following circumstances :

1. Where the search etc is made at a public place.  
Megha Singh v. State of Punjab 2003 AIR SC (1) 4536  
Prabhulal v. Asst Director, DRI (2003) 8 SCC 449  
Ramkumar v. Central Bureau of Narcotics (2008) 5 SCC 385  
Narayanaswami Ravishankar v. Asst Director 2003 Crl.LJ 27  
Jagat Singh v. State of Uttarkhand (2016) 3 JCC (Narcotics) 217  
Raju v. State of WB (2018) 9 SCC 708
2. Where there is no prior knowledge or information.
3. Where the recovery is chance recovery  
Ram Kumar v. Central Bureau of Narcotics (2008) 5 SCC 385
4. Where the information was received or knowledge gained in the course of a patrolling or investigation into another offence.  
(Hamidbhai Azambai v. State of Gujarat (2009) 3 SCC 403).
5. Where the information is general in nature:- In a case where the officer blocked the road for checking on getting information that contraband was likely to be transported. Sec.42 was held not applicable.  
Durgo Bai and another v. State of Punjab AIR 2004 SC 4170.
6. Where the search is made by a gazetted officer.  
Sekhar Suman Verma v. NCB (2016) 11 SCC 368.

## SEARCH, SEIZURE, ARREST AT PLACE OR IN TRANSIT UNDER SECTION 43

### Powers conferred by the Section

1. Power to seize narcotic drug, psychotropic substances, articles, documents etc.
2. Power to detain and search the suspected person.
3. Power to arrest the person in possession of any contraband and any other person in his company.

### Conditions to exercise power

1. The person to be detained searched or arrested and the things to be seized should be at a public place or in transit.
2. There is reason to believe that an offence has been committed and the things or document will furnish evidence.

### Officers who may exercise the powers

Any officer of any of the department mentioned in Section 42.

### Non applicability of Sec.42

Where the facts attract Section 43, Section 42 has no application.

### Raju v. State of WB (2018) 9 SCC 708

**Narayanaswamy Ravishankar v. Asst Director, DRI 2003 CrI.J 27**

### Additional powers of the officers (Sec.49)

The officers authorised under Sec.42 may stop and search animals or conveyance, aircraft.

### Applicability of Sections 41 to 43 in other cases (Sec.44)

The provisions in Sections 41 to 43 apply to coca plant, opium poppy and cannabis plant.

## SEARCH OF A PERSON – PROCEDURE (SECTION 50)

A person has a right to be searched in the presence of a gazetted officer of the departments mentioned in Sec.42 or of a Magistrate. This applies to search under Sections 41, 42 and 43.

Since the section applies only when a person is searched, the meaning of the word 'person' becomes significant. It is "the body of a human being as presented public view usually with its appropriate coverings and clothing". (**State of HP v. Pavan Kumar (2005) 4 SCC 350 and Union of India v. Shah Alam (2009) 16 SCC 644**).

The section does not apply when something in the hand of a person is searched (**State of**

**Punjab v. Makhan Chand AIR 2004 SC 3061**) or when baggage is searched (**State of HP v. Pavan Kumar AIR 2005 SC 2265**) or something carried on head is searched (**State of Rajasthan v. Daulat Ram**).

The section applies when a person and things are also searched at the same time.

**State of Rajasthan v. Paramand and Anr AIR 2014 SC 1384**

**Dilip and Anr v. State of MP (2007) 1 SCC 450**

**Raju v. State of WB AIR 2018 SC 4255**

### **Information should be of right**

The person should be informed of his right.

**State of Punjab v. Baldev Singh AIR 1999 SC 2378 CB**

### **Mode of Communication**

The communication of right may be oral and need not be in writing.

**State of Punjab v. Baldev Singh (Supra)**

**State of Rajasthan v. Paramand AIR 2014 SC 1384**

### **Gazetted Officer or Magistrate – Choice**

The choice is with the officer and not the accused. But prefer Magistrate.

**Vijay Sinh Chandubha Jadya v. State of Gujarat AIR 2011 SC 77 CB.**

### **The Section is Mandatory**

Strict compliance (and not substantial compliance) is necessary.

**Vijay Sinh Chandubha Jadya v. State of Gujarat (supra) CB.**

Both empowered officer and authorised officer should comply with it. **Vijay Sinh's case (Supra)** and **Ahmed v. State of Gujarat AIR 2000 SC 2790.**

In spite of the insertion of Subsections (5) and (6), Subsection (1) has to be complied with. **Vijay Sinh's case (Supra).**

### **Chance recovery**

The section is not applicable to chance recovery.

**State of Punjab v. Balbir Singh AIR 1994 SC 1872 CB**

## **State of HP v. Sunil Kumar AIR 2014 SC 2564**

In this case a person was searched in a bus. Contraband was seized. The Supreme Court held that mere suspicion is not sufficient to attract the section, but the officer should have reason to believe.

### **Exception to the mandatory provision (Section 50 (5) & (6))**

If the officer has a reason to believe that there is a possibility of the person parting with the possession of the contraband before he could be taken to a gazetted officer or Magistrate, the officer need not take him to gazetted officer or Magistrate and may search him. After the search the officer shall record the reasons for his belief. He shall send a copy of the reasons recorded to his immediate superior officer within 72 hours.

### **Failure to Produce Seized Contraband**

Prosecution failed to produce the seized contraband in court. No explanation for it. Oral evidence or panchnama will not help.

## **Jitendra v. State of MP 2004 (10) SCC 562**

## **Ashok @ Dangra Jaswal v. State of MP 2011 (5) SCC 123**

## **Vijay Jani v. State of MP 2013 (14) SCC 257**

### **Failure to comply with Sec.52A(2)**

No application was filed before Executive Magistrate. Contraband destroyed. Accused acquitted.

## **Union of India v. Jarooparan 2018 (4) SCC 334**

Prosecution has a duty to prove that it is the seized article that has reached the court.

## **Vijay Pandey v. State of UP (2019) 10 SCALE 129**

See **Hanif Khan (@ Annu Khan v. Central Bureau of Narcotics (SC)** in CrI. A No.1206 of 2013 decided on 20.08.2019

### **Representative Sample**

If the contraband is contained in several containers and the prosecution wants to prove the total quantity of it, representative sample has to be taken from each container.

## **Gaunter Edwin Kircher v. State of Goa AIR 1993 SC 1456**

### **Date on which the quantity is relevant.**

It is the weight on the date of seizure that is relevant.

**Shiv Kumar Mishra v. State of Goa 2009 (3) SCC 797.**

### **Recovery from several accused.**

Unless conspiracy is proved, each cannot be said to be in possession of the total quantity.

**Amar Singh Ramjibhai v. State of Gujarat (2005) 7 SCC 550**

### **Delay in sending the sample to lab**

Not always fatal.

**Hardip Singh v. State of Punjab AIR 2009 SC 432**

**Mohinda v. State of Haryana (2014) 15 SCC 641**

**Mohanlal v. State of Rajasthan AIR 2015 SC 2098**

## **PRESUMPTIONS**

Presumption is the inference of existence of a fact on proof of existence of another fact.

Unless the foundational fact is proved, no presumption can arise.

**Noor Aga v. State of Punjab (2008) 16 SCC 417.**

### **Reverse Burden**

Ordinary rule is that in a criminal case the prosecution should prove every ingredient of the offence. **Sayed Akbar v. State of Karnataka AIR 1979 SC 1848.** But certain statutes provide that existence of one or more ingredients of the offence in it shall be presumed on proof of certain facts. This is called reverse burden.

### **Validity of reverse burden**

Constitutional validity of reverse burden clauses was challenged in **Noor Aga v. State of Punjab (Supra)**. The Supreme Court held that it is valid.

### **Discharge of reverse burden**

It is sufficient for the defence to show that it has a probable case. The burden to disprove non

existence of the presumed fact is not as heavy as it is on the prosecution to prove its case.

**Sanjay Datt's Case (1994) 5 SCC 410 (CB)**

Preponderance of probability is sufficient (Noor Aga case supra).

**Baldev Singh v. State of Punjab (2015) 17 SCC 554**

The defence need not adduce any evidence. It can rely on prosecution evidence, circumstances, presumptions, weakness of prosecution case, etc.

**Kundan Lal Rallaram v. Custodian, Evacuee Property AIR 1961 SC 1316**

**Abdul Rashid v. State of Gujarat AIR 2006 SC 3366**

**Rangappa v. Sri. Mohan (AIR 2010 SC 1898)**

**Aneeta Hada & Ors v. M/s Godfather Travel Tours Pvt Ltd AIR 2012 SC 2795**

"In the stringent nature of the provisions of the Act, the reverse burden of proof, the presumption of culpability under Section 35 and the presumption against the accused under Section 54, any reliance upon Section 114 of the Evidence Act in the facts of the present case can only be at the risk of a fair trial to the accused."

**Naresh Kumar @ Nitu v. State of HP AIR 2017 SC 3859.**

Since "there is a reverse burden of proof, the prosecution shall be put to a stricter test for compliance with statutory provisions"

**Hanif Khan @ Annu Khan v. Central Bureau of Narcotics (Crl A No. 1206 of 2013 decided on 20.08.2019)**

## POSSESSION

Possession is a relationship between a person and a thing. It is basically connected to "actus of physical control and custody". **Mohanlal v. State of Rajasthan AIR 2015 SC 2098.** The meaning differs in different situations. It has two elements viz physical control and animus.

Possession may be actual or constructive. In constructive possession the actual possession is with one person and the power and control with another. The former holds it subject to the power and control of the latter (Gunwantlal v. State of MP AIR 1972 SC 1756).

**Kulwinder Singh v. State of Punjab (2015) 6 SCC 674**

More than one person found travelling in the private car from which contraband was seized. All were known to one another. They boarded from the same place. They did not explain these circumstances. Held all were in possession.

**Mohanlal and Anr v. State of HP (2003) 7 SCC 465.**

Contraband recovered from a room opened by the accused with the key in his possession. Conscious possession proved.

**Bahadur Singh v. State of Haryana (2010) 4 SCC 445.**

Exclusive possession of building should be proved.

**Om Prakash v. State of Rajasthan (2009) 10 SCC 632.**

Some ladies were found sitting on a bed beneath which there were some contraband articles. The accused ladies did not adduce any evidence. But the Supreme Court held that they were not in conscious possession.

**State of Punjab v. Gurnam Kaur (2009) 11 SCC 225.**

#### **Procedure after seizure (See Section 52A)**

Prosecution should prove where the contraband /sample was kept, who handled it and in what ways.

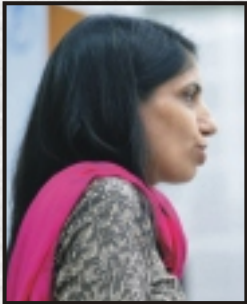
**Ashok v. State of MP 2011 (5) SCC 123**

**State of Rajasthan v. Tara Singh (2011) 11 SCC 559**

#### **Chemical analysis necessary**

Chemical analysis is necessary. But opium has a peculiar smell. The chemical analysis is necessary only if it is extremely diluted.

**Harjit Singh v. State of Punjab (2011) 4 SCC 441.**



## NEED TO REVISIT FUNDAMENTAL PRINCIPLES OF CRIMINAL LAW VIS A VIS NDPS ACT

**Dr. (Ms) Jyoti Dogra Sood**  
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I have divided my talk into three parts:

- (i) Briefly revisiting the fundamental principles of criminal law
- (ii) How do these principles sit within a strict liability statute like the NDPS Act
- (iii) Role of judiciary in NDPS cases as the arbitrator of individual rights and the broader agenda of the state's social welfare

Criminal law is the most formal condemnation of a conduct that the society can inflict on its members and is also the most censuring and stigmatizing. And as Hart argues that “the method of criminal law, of course, involves something more than the threat (and on due occasion, the expression) of community condemnation of anti-social conduct. It involves, in addition, the threat (and, on due occasion, the imposition) of unpleasant physical consequences called punishment.” And hence there may be a need to constantly revisit the aims and purposes of criminal law and its fundamental principles. Andrew Ashworth argues and I totally agree that we cannot have a single value or purpose or principle that the criminal law espouses but there may be multiplicity of values that the state may want to protect, there may be plethora of purposes that the criminal law works towards and we may have multiple principles that it must operate within. Revisiting some of the most fundamental of these must be a pious obligation in such gatherings especially in the very first session as they then set the tone for the discussions that follow, and helps us in avoiding the pitfalls.

The fundamental principles within which the criminal system operates is *actus non facit reum nisi mens sit rea*, burden of proof, innocent until proven guilty and strict construction of criminal statutes. There, however, may be a class of cases where social regulation and context override this very first essential *mens rea* requirement and are a clear departure from the basic presumption, as Alan Norrie puts it, that offences are defined according to *mens rea* and *actus reus*. In cases of strict liability offences, we see a departure from these fundamental

propositions of criminal law for the simple reason that the nature of some of the crimes is such that its detection by criminal law becomes almost impossibility if we strictly follow the fundamental principles. Public welfare in such cases may have to be given priority over individual liberties. And we have now come to terms with this fact and have almost become, if not comfortable but grudgingly agreeable with the state adding more and more categories of strict liability offences. But one principle from which no derogation must be allowed is, as Andrew Ashworth in his principles of criminal liability emphasizes, principle of legality- the famous maxim being *nullum crimen sine lege* it has three distinct components: (a) the principle of non-retroactivity (b) the principle of maximum certainty and (c) principle of strict construction of penal statutes.

The Narcotic Drugs and Psychotropic Substances Act 1985 is one of such strict liability legislations and it is the third component of legality that I want to examine and test here. As far as the first two components are concerned, they are more or less satisfied, the Act is not retrospective and also lives up to the certainty requirement and does not suffer too much from the vice of uncertainty. That leaves us with the third component. I hope you will agree with me that as law persons it is our duty that we must not only read and follow law, but also interrogate the same. And examine not only what the law reads but what it actually ends up doing. It may be axiomatic to mention here that India passed this deterrent legislation under American pressure. The law aimed to fulfil India's obligation for Single Convention on Narcotics which India had ratified. All this, however, may be debated some other time and is not within the scope of the present Conference which is more on the operational part of the NDPS Act.

What needs to be again underlined here is that in the NDPS Act, there is a departure from the fundamental principles of criminal law. There is, therefore, an onerous obligation on the criminal justice administrators that each section of the Act is strictly construed (third component of legality) and followed as the personal liberty of an individual, which is held sacrosanct by placing it in Part III of the Constitution, is at stake. Article 21 clearly establishes that personal liberty can only be curtailed by procedure established by law and the post Maneka Gandhi jurisprudence tells us that it is not any procedure but a due process that must be followed. If this is kept in mind by the gathering sitting here and we internalize it, I think we would be fulfilling our constitutional mandate. I understand that the issue of aims of criminal law from the point of view of this eclectic gathering may be varied! But my simple point is that we may be police officers, prosecutors, judges of special NDPS Courts, high court judges or academicians and so on and so forth, but what binds us all is the fact that we, as criminal justice administration functionaries who swear by the Constitution, must ensure that the aim, that we have set for ourselves, rests within the contours of our Constitution. At least on this one point we have to be on the same page.

I understand that for administrative conveniences, it is very nice to have a crime control

model but history is witness to the fact that it has always been the due process model that has served humanity better. The crime control model may result in higher convictions but may end up blighting the 'justice' component of the criminal justice system, but be rest assured the due process model (which Herbert Packer- who gave these two models- calls the obstacle model) will ensure that justice remains the hall mark of our criminal system.

It is with these prefatory remarks that I come to the second part of my talk and that is to examine some sections of the NDPS Act i.e. sections 41, 42, 43, 50 and 53. You will agree to the fact that in normal crime situations the role of the police is reactive i.e. an offence is committed and the police comes into action. However, in strict liability offences which are also referred to as victimless crimes the role of the police and other law enforcers is also proactive. They will definitely react to specific situations but much of the role is proactive. Case laws on NDPS prove that quite authoritatively. And to give a shout out to the general public that this proactive role was done without any bias or prejudice, it is imperative that procedural nitty gritty is scrupulously adhered to. And this can only be done when in our training programmes and otherwise in such gatherings we emphasize the importance of procedure especially in extremely stringent legislations like NDPS.

By virtue of section 35 of the NDPS Act, an oppressive burden is put on individual citizens and a greater power in the hands of the state officials who are involved in the prosecution. And in a country like India where rule of law and constitutional foundations of criminal law are held sacrosanct, it is a natural corollary that even in face of stark obvious criminality, procedure must be followed scrupulously! Realist school judge Justice Jerome Frank in his *Courts on Trial* suggested that at the end of the day in a case what we have is educated guesses about what really happened. He called it 'guesstimates'- judicial guesses about what really happened. This becomes possible by sifting through evidence. Presumption of innocence is held in high esteem and let us be very clear that presumption of innocence is not opposite of presumption of guilt but it is a counterweight to the immense powers and the resources of the state compared to the position of the defendant (Herbert Packer). And if there is a reversal of burden of proof by virtue of section 35 how do we somehow counter this immense power is the challenge.

Currently, it may seem that this presumption of innocence is more of an empty rhetoric now with statutory exceptions being multiplied but judges do have a way to deal with it. The House of Lords in *Lambart case* [2001]3 WLR 206 reinterpreted a reverse onus provision in S. 28 of the Misuse of Drugs Act 1971 to impose merely an evidential burden (not the burden of proof) on the defendant. So, the point is that we have to work around strict liability offences which may be interpreted without contravening the presumption of innocence which has been firmly entrenched in the criminal justice administration. The judges reminded us that this presumption is procedural not substantive and so applies to the burden

of proof.

So, also in NDPS Act there is a presumption and hence to believe in that presumption and for the 'guesstimate' that it happened the way it is narrated by the investigating officers and the prosecution, what is essential is that procedure under chapter V of the NDPS Act is strictly followed especially under sections 41, 42, 43, 50 and 53 of the NDPS Act. It means that criminal justice administrators, be it the police, other law enforcers, the prosecutor or the courts cannot for administrative convenience read and apply the sections as they deem fit. Ease of enforcement must give way to constitutional guarantees!

Section 41 talks about power to issue warrants and authorization. The section extends powers of the Central government and state governments to authorize subordinate officers for search and seizure and procedure for seizure, detention and search of persons.

Section 42 is about entry, seizure and arrest without warrant or authorization. The procedure laid down has to be scrupulously followed. For example, the section talks about "reason to believe" either out of personal knowledge or information given by any person and taken down in writing. The information has to be taken down in writing and as the section demands be sent to his immediate official superior within seventy-two hours. It is a "shall" mandate and has to be followed. Similarly, if the officer has reason to believe that warrant cannot be obtained and the purpose of search may be defeated, he may "enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief". That means the officer will have to put it in writing what impelled him/her to enter beyond sun set and before sunrise without judicial authorization. He/she is not expected to fall back on their memory but a proper documentation is expected out of them and which needs to be forwarded.

In *State vs. Balbir Singh* (1994) 3 SCC 299 the court in the context of section 42 held thus:

Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

Section 43 deals with arrest and seizure at public places and the public places are defined.

Here the procedural provisions are lax given the fact that these are places used or accessed by the public and works as a check on executive power.

Section 50 is again an extremely important section as it lays down the conditions under which search of persons shall be conducted. It underlines the importance of Miranda warnings and DK Basu guidelines and arrest provisions in Cr. PC. The requirement of telling the accused persons of his right to be searched before a gazetted officer is a very important right as personal search is invasion of privacy and the officer is not expected to say that he sounded the accused of the right and it was declined by the accused. The onus is on the officer and he/she has to discharge that burden and if the officer has reason to believe that it is not possible to take the person to the nearest magistrate the officer has to record the reasons and within seventy-two hours send a copy thereof to his immediate official superior. It needs to be underlined here that this has nothing to do with the credibility and the integrity of an officer. Nevertheless, procedural checks become imperative as the officer represents state power and 'guesstimate' requires that since it is a conduct crime, it is essential that the state power is met with some procedural obstacles so as to ensure essential checks and balances. In the 2018 case of Arif Khan vs. State of Uttarakhand [(2018) 18 SCC 380] the police party submitted that section 50 was followed and the accused was informed of his right to be searched in the presence of a gazetted officer or a Magistrate but the accused refused and reposed total faith in the raiding party. The same was also reduced in writing and the police got it signed. The court after examining catena of decisions on the point came to the conclusion that section 50 was not satisfied in letter and spirit and observed as follows:

"First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer, Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "Charas" was not made from the appellant in the presence of any Magistrate or Gazetted Officer, Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "Charas" from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "Charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer, Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer".

Similarly, in Joginder Singh vs. State of Himachal Pradesh (2018) SCC OnLine HP 836) the H.P. High Court held thus:

The real aim and purpose of Section 50 is to inform the person, who is to be searched, of his vital right to be searched by a magistrate or by a gazetted officer. Compliance of Section 50 cannot at all be given go by, as crimes under the NDPS Act provide stiffer punishments and, therefore, the procedure provided under the Act has to be followed meticulously. Indeed, Section 50 of the Act works as safeguard for the accused against false involvement. Therefore, it is incumbent upon the police to clearly communicate the accused of his valuable right to be searched by a magistrate or by the gazetted officer and in a case where this vital right of the accused is diluted, the very purpose of creating this right in the NDPS Act is defeated. The objective of this Section is to make aware the accused of his right, and the whole purpose behind creating this right is effaced if the accused is not able to exercise the same for want of knowledge about its existence. The right ingrained under Section 50 of the Act is of utmost importance to the accused and failure of the police to communicate the same to the accused, entails fatal consequences on the roots of the prosecution case. *Abdul Rashid Ibrahim Mansuri vs. State of Gujarat (AIR 2000 SC 821)* is an interesting case where the rigour and true import of section 35 was discussed in detail and the court held thus:

"No doubt, when the appellant admitted that narcotic drug was recovered from the gunny bags stacked in the auto-rickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained such a substance. The standard of such proof is delineated in sub-section (2) as "beyond a reasonable doubt". If the court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of substance concealed in the gunny bags then the appellant is not entitled to acquittal. However, if the court entertains strong doubt regarding the accused's awareness about the nature of the substance in the gunny bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strung doubt undispelled. Even so, it is for the accused to dispel any doubt in that regard. The burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that, he can rely on the materials available in the prosecution evidence. Next is, in addition to that, he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in prosecution case or in the prosecution evidence are such as to give reasonable assurance to the court that appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence".

Section 55 comes into operation once the contraband has been seized and mandates that officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and

goes on to spell out the nitty gritty of seal etc. Now the police, in absence of other storage areas for contraband must deposit in the malkhana, she cannot keep it in his/her private safe custody in a rented accommodation as happened in Mohan Lal vs. State of Punjab.

The list of cases can go on and on but the point I am trying to make is that the factual matrix of some of these NDPS cases did not always inspire confidence and rights of the accused stood compromised. The strict liability nature of NDPS offences with a reverse burden of proof added to the mess. As a person interested in criminal law and holding the fundamental principles of criminal law very highly, the case after case narration of accused being caught in suspicious circumstances and seizure and investigation being done by the same officer or the informant and the investigative officer being the same person and such other procedural infirmities is highly problematic. And as the saying goes- justice should not only be done but also seem to be done. The fair trial which the Indian criminal jurisprudence boasts of was taking a dent by these cases. And that is why two separate cases with the name Mohan was welcomed by the academic fraternity who hold liberties very dearly.

In the case of Mohan Lal vs. State of Punjab [(2018)17 SCC 627]\* the issue before the court was whether the informant and the investigating person can be same or fair trial demands that the investigation be carried out by an independent person. The Court held thus:

It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a pre-determined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

However, in my state Himachal Pradesh, for example, which has lot of cases on NDPS the courts faced a huge challenge as many cases were at the stage of decision and if Mohan Lal was to be applied retrospectively all those trials stood vitiated as per the Mohan Lal ruling. The facts of Varinder Kumar vs. State of H.P. [2019 SCC OnLine SC 170]\* is a telling reflection of the state of affairs. The apex court, therefore, for administrative convenience, perhaps (as it may be difficult to order a fresh investigation by an independent officer), ordered in Varinder Kumar that “all pending criminal prosecutions, trials and appeals laid down in Mohan Lal shall continue to be governed by the individual facts of the case.”

The last part of my talk is regarding Role of judiciary in NDPS cases as the arbitrator of individual rights and the broader agenda of the state's social welfare. Judicial function, inter alia, is to uphold individual rights, leaving broader issues of social policy to Parliament. Ronald Dworkin, philosopher and scholar of Constitutional law in his 1985 publication “A Matter of Principle” argued that judges ought to ground their decisions in reasons which

\*Editor's Note : A Constitutions Bench of Hon'ble Supreme Court in Mukesh Singh Vs State (Narcotic Branch of Delhi) (2020) 10 SCC 120 has expressly overruled the judgement.

uphold individual rights and ought not to take account of policies, goals or overall social welfare.” But thank God in India we have a robust and dynamic judiciary which does such a fine balancing of individual liberties and also takes measures towards social welfare. And this Conference is an apt example of this trend.

Having firmly entrenched a strict adherence to procedure in the cases mentioned above and many more cases, the apex court in *Union of India vs. Mohan Lal* [(2016)3 SCC 379], took upon itself the onerous task of tackling the pilferage of the contrabands and goods and their re-entry in the market.

All those people who support the government to have made draconian laws to fulfil its treaty requirements must also question the government. Equally important with deterrence is that the seized contraband does not re-circulate in the market as this would render all efforts by the law enforcement officers, the prosecution and the efforts of the courts futile. Can we as a country afford such criminal wastage of time, human resources and financial resources apart from piquant crime situations? The court fixed a time limit of six months to set up storage facilities with vaults and double locking systems etc. etc. The court did not rest here and directed all high courts to supervise and monitor the progress. The judiciary is already burdened with so many cases and then it also has to do the government's job-I may be wrong but it was the Parliament which was so piqued by the increasing drug trade and made this deterrent law to deal with it. I am sure and you will agree that it was not just done to be on the right side of things in the international community but to seriously tackle the problem and if the latter part is true then the government must ensure and actually should have ensured mechanism and respected and operationalized its own Standing Order No. 1/89 and other notifications- the latest perhaps being notification dated 16th January 2015. It is a sad commentary on the state of affairs that even in 2019 we still have to talk about inadequate and lax storage facilities and hardly any worthwhile disposable mechanisms. With this I rest my case and will be happy to answer questions.

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## FAIR AND PROPER INVESTIGATION : ISSUES AND CHALLENGES

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The explosive escalation of the illicit use of narcotic drugs and psychotropic substances, which account for more deaths than the most deadly diseases, has become a lethal phenomenon everywhere today, with the result that the rich and the poor alike, including students of both sexes, are falling prey to the hands of the powerful lobby of smugglers of these drugs and substances who amass wealth in a couple of days. The dangers flowing from illicit traffic in narcotic drugs have been recognised world-wide, and so agitated is the conscience of world community that they are the subject of international conventions like the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances Act, 1971, and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The Indian Parliament, recognising the need of the hour, enacted the Narcotic Drugs and Psychotropic Substances Act, 1985 (which came into force on 14th day of November, 1985) in which deterrent punishment of rigorous imprisonment which shall not be less than ten years and fine which shall not be less than one lakh rupees was prescribed for those found guilty for most of the offences under the Act. By the amendment Act No. 2 of 1989, even the harsh punishment of death penalty has been provided for specified offences by previous convicts under section 31A of Act.

However, after coming into force of the Narcotic Drugs and Psychotropic Substances (Amendment) Act No. 9 of 2001, the contravention of narcotic drugs has been categorized for the purpose of punishment into (a) small quantity; (b) quantity lesser than commercial quantity but greater than small quantity; (c) commercial quantity; and while the Act has provided stringent and severe punishment for drug traffickers and for possession of commercial quantity of narcotic drugs or psychotropic substances, it envisages reformatory approach towards addicts of such drugs and substances.

Drug abuse is a social evil. In my opinion it is not a law and order problem as imagined by many social workers and administrative authorities. The addict does not simply use drugs but develops a pathological craving for them. The desire is so strong that the addict must

have his drug at all costs. It is more of a psychosocial problem than anything else. We cannot lose sight of the fact that use of narcotic drugs and psychotropic substances for scientific and medicinal purposes is indispensable. For the preparation of a number of life-saving drugs, like morphine, pathedine and tranquilizers, these drugs and substances are required. India is the largest producer of opium for medicinal purposes in the world. However, without going into the controversy of medicinal use of the narcotic drugs and psychotropic substances, what is bad is the abuse or the illicit use of these drugs and substances.

Investigation is not an end in itself but means to find out the truth. When more stringent punishment has been provided in the Narcotic Drugs and Psychotropic Substances Act, correspondingly more safeguards have also been provided for conducting fair investigation of the cases under the Act. Chapter V of the Act lays down the procedure for conducting search and seizure under the Act. Our experience has shown that a large number of cases instituted in courts in respect of various offences under the NDPS Act have ended in acquittal, not on merits, but on technical grounds of non-compliance of mandatory provisions of the Act.

For application of section 42 of the NDPS Act, it is necessary that the officer empowered thereunder, before exercise of his right, has reason to believe from personal knowledge or information received regarding the movement of narcotic drug or psychotropic substance. However, if the action is taken not upon his personal knowledge or information received, the requirements of section 42 of the Act would not be applicable. *Karnail Singh v. State of Rajasthan*, (2000) 7 SCC 632.

Under section 42(2) of the Act such empowered officer who takes down any information in writing or records the grounds under proviso to section 42(1), should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution's case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not will be a question of fact in each case. *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299. Also refer to *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172, *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, (2000) 2 SCC 513.

While total non-compliance of requirement of sub-sections (1) and (2) of section 42 of the NDPS Act is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42 of the Act. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42 of the Act. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then

it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 of the Act or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 of the Act by Act 9 of 2001. *Karnail Singh v. State of Haryana*, (2009) 10 SCALE 255.

Where a search is conducted by a Gazetted Officer himself, acting under section 41 of the NDPS Act, it was not necessary to comply with the requirement of section 42 of the Act. For this reason, also, in the facts of the case, it was not necessary to comply with the requirement of the proviso to section 42 of the NDPS Act. *M. Prabhulalv. Assistant Director, Directorate of Revenue Intelligence*, (2003) 8 SCC 449. The gazetted rank officers enjoy special position and privileges under the Narcotic Drugs and Psychotropic Substances Act. They need not be equated to officers taking action without authorization or warrants. The requirement of sending information to superior officers under sub-section (2) of section 42 of the Act cannot be insisted upon in their case. There is no bar in the statute to of arrest, search and seizure being carried out by the officers of the gazetted rank themselves. When they act on their own, they do not have to report to their seniors on such things. *G. Srinvas Goud v. State of A.P.*, AIR 2005 SC 3647. Also refer to *M. Prabhulalv. Assistant Director, Directorate of Revenue Intelligence*, (2003) 8 SCC 449 and *State of Haryana v. Jarnail Singh*, (2004) 5 SCC 188.

The compliance of the safeguards in section 50 of the NDPS Act is mandatory. When an empowered officer or a duly authorized officer acting on prior information is about to “search a person”, it is imperative for him to inform the person concerned of his right under sub-section (1) of section 50 of the Narcotic Drugs and Psychotropic Substances Act of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing, and section 50 of the N.D.P.S. Act would be applicable only in those cases where the search of the person is carried out. *Gurbax Singh v. State of Haryana*, AIR 2001 SC 1002.

On prior information, the empowered officer or authorized officer while acting under section 41(2) or section 42 of the Narcotic Drugs and Psychotropic Substances Act, should comply with the provisions of section 50 of the Act before the search of the person is made and such person must be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of section 50 of the Act which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact. *State of Punjab v. Balbir Singh*,

AIR 1994 SC 1872.

It is imperative on the part of the officer to apprise the person intended to be searched of his right under section 50 of the NDPS Act to be searched before a gazetted officer or a Magistrate. In para - 32 of the judgement in *Vijay Singh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609, the Constitution Bench made it clear that in order to impart authenticity, transparency and creditworthiness to the entire proceedings, an endeavour should be made by the prosecuting agency to produce the suspect before the nearest magistrate. [Also refer to *Suresh v, State of Madhya Pradesh*, (2013) 1 SCC 550 and *Navdeep Singh v. State of Haryana*, (2013) 2 SCC 584]. Where accused was not taken before nearest magistrate for search after exercise of right by the suspect, it has been held that the mandatory provisions of section 50 has not been complied with and acquittal of accused was upheld. [*Narcotic Control Bureau v. Sukh Dev Raj Sodhi*, 2011 (4) Supreme 319]. Investigating officer nowhere stated, in his examination, that he informed the person to be searched of his right to be searched before a gazetted officer or a magistrate and in these circumstances, the judgement in *Noor Aga's case* was followed and accused was acquitted. [*Nirmal Singh Pehlwan @ Nimmo v. Inspector, Customs, Punjab*, (2011) 3 RCR (Cri) 831]. Strict compliance of section 50 is required. [*Myla Venkateswarlu v. State of Andhra Pradesh*, (2012) 5 SCC 226].

As has been highlighted in *Baldev Singh's case* (supra) it has to be seen and gauged whether the requirements of section 50 of the Act have been met. Section 50 in reality provides for additional safeguards which are not specifically provided by the statute. The stress is on the adoption of a reasonable, fair and just procedure. No specific words are necessary to be used to convey existence of the right. [*Krishna Kanwar @ Thakuraenv. State of Rajasthan*, AIR 2004 SC 2735].

A bare reading of section 50 of the NDPS Act shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. [*Kalema Tumba v. State of Maharashtra*, AIR 2000 SC 402. Also refer to *Gurbax Singh v. State of Haryana*, (2001) 3 SCC 28]. The language of section 50 of the Act is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles, and this position was settled beyond doubt by the Constitution Bench in *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

In the case of *State of Himachal Pradesh v. Pawan Kumar*, AIR 2005 SC 2265, it has been held that section 50 of the Act can have no application when opium was allegedly recovered from the bag, which was being carried by the accused. Section 50 is not applicable when recovery is from bag (thaili) [*Jarnail Singh v. State of Punjab*, (2011) 3 SCC 521]. Section 50 is also held to be not applicable when recovery is from gunny bag. [*State of Rajasthan v. Tara Singh*, (2011) 11 SCC 559].

The provision of search of a lady by a female under section 50(4) of the NDPS Act is mandatory and in case of non-compliance of the same, the conviction and sentence of the accused cannot be sustained [*State of Punjab v. Surinder Rani alias Chhindi*, (2000) 10 SCC 429].

However, for non-compliance of the mandatory provision of section 50 of the NDPS Act the order of the discharge of the accused held to be improper. Even if search is found to be in violation of law, what weight should be given to the evidence collected is yet another question to be gone into during the trial. Under these circumstances, it has been held by the Supreme Court of India that the Sessions Judge was not justified in discharging the accused, after filing of the charge-sheet holding that the mandatory requirement of section 50 of the Act has not been complied with. *State of Himachal Pradesh v. Prithi Chand*, AIR 1996 SC 977.

The provisions of sections 52 and 57 of the NDPS Act which deal with the steps to be taken by the officers after making arrest or seizure under section 41 to 44 of the Act are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc., then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case. *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299.

In the case of *Ashok alias Dangra Jaiswal v. State of Madhya Pradesh*, 2011 (5) SCC 123, the conviction and sentence of appellate court was set aside by the Hon'ble Apex Court because all the independent witnesses in the panchnama turned hostile, investigating officer did not come into the witness box, seized narcotic powder was not deposited with the malkhana for more than two months and was not produced before the court at the time of trial.

In *Rajendra v. State of M.P.*, AIR 2004 SC 1103 the trial court held that the articles seized were kept in *malkhana*, intact, and section 55 of the Act was complied with, the Supreme Court of India did not interfere with the findings of conviction and sentence. In the case of *Smt. Krishna Kanwar @ Thakuraeen v. State of Rajasthan*, AIR 2004 SC 2735, the safe custody of seized articles and samples had been established by cogent evidence. Forensic Laboratory report showed that the samples were received in sealed conditions with seals and tags intact. That being so, it was found there was no infraction as alleged.

When there was doubt about sample on the basis of contradiction as to its colour but the sample was found in sealed container, intact and fit for testing, it has been held that it cannot be doubted that material seized and examined was different. *Jagdish Budhroji Purohit v. State of Maharashtra*, (1998) 7 SCC 270.

When the seals of sample were found intact and the variation in the weight was very minimal and almost ignorable, the plea of the accused of tampering was rejected. [*Rajesh Jagdamba Avasthi v. State of Goa*, AIR 2005 SC 1389. In *Madan Lal v. State of Himachal Pradesh*, AIR 2003 SC 3642, the plea that there was reduction in weight of the samples sent for analysis

and there was tampering, was considered by the trial court which had recorded the reasons for rejecting the same. It had been noted that the seals were intact and there was no tampering. The view of trial court was endorsed by the High Court. On considering the reasoning indicated that there was very minimal and almost ignorable variation in weight, Supreme Court found no reason to interfere with the findings.

When any narcotic drug or psychotropic substance is found mixed with one or more neutral substance (s), for the purpose of imposition of punishment, it is the content of the narcotic drug or psychotropic substance, which shall be taken into consideration [E. Michael Raj v. Intelligence Officer, N.C.B., (2008) 5 SCC 161]\*. When 740 grams of heroin was recovered and as per the CFL report the percentage of concentration was 16.93% and thus it was held the quantity virtually comes to 125 grams which was intermediary quantity and not commercial quantity. [Nikku Khan @ Mohammadeen v. State of Haryana, 2011 (5) Supreme 84].

The notification dated 18<sup>th</sup> November, 2011 has replaced the part of notification dated 19.10.2001 by laying down that in the table at the end after Note 3, the following note shall be inserted:

“(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

It has been held that this notification dated 18.11.2009 cannot be applied, retrospectively, as a penal provision providing for enhancing the sentence does not operate retrospectively. However, it has been held that the judgement in E. Michael Raj case has no application as the present case does not relate to a mixture of narcotic drug or psychotropic substance with one or more substances because material recovered in this case is opium in terms of section 2 (xv) of the NDPS Act and under entry 92 (dealing with opium) entire substance is to be opium. (Harjit Singh v. State of Panjab, 2011 (4) SCC 441.

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- (1) The Commentary on the Narcotic Drugs and Psychotropic Substances Act',
- (2) 'Commentary on the Consumer Protection Act' and
- (3) 'Commentary on the Right to Information Act'

\*Editor's Note : The Hon'ble Supreme Court in Hira Singh Vs Union of India (Criminal Appeal No. 722 of 2017) decided on 22.4.2020 has expressly overruled the judgement of E- Michael Raj.



## STORAGE AND DISPOSAL OF SEIZED CONTRABAND: ISSUES & CHALLENGES

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### Background

The NDPS Act, 1985 was enacted by consolidating and amending the provisions for control and regulation of operation relating to ND & PS (Narcotics Drugs and Psychotropic Substances) under Opium Act, 1878 and the Dangerous Drugs act, 1930. This Act was first amended in 1989 and subsequently in 2001 and 2014 to rectify the anomalies noticed during its implementation. Many different agencies of the central and state govt. viz; state police, state excise, DRI, Customs, CBN etc are involved in the enforcement of the provisions of this Act with Narcotics Control Bureau, New Delhi (NCB) at its apex.

Proper seizure of narcotics and its receipt & safe custody till the conclusion of judicial process forms the basis of trial in NDPS cases.

To bring uniformity in the process of seizure and sampling of seized contraband, Standing Instruction No 1/88 dated 15.3.88 was formulated and circulated by the NCB. Again recognizing the importance of dispatch, transit, receipt, safe custody, storage and disposal of seized drugs Standing Order No. 2/88 was issued on 11.4.88 by the NCB. Similarly, the Govt. of India vide Standing Order No. 1/89 dated 13.06.89 also issued the guidelines regarding the manner in which Narcotic Drugs & Pyschotropic Substances shall as soon as after their seizure, be disposed off, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space.

#### *Legal Framework for disposal of seized contraband*

The original Act had no specific provision for the disposal of sized narcotics. Section 52A was added to the Act in 1989. It deals with disposal of seized Narcotic drugs and psychotropic substances. It reads:

#### **"Section 52A: Disposal of seized narcotic drugs and psychotropic substances.**

- (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints

of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

- (2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the Purpose of-
  - (a) Certifying the correctness of the inventory so prepared; or
  - (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or
  - (c) Allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.
- (3) When an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.
- (4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

### **Status of storage and disposal of seized contraband**

Even after so many years of enactment of the provisions and issuance of the aforesaid standing orders the procedure prescribed therein for seizure, safe custody, disposal of seized contraband was not being fully followed. The same maalkhana room of Police Station used for keeping court exhibits like seized arms, valuable items, attached property, documents etc was being used for storing seized Narcotics Drugs & Psychotropic Substances. As a result, there was accumulation of huge quantities of seized drugs and narcotics in the common malkhana room over the year.

Police stores bursting at its seams with seized narcotics often made headlines of the newspaper. It increased manifold the chances of their pilferage and re circulation in the market.

Under this background, the appeal in Mohanlal case came up before the Hon'ble SC for hearing in the year 2012. This appeal had been filed by the Union of India against the judgment and order of the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 193 of 2008 whereby the High Court had acquitted the respondents of the charges framed against them under Section 8/18(b) r/w Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, primarily for the reason that no evidence regarding the destruction of the 3.36 Kgs. of opium allegedly seized from the respondents had been provided by the prosecution.

In the absence of any evidence to show that the seized contraband was destroyed as per the prevalent procedure, the contraband should have been, according to the High Court, produced before the Trial Court. The failure of the prosecution to do so, therefore, implies a failure to prove the seizure of the contraband from the possession of the respondents.

In this backdrop, the hon'ble Supreme Court while hearing the appeal in Mohanlal case, appointed a amicus curie with a view to make a realistic review of the procedure for storage, disposal/destruction of seized narcotics being followed by the state and central agencies and remedial steps needed if any. The Hon'ble court ordered to collect information on lots of queries with regard to seizure, storage, disposal and destruction of the seized contraband from police heads of each states through the chief secretaries under judicial supervision over the same. The salient part of the hon'ble Supreme Court order in above case is quoted below:

**"The reports submitted by the state govt. suggests that no proper storage facilities are available in most of the states..... The NDPS Act, 1985 does not make any special provision regulating storage of the contraband substances.... the importance of adequate storage facilities has been recognised by the Govt. in as much as the Standing Order No-1/89 has made specific provisions in this regard. Section III of the said order deals with Receipt of drugs in godowns and Procedure.**

### **Section III para 3.2 of the order reads as follow:**

3.2 All drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, May specifically, designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts etc."

Hon'ble SC expressing displeasure over the affair noted in its order that, "due to non-availability of any designated godown-facility with adequate vaults and double lock system, the seized contraband is stored in police maalkhana which is a common storage facility for all kinds of goods and weapons seized in connection with all kinds of offences including

those specified by the IPC.

This is a totally unhappy and unacceptable situation to say the least. It is indeed unfortunate that even after a lapse of 26 years since Standing Order No. 1/89 was issued, the Central Government or its agencies and the State Governments have paid little or no attention to the need for providing adequate storage facilities of the kind stipulated in Standing Order No. 1/89".

Similarly, regarding the steps taken at the time of destruction to determine the nature and quantity of the substance being destroyed, the reports submitted by the State Governments give varying answers. There is no uniformity in the procedure adopted by those associated with or in charge of the process of destruction.

To bring uniformity and to remove the confusion, the Hon'ble Supreme Court gave the landmark judgment on seizure & sampling, storage, disposal of contraband in the Mohanlal case on 28 Jan 2016. (Please refer to this link [http://www.narcoticsindia.nic.in/upload/download/document\\_id99be9f83741d1275639df2c1ed0072f.pdf](http://www.narcoticsindia.nic.in/upload/download/document_id99be9f83741d1275639df2c1ed0072f.pdf)) We confine here with direction of the Hon'ble court regarding storage & disposal of the contraband as given to us for the seminar.

### **Storage:**

- (i) Court's direction: The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.
- (ii) Status of compliance: 46 dedicated godowns have been constructed in the state, one in each district including 3 police district (Arwal, Bagha, Naugchia) and 4 rail districts (Patna, Muzaffarpur, Jamalpur, Katihar). Except for Purnea and Rail Patna all the godowns have been made functional. Exhibits from the police station maalkhna are being shifted to these godowns and is still continuing. SOP formulated on the basis of Standing Order No. 1/89 for running the godowns have been circulated to all the districts S.P's. (e.O.U Memo No-5527/N.D, Dated-26.9.18) for compliance.
- (iii) Challenges: Presently it is taking long time in destroying the seized narcotics. During this period not only the seal but the jute or plastic bags containing the narcotics often gets torn or broken. The most common narcotics ganja, being hygroscopic in nature, there is reduction in its weight also. Rodents are also another factor involved in

destroying the integrity of sealed container.

## **Disposal:**

### **(i) Court's direction:**

Section 52A of the Act as amended, provides for disposal of the seized contraband in the manner stipulated by the Government under clause I of that section. Notification dated 16th January, 2015 has, in supersession of the earlier notification dated 10th May, 2007 not only stipulates that all drugs and psychotropic substances have to be disposed off but also identifies the officers who shall initiate action for disposal and the procedure to be followed for such disposal.

The Hon'ble Supreme Court in *Union of India v. Mohanlal* (2016) 3 SCC 379 has directed that disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances shall be carried out in the following manner till such time the Government prescribes a different procedure for the same:

- (1) In cases where the trial is concluded and proceedings in Appeal/revision have all concluded finally before 29th May 1989 or
- (2) In cases where drugs are seized after May, 1989 and where the trial and appeal and revision have also been finally disposed off.

Drug Disposal Committees of the States and the Central agencies shall take stock of all such seized contrabands and take steps for their disposal without any further verification, testing or sampling whatsoever.

- (3) In cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme Court, the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16th January, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time.

### **(ii) Status of compliance:**

Economic Offences Unit, Bihar, Patna is the nodal unit of Bihar Police for ensuring enforcement of provisions under the Act and compliance of the hon'ble court's order. It has started capacity building programme for the field level officers through training at Patna in association with NCB, Patna and NACIN, Patna to improve the quality of investigation and to ensure compliance of the Hon'ble Supreme court's direction in the Mohanlal case.

The state has constituted Drug Disposal Committees with Range DIG as its chairman & two SPs as its member. The DDC's vide E.O.U. Memo No.-2229/N.D, Date-19.04.2018 have

been asked to prepare list of cases and expedite the process of destruction.

Manner of disposal, procedure to be followed by the DDC, power of DDC for disposal of seized item, mode of disposal of seized drug and conveyance and the Performa for the same is given in the Govt. of India, Ministry of Finance, Dept. of revenue, Notification dated 16th January, 2015 ([https://dor.gov.in/sites/default/files/52a\\_o.pdf](https://dor.gov.in/sites/default/files/52a_o.pdf)). On this basis, districts were asked to adopt the following procedure for disposal of seized drugs and conveyances:

- (a) Identify the cases fit for disposal under sec 52A and as per guidelines in Notification dated 16th Jan, 2015
- (b) Prepare inventory as per Annexure I of the above notification and make an application as per Annexure II before hon'ble trial court for deputing a learned magistrate for the purpose of certification etc.
- (c) Certification of the inventory, drawal of sample, photograph in presence of the learned magistrate at thana malkhana.
- (d) Sending report of certification to the Hon'ble trial court with a request to pass necessary order for disposal of the seized drugs and conveyance.
- (e) After getting order from the Hon'ble trial court an application for disposal by the SHO will be sent to the Chairman of the DDC through the SP.
- (f) Drug Disposal Committee will accordingly meet, inspect the item fit for disposal and decide the manner in which they will be disposed.
- (g) Information regarding the disposal of seized Narcotics is also given to state pollution control board and chief controller of factories.
- (h) After disposal, Disposal certificate will be prepared in triplicate signed by the DDC's Chairman and its two members.
- (i) Report of disposal is sent to the concerned trial court for information.

**(iii) Challenges:**

The status of disposal of seized drugs and conveyance is challenging and needs improvement. It needs attention of all concerned viz; SHIO, SP, DIG, Presiding Officers of the trial court. All SSP/SP should entrust an officer to coordinate with Spl PP in order to expedite the process of certification. All presiding officers of trial court are kindly requested to take the application under sec 52A submitted by the SHO through the Spl P.P with utmost priority in order to ensure compliance as per the direction of the Hon'ble Supreme Court in Mohanlal case.



## Issues in Search, Seizure, Arrest & Sampling under NDPS Act, 1985

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### Introduction:

It's a rare opportunity not just to be speaking before and also interacting with a large audience such as this but mainly because of being able to interact with such an audience of varied nature. Not very often, all the stakeholders in the justice delivery system come under the same roof, except within a court room.

I understand each group of stakeholders has its own special concerns. The enforcement officers may have their own priorities; the public prosecutors may have their own priorities; the judicial officers' priorities may well differ from others'. But at the end of the day, all of us here are expected to carry out the command of the legislature so that the cause of justice may not be defeated.

I would request all of you to feel free to interact with me and raise any query whatsoever in regard to what I intend to elaborate. I believe any point of query would enrich our collective understanding and in the process contribute to the quality of the session.

Let's come to the subject of my session. It is the provisions relating to search, seizure and arrest under NDPS Act. You all know that apparently it's just three or four Sections that should cover it all: Sections 41, 42, 43 and 50 of NDPS Act should cover it entirely. But let me now spare a few words here especially for appreciation of the drug law enforcement officers. It's always profitable to attempt to appreciate an Act in its entirety in order to get at its true spirit.

### NDPS Act: Its special jurisprudence

The NDPS Act is a special legislation for a very special purpose—the purpose of national security—and thus, this contains a few features which mark a significant departure from the principles of general criminal procedure contained in our Criminal Procedure Code. These elements of departure clothe the NDPS Act with the so-called character of a draconian law. What are those elements? Well, two Sections—35 and 54—are a case in point. Then Section 37 follows suit.

What does the Section 35 say?

### Section 35. Presumption of culpable mental state—

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation—In this Section “culpable mental state” includes intention, motive, knowledge of a fact and belief in or reason to believe a fact.

(2) For the purpose of this Section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when the existence is established by preponderance of probability.

Now let's take a look at Section 54. Section 54 of NDPS Act provides that in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of any Narcotic Drugs etc. mentioned in clauses (a) (b) (c) (d) of the section for the possession of which fails to account satisfactorily.

The Section 35 of NDPS Act, read with **Section 4 of the Indian Evidence Act**, which tells us about the rules of presumption, shows that the Court has a sort of mandate from the legislature to presume culpability of the accused. Please note the use of the expression **...Court shall presume...** Our understanding of English grammar tells us something very special when we come across such use of the word shall for the word court which is a Third Person Singular Number. It carries an unmistakable stamp of compulsion, which is tantamount to saying that ...the court must presume...

And how does the defence fight such presumption of law in Section 35? Not by preponderance of probability but beyond reasonable doubt. Normally, it's the other way round in regular criminal prosecutions. The defence is considered innocent until the prosecution proves its case beyond reasonable doubt. The tables seem to be turned against the accused in prosecutions under NDPS Act. The Section 54 which is only about trials however talks about discretionary presumption on the part of the Court.

Now let's consider another much-criticized provision of the NDPS Act—**Section 37(1)(b) and 37(2)**—which apparently puts extremely difficult conditions for a Judge to release an accused on bail in certain situations—situations involving questions of commercial quantities of contraband substances. The Court has to be satisfied that there are reasonable grounds for believing that the bail applicant is not guilty of such offence with which he is charged and that he is not likely to commit any offence while on bail. Thus, on the one hand the court has to have retrospective satisfaction that the accused didn't apparently do it and on the other, has to somehow satisfy itself about the prospective behavior of the person. Maybe, not impossible...but an extremely difficult proposition for sure...

## Rigors against the suspects: Do they really make the prosecution case any easier?

Now let me come to the crux of the problem from the law enforcement officer's point of view. Why do I discuss these provisions at all in a session on search, seizure and arrest in NDPS Act? Sections like 35, 54 or 37 are more relevant for the lawyers and Judges, that's a very common perception among the drug law enforcement officers. Not entirely wrong. But drug law enforcement officers don't have to bother at all about these provisions—this perception is completely erroneous. In fact, it's these very provisions which immensely enhance the responsibilities of drug law enforcement officers on the ground. These provisions render the drug law draconian on the one hand and increase the field officers' responsibilities manifold. Why so? In order to reconcile the difficult demands of state security with those of individual liberty.

Certain piece of action on the part of a drug law enforcement officer has the enormous potential to jeopardize an individual's right to life and liberty as enshrined in our hallowed Constitution. And that is why the NDPS Act has imposed certain mandatory checks on the action of such Officer. If those checks are not complied with and such non-compliance becomes evident on the face of the record, the law enforcement would be quite correctly caught on the wrong foot and the advantage would naturally go to the defence.

### What are those mandatory checks?

**Undertaking of operations in closed places:** Section 42 of the Act talks about an officer's power to enter a closed place such as a building or a stationary vehicle and search the premises, etc and seize any contraband drugs or other incriminating articles and even arrest someone in that connection on the basis of his **reason to believe** that an offence under NDPS Act has been committed. Mind the text used there. The officer must have a reason to believe that certain narcotic drugs can be found in certain premises or a certain person responsible for such trafficking may stay put there or certain relevant documents may be unearthed there. He must act on the sole basis of "reason to believe" and not just on the basis of "reason to suspect". The Criminal Procedure Code interestingly doesn't entirely rule out the provision of arresting a person on the basis of suspicion but NDPS Act doesn't allow that. None can be arrested there on the basis of mere 'reason to suspect'<sup>12</sup>

<sup>12</sup>Allahabad High Court observed in a non-narcotic matter of **Rajbir Singh Tyagi vs. State of UP & Ors [Criminal Misc. Writ Petition 17245 of 2009. Judgment 23.08.2018]** "....The word 'believe' is a very much stronger word than 'suspect' and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that what has been alleged is true. The expression 'reason to believe' is also defined in Section 26 of the Indian Penal Code. According to the said definition, a person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. The belief entertained by the authority must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which weighed with the authority in coming to the believe, but the Court can certainly examine whether the reasons are relevant and have a bearing in the matter in regard to which it is required to entertain the belief"

How would the journey be undertaken from the reason to suspect to the reason to believe, in the context of NDPS Act? Well, when you get a piece of information, maybe, about a person allegedly dealing in drugs, it's in most cases neither suspicion nor belief. It's on neutral ground. You cause a quick verification and let's suppose, that tells you your information was not entirely baseless. You then have a reason to suspect. You follow it up further and let's suppose, your intelligence becomes actionable. The suspicion becomes crystallized and believable. You arrive at a reason to believe. How this is to be done and documented cannot have any straightjacket formula and should depend on the facts of each individual case.

Then, the law reposes a significant amount of trust in a superior officer, i.e. a Gazetted Officer. Any Sub-Inspector level Officer in State Police or State Excise or an Inspector level officer in a central agency like Customs, NCB, DRI, who is a non-Gazetted officer is otherwise empowered in NDPS Act to effect any search, seizure or arrest. But his freedom is not unfettered in that regard. When he intends to proceed on the basis of any information received from someone else, he has to document that information and have it vetted by his immediate official superior, i.e. by a Gazetted officer. The application of mind on the part of the Gazetted Officer is what should be important in that regard. He should be convinced that such piece of intelligence is believable and thus, actionable.

Often documents are found where the Police officer has taken down a piece of information and his superior officer has just put in his initials in the body of the document. This should be highly discouraged. Some indication should be there, which would point towards the fact that the Gazetted Officer had really applied his mind and endorsed the operations undertaken by the empowered officer. Some notings, etc should be there to show that he discussed the issue with the officer in question and agreed to him and orders were given towards undertaking of interceptive operations.

The field officers should appreciate that Section 42 envisages a potential situation where someone is going to invade a person's private space, where the latter resides or finds himself stationary. He is more vulnerable than others so far as his mobility or the lack of it is concerned. Utmost caution needs to be exercised to ensure that the limitations of his private space are not abused; it's a Gazetted Officer who is expected to ensure that. Thus, any information recorded in accordance with the proviso to Section 42 but not duly endorsed by the official superior is viewed with suspicion, and for good reasons.<sup>3</sup>

In terms of Section 42, similar degree of caution should be exercised also while entering

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<sup>3</sup>However, in terms of Section 42(1), if the empowered officer has any reason to believe from his *personal knowledge* and not on the basis of any information received from someone else that someone's premises should be raided in search of any incriminating articles or otherwise, he is not fettered by any obligation to have it vetted by his immediate official superior. This emerges from the plain reading of the Section as well as is vindicated by the Apex Court in the **Baldev Singh** case. Interestingly, this leaves a lot of scope for discretion at the level of the empowered officer, which is ridden with the risk of jeopardizing someone's life and liberty. However, very few or almost no cases are found where the empowered officer actually proceeds on the basis of such personal knowledge. Maybe, that is why it has not yet attracted the critical attention of the higher judiciary.

someone's premises between sunset and sunrise. Normally, in case the empowered officer is going to raid someone's premises between sunset and sunrise, i.e. under cover of darkness unsupervised by any superior officer, he must have prior authorization to that effect issued by his superior officer. In case, he apprehends that the given situation really warrants otherwise, he must document this 'otherness' which may compel him to proceed in absence of such formal authorization but only after sharing the documented situation with his immediate superior and obtaining a go-ahead to that effect from the Gazetted Officer.

Interestingly, Section 42 (2) says that where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy two hours send a copy thereof to his immediate official superior. What if some empowered officer takes it literally? What if he records his information now and raids someone's premises immediately thereafter and informs his immediate official superior after two days, i.e. 48 hours? The text of the law apparently allows that. But in view of the true spirit involved, such an action would unmistakably convey a wrong message. The intention has been to have any such interceptive operation checked and double-checked by a superior level before someone's private space be invaded.

**Undertaking of operations in open places, etc:** However, under Section 43 which speaks about interceptions at public places or in transit, no such extra curbs are there clamped on the empowered officer. The idea is simple. Section 43 basically envisages situations where recovery of drugs happens by chance, i.e. during a routine check or a surprise check, i.e. where you don't have any prior idea that recovery of drugs might take place. It's only after drugs are recovered following the check that other post-seizure formalities would follow.

A question may arise as to what to do when the officer has prior information leading to credible intelligence and the target person is expected to be in transit or in a public place? Should he follow the route of Section 42 and obtain prior endorsement of his superior in this regard also? The text of Section 43 doesn't demand that. However, there are Apex Court judgments like **Abdul Rashid Ibrahim Mansuri vs. State of Gujrat**<sup>4</sup> or **State of Rajasthan vs. Jagraj Singh**<sup>5</sup> where non-compliance of Section 42 formalities was held to be a deciding factor in view of the fact that the accused in the Mansuri case had been transiting in an auto-rickshaw or in a private jeep in the Jagraj case, the automobiles not having been registered as public conveyances. But the text of Section 43 also talks about being in transit... **“seize in any public place or in transit...”** and then at the end explains that the expression 'public place' includes 'public conveyances'. It shouldn't tantamount to meaning that even a private conveyance in transit would also qualify as a public place.

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<sup>4</sup>(2000) 2 SCC 513

<sup>5</sup>(2016) 11 SCC 687

Be that as it may, for the sake of consolidation of a prosecution case, it would be probably in the fitness of things to err on the side of caution and adopt measures accordingly. Thus, in such cases of prior intelligence, the drug law officer would do well if he would observe the formalities warranted by Section 42 even though it be a fit case otherwise for Section 43.

Regarding subsequent search of place, nothing special has however been mandated by the NDPS Act and thus, such searches may be carried out in accordance with the relevant provisions of Criminal Procedure Code.

**Search of person:** A good number of cases get vitiated because of strict non-compliance of Section 50 of the NDPS Act which is about search of person. One broad issue essentially emerges out of this Section. The person must be duly apprised to the effect that he has a legal right to be searched before an empowered Gazetted Officer or a Magistrate. And then, a lot of subsidiary issues revolve around this. Who is an appropriate Gazetted Officer or a Magistrate for this purpose? How to make the suspect aware of his right? Whether a Gazetted Officer accompanying the raiding team would qualify as an eligible Gazetted Officer for this purpose? What if the suspect refuses to exercise his right in this regard?

It would be of much help to have a look at some of the critical judgments in this regard.

Regarding exercise of option by the accused, there is no specific form or manner prescribed<sup>6</sup>. Usually, it's done on plain paper. The suspect should be informed of his right in writing and then his answer too should be obtained in writing. The empowered officer has absolutely no choice and he must apprise the suspect that he has a legal right. This is a statutory right and the suspect must exercise it. Would exercising this right always presuppose that the choice be executed in the affirmative? Field officers often suffer from confusion as to whether the suspect should be mandatorily produced before a Gazetted Officer or a Magistrate even though the suspect exercises his choice in the negative. The 2018 Apex Court observation in the matter of **Arif Khan vs. State of Uttarakhand**<sup>7</sup> has apparently all the more deepened such confusion. We may take a look first at the Constitution Bench judgment in this regard, i.e. in the matter of **State of Punjab vs. Baldev Singh**<sup>8</sup>: “ .... We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision”

This was reinforced by the Apex Court in a later 5-Judge Bench in the matter of **Vijaysinh**

<sup>6</sup>Krishan Kanwar alias Thakuraeen vs. State of Rajasthan (2004) 2 SCC 608

<sup>7</sup>(2018)18 SCC 380

<sup>8</sup>(1999)6 SCC 172

**Jadeja vs. State of Gujarat**<sup>9</sup> which however also observed: "... We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be made to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

And we may also take a look at a recent Special Court judgment<sup>10</sup> where the Trial Court Judge has decided not to go ahead with the Arif Khan case and how he has recorded his conviction with the Vijaysinh Case under a comparable circumstance.

However, for erring on the side of caution, the drug law officers should make it a point without fail that due documentation must be done regarding informing the suspect of his right to choose and recording of his exercise of that choice. The suspect cannot however choose as to before whom he should be searched. He can only exercise his choice as to whether he intends to be searched in front of a GO or a Magistrate. The officer decides finally as to before whom the search should be conducted<sup>11</sup>. Due documentation should also be done as to why he could not be searched in front of a Magistrate in the first place in case he is searched in front of a GO<sup>12</sup>. What efforts were actually made by the empowered officer will remain a matter of evidence in each case. But in case the empowered Gazetted Officer himself conducts the search, there must be the presence of another competent G.O. or a Magistrate. The authority in **State of Rajasthan vs. Ram Chandra**<sup>13</sup> is also eloquent on this point<sup>14</sup>.

## Search before which Gazetted Officer or which Magistrate?

Any Gazetted Officer wouldn't serve the purpose, no matter how senior or superior he or she may be. In terms of Section 50(1), it has to be a Gazetted Officer of any of the departments mentioned in Section 42. That means, a Principal of a Government College or a Secretary to the Government, Department of PWD, for example wouldn't serve the purpose. He must be a Gazetted Officer of agencies like Police, Excise, Customs, NCB, DRI, etc.

Similarly, more interestingly, which Magistrates is the Act talking about in Section 50? The text of the Section 50(1) only talks about the nearest Magistrate. The question may arise as to whether this may include an Executive Magistrate as well in addition to a Judicial Magistrate.

<sup>9</sup>(2011)1 SCC 609

<sup>10</sup>State vs. Izuchukwu Joseph. Addl. Special Judge. South District. Saket, Delhi. Case No. 7573 of 2016.

<sup>11</sup>Raghubir Singh vs. State of Haryana (1996)2 SCC 201

<sup>12</sup>This GO can even be the GO accompanying the raiding team. State of Rajasthan vs. Ram Chandra (2005)5 SCC 151

<sup>13</sup>Criminal Appeal No. 541 of 2005 at SCI

<sup>14</sup>The settled law however in cases involving search of anything carried in hand or head or on back, eg. a bag, etc provisions of Section 50 are not attracted since 'person' doesn't include that. Baldev Singh case or State of Himachal Pradesh vs. Pawan Kumar (2005) 4 SCC 350 is clear on this. Of course, a search of such bag etc followed or preceded by a search of 'person' would attract Section 50 regardless of the fact whether drugs are recovered from such search of person or not.

Cases do occur at times where the Police causes the search to be conducted in front of an Executive Magistrate for compliance of Section 50. I am afraid this may not be the correct interpretation of the Section 50 (1) and thus, it should be inescapably done in front of a Judicial Magistrate in cases where the Police chooses to have the search of the suspect's person conducted in front of someone other than an empowered G.O.<sup>15</sup>.

**Arrests:** After the empowered officer has seized contraband drugs from the possession of someone or becomes satisfied that someone has any believable connection with some offence under NDPS Act, he may arrest him without warrant. The offences involving commercial quantity or the so-called intermediate quantity or involving controlled substances or cultivation of plants attract penalties which can be up to ten years or more. Thus, the officer is free from the rigors of the Apex Court's observation in **Arnesh Kumar vs. State of Bihar**<sup>16</sup> since the said case deals with offences where the prescribed penalty runs up to a maximum of seven years. Of course, for offences involving small quantities, the said rigors will have to be complied with. And needless to say that all regular provisions relating to arrests as contained in Criminal Procedure Code will have to be followed as well.

### Sampling of seized drugs, etc:

#### Drawal of sample -

- a) The procedure suggested in the notification No.1/89 of Govt. of India and standing order No.1/88 of Narcotics Control Bureau should be followed about the sampling. But in the wake of the Mohanlal judgment<sup>17</sup>, it should be read with strict regard to Section 52A of the Act and the seized articles should be produced before the designated Judicial Magistrate as early as possible following the seizure of drugs, etc for necessary certification and sampling.
- b) If the drugs/controlled substances seized are found in packages/ containers, the same should be serially numbered for purposes of identification.
- c) In case the drugs/controlled substances are found in loose form, the same should be

<sup>15</sup>Section 2 (xxix) of NDPS Act says that words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 have the meanings respectively assigned to them in that Code. And Section 3 (1) of the Code says that any reference, *without any qualifying words*, to a Magistrate, shall be construed, unless the context otherwise requires (i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate and (ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate. In view of the fact that Section 50 of the NDPS Act doesn't qualify the word Magistrate otherwise than by way of using the expression 'nearest', which is not a functional qualifier, reason demands that such search of person be conducted in front of a Judicial Magistrate when not done before a competent G.O. Section 52A of the Act too uses the expression *any Magistrate*, i.e. without any qualifying word, and the mandate under Section 52A is not carried out by any Executive Magistrate but always by a Judicial Magistrate. Thus, a conjoint reading of Sections 50 and 52A of NDPS Act read with Section 3 (1) of Criminal Procedure Code renders an Executive Magistrate bereft of any element of magistracy as strictly envisaged by the NDPS Act; in view of Section 50(1) of the Act read with Section 42(1) thereof, such an Executive Magistrate isn't a competent G.O. either for the purpose of Section 50. Search of person conducted in front of an Executive Magistrate should be thus strictly avoided by the drug law enforcement officers.

<sup>16</sup>(2014)8 SCC 273

<sup>17</sup>Union of India vs. Mohanlal & Anr. (2012) 7 SCC 219

arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package / container. Beside the serial number, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages.

- d) In case sufficient space is not available for recording the above information on the package, a card board label, should be affixed with a seal of the seizing officer and on this card board label, the above details should be recorded.
- e) Sample from the seized drugs/controlled substances must be drawn on the spot of recovery, in duplicate, in the presence of search witnesses and the person from whose possession the drug/ controlled substances is recovered or the owner/occupier/representative of the owner of the premises and a mention to this effect must be made in the Panchnama and the case file.
- f) The quantity to be drawn in each sample :-
  - (i) 5 grams. in respect of all narcotic drugs and psychotropic substances, except Opium, Ganja and Charas.
  - (ii) 24 grams. for Opium, Ganja and Charas.
  - (iii) in case of sample drawn from the field where illegal cultivation is there, the sample should be sufficient
  - (iv) in case of controlled substances, if the same are in the state of powder or liquid, each sample size should be 5 gm/5 ml (liquid). If it is in a tablet/capsule form, each sample size should contain at least a strip of 10 tablets/capsules.
  - (v) The same quantity should be taken for the duplicate sample also. The seized drug in the packages/containers should be well mixed to make it homogenous and representative before the sample in duplicate is drawn.

## **How many samples to be drawn-**

- I. In the case of seizure of a single package/container one sample in duplicate is to be drawn.
- II. Normally it is advisable to draw one sample in duplicate from each package/ container in case of seizure of more than one package/ container.
- III. However, when the package / containers seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by drug/ precursor testing kit, conclusively indicating that packages are identical in all respects, the packages/ container may be carefully bunched in lots of 10 packages/ containers.

- IV. In case of seizure of ganja and hashish, the packages/ containers may be bunched in lots of 40 such packages/ containers.
- V. For each such lot of packages/ containers, one sample in duplicate may be drawn.
- VI. Where after making such lots, in the case of hashish and ganja, less than 20 packages/ containers remain, and in case of other drugs less than 5 packages/ containers remain, no bunching would be necessary and no samples need be drawn.
- VII. If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/ containers.
- VIII. While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/ container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot<sup>18</sup>

### **Numbering of packages/containers**

- Each package/ container should be securely sealed and an identification slip pasted/ attached on each one of them at such place and in such manner as will avoid easy obliteration of the marks and numbers on the slip.
- Where more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2 & S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P-1,2,3,4 and so on.
- All the samples must be drawn and sealed in presence of the accused, seizure (panchnama) witnesses and seizing officer and all of them shall be required to put their signatures on each sample.
- The official seal of the seizing officer should also be affixed.
- The specimen of seal used should be embossed on a separate sheet of paper so as to produce in the court as an exhibit with other documents during the trial.
- The specimen of the seal used should be sent to the drug testing laboratory along with samples separately for comparison with that of the sealed packet to certify that the seal on the sealed sample packet was in tact.

### **Packing and Sealing of Samples –**

1. The sample in duplicate should be kept in heat sealed plastic bags as it is convenient

<sup>18</sup>It should be meticulously mentioned in relevant documents so that the defence may not raise the plea afterwards that sampling was actually done from only one packet/container and thus, prosecution may not charge with an offence involving the entire quantity of all the containers/packets in any given case.

and safe. The plastic bag container should be kept in a paper envelope, which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the Sl. No. of the packages/ containers from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible.

2. This envelope along with test memos should be kept in another envelope, which should also be sealed and marked "secret-Drug sample/Test memo" to be sent to the concerned chemical laboratory. However, in the case of controlled substance, since most are highly inflammable or corrosive or may cause injury, these should be handled carefully, possibly with the help of literature or experts, for the purpose of testing, drawal of samples, sealing and storing.

## **Test Memo**

The samples of seized drugs or substances should be dispatched to the chemical examiner under the cover of a Test Memo, which shall be prepared in triplicate. The original and duplicate of the Test Memo should be sent to the Laboratory along with the samples. The triplicate shall be retained in the case file of the seizing officer. Documents found during the search from the spot/house/conveyance in the name of the accused should be seized to prove exclusive possession of the spot house and contraband articles by the accused.



## Speedy Trial of cases under NDPS Act – Issues and Challenges

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'Justice delayed is justice denied'. For the credibility of criminal justice system, it is necessary that the criminal cases should be decided by speedy trials. The constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure is embodied in article 21 of the Constitution of India. The laxity with which we throw citizens into prison during trial of the cases reflects our lack of appreciation for the tribulations of incarceration; the callousness with which we leave them there reflects our lack of deference for humanity. It also reflects our imprudence when our prisons are bursting at their seams. For the prisoner himself, imprisonment for the purposes of trial is as ignoble as imprisonment on conviction for an offence, since the damning finger and opprobrious eyes of society draw no difference between the two.

It cannot be said that the violation of the right of speedy and public trial pertains to the realm of sentence alone. Once the constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure under article 21 has been violated, then the accused is entitled to an unconditional release and charges levelled against him would fall to the ground [*State v. Maksudan Singh*, AIR 1986 Pat 38]. In all criminal prosecutions the right to a speedy public trial is now an inalienable fundamental right of the citizen under article 21 of the Constitution. This cannot be allowed to be whittled down on any financial ground of the hoary origin of this right in the constitutional history of Great Britain and America, nor are considerations of affluence of developed countries even remotely relevant or germane in this context. Therefore, it is not possible to read down the right of speedy and public trial in India for the fact that our society as yet is not as developed or affluent as the Anglo-American one [*Madheshwardhari Singh v. State of Bihar*, AIR 1986, Pat 386].

The fundamental right to a speedy public trial under article 21 of the Constitution of India extends to all criminal prosecution for all offences generally, irrespective of their nature. It is not confined or constricted to either serious or capital offences only. In the majestic sweep of the fundamental right of a speedy public trial in the context of a criminal prosecution, initiated at the State's instance, it necessarily connotes all the period from the date of the levelling of the criminal charges to the date of the rendering of the judgment in court. Unless

it is so held, the cherished fundamental right herein would be whittled down to a teasing mirage, where the investigation of the offence itself may protract on for years and, thus rendering the very concept and purpose of a speedy trial purely illusory. Therefore, a speedy trial in a criminal prosecution herein includes within it both the police investigation of the crime and the later adjudication in court based thereon. *Madheshwardhari Singh v. State of Bihar (supra)*.

The constitutional right of a speedy trial extends to and is applicable to capital offences punishable with death as well. The scope of article 21 does not stop at the prison gates and the umbrella of the speedy trial rule which is an integral part of article 21 of the Constitution is equally available to the accused during investigation, trial and even the post-trial field of capital offences punishable with death. Thus, as regards the investigation and original trials of capital offences in future a time frame of five years would be more than reasonable. To formalize the principle, it must be held that a callous and inordinately prolonged delay of five years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reasons) in investigation and original trials for capital offences registered hereinafter would plainly attract the constitutional guarantee of a speedy public trial under article 21 of the Constitution of India [*Surya Narain Singh v. State of Bihar*, AIR 1987 Pat 219].

Delay defeats justice, it is proverbial truth and with the passage of time, memory fades and witnesses pass away. Time consumes the evidence if not immediately tapped. For this reason, speedy trial is necessary so that justice is done to both the parties *i.e.*, accused and the victim [*Mahendra Lal Das v. State of Bihar*, AIR 2001 SC 2989]. It is made abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly, they incur suffering and loss of income. The meager amount of *bhatta* (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. Keeping in view section 309 of the Code of Criminal Procedure the legal position is that once examination of witnesses started the court has to continue the trial from day-to-day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are 'special reasons', which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case

without examination of witnesses who are present in court [*State of Uttar Pradesh v. Shambhu Nath Singh*, AIR 2001 SC 1403].

It is not possible in the very nature of things and the present-day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. Fair, just and reasonable procedure implicit in article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Right to speedy trial flowing from article 21 of the Constitution encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. This is how the Supreme Court has understood this right and there is no reason to take a restricted view [*Abdul Rehman Antulay v. R.S. Nayak*, AIR 1992 SC 1701].

In the case of *P. Ramachandra Rao v. State of Karnataka*, AIR 2002 SC 1856, the Supreme Court held that Courts can interpret the law; they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the Legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for judiciary to do. But it may not, like Legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure. The Supreme Court of India has further held in the case that: (1) The dictum in *A.R. Antulay's* case (referred to in previous para) is correct and still holds the field. (2) The propositions emerging from article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay's* case, adequately take care of right to speedy trial, and the court upheld and reaffirmed the said propositions. (3) The guidelines laid down in *A.R. Antulay's* case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a straight-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made. (4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in *Common Cause (1)*, *Raj Deo Sharma (I)* and *Raj Deo Sharma (II)* could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in *Common Cause Case (I)*, *Raj Deo Sharma case (I)* and *(II)*. At the most, the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be

persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in *A.R. Antulay's* case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused. (5) The criminal courts should exercise their available powers such as those under sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases, jurisdiction of High Court under section 482 of Code of Criminal Procedure and articles 226 and 227 of the Constitution of India can be invoked seeking appropriate relief or suitable directions. (6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary - quantitatively and qualitatively – by providing requisite funds, manpower and infrastructure and the Supreme Court hope and trust that the government shall act.

It can be said that the Report of the Arrears Committee (1989-90) suggested that not only an increase in the judge strength but a provision for necessary infrastructure such as court buildings, court staff, equipments etc., should also be simultaneously worked out and provided to meet the challenge of backlog of cases. It was pointed out in the report that unless systematic steps in that direction are taken, coupled with periodical review, the court dockets will not remain within manageable limits and problem of arrears would continue to live with us. The Law Commission of India, in its 120th Report (submitted in 1987), examined the problem of under-staffing of the judiciary and recommended fifty judges per million of population instead of 10.5. The author remained a judicial officer for more than thirty-two years and can safely conclude that when we talk of speedy trial of criminal cases this inadequate judges-strength coupled with court infrastructure is the major cause of delay in disposal of cases. More than two decades have elapsed since the report of the Law Commission of India has submitted in 1987 and the present requirement of number of judges is much greater looking to the spate of litigation, the population explosion and other factors but nothing concrete has been done to enhance the judge's strength. Non-filling of the judge's vacancies for long time is also responsible in delay in disposal of cases. Appointment of right persons to fill-up the posts of judges is another problem being faced. Thus, the main cause for judicial delay lies not so much with the judicial officers as with the Executive Wing of the Government.

The question whether the right to a speedy trial which forms part of the fundamental right to life and liberty guaranteed by article 21 has been infringed is ultimately a question of fairness in the administration of criminal justice even as 'acting fairly' is the essence of the principles

of natural justice and a 'fair and reasonable procedure' is what is contemplated by the expression 'procedure established by law' in article 21 of the Constitution of India. Several questions arise for consideration in this connection. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the willfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused? Commenting upon the correlation between delay and nature of case it was held by the Supreme Court that as the police officers had some justification for suspecting a conspiracy to wage war they would be well justified in suspecting ramifications of the conspiracy elsewhere in the country necessitating investigation into the conspiracy in Punjab, Delhi, Maharashtra, Calcutta and other parts of the country and such delay as there was in the investigation of the case, considering the extraordinary law and order situation in the country necessitating the placing of a great additional burden on the police, was not wanton and that it was the outcome of the nature of the case and the general situation prevailing in the country. Lulls in investigation for fairly long spells could not be considered to be sinister [*Raghubir Singh v. State of Bihar*, AIR 1987 SC 149].

It is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligation as officers of the Court. In the case of *S.J. Chaudhary Lt. Col. v. State (Delhi Administration)* reported in (1984) 1 SCC 722, the High Court had directed that a criminal trial go on from day-to-day, and before the Supreme Court it was urged that the advocates were not willing to attend day-to-day as the trial was likely to be prolonged, and in these circumstances it was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day-to-day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend.

#### **(1) Establishment of Special Courts/more courts**

Section 11 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (Act No. 2 of 1989) has laid down that all the offences under the Narcotic Drugs and Psychotropic Substances Act shall be triable by Special Courts by inserting section 36A in the principal Act, which section 36A is reproduced below: —

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one

for such area, by such one of them as may be specified in this behalf by the Government;”

Therefore, after the amendment by Act No. 2 of 1989 which came into force w.e.f. 29th May, 1989 *vide* notification No. 2/89 all the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 were made triable by the Special Courts. However, till the establishment of these Special Courts, section 36D of the Act provides for transitional provisions for the trial of the offences as under:

*“Transitional provisions :* (1) any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, until a Special Court is constituted under section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session:

Provided that offences punishable under sections 26, 27 and 32 may be tried summarily.

(2) Nothing in sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session under the said sub-section (1) and the same shall be heard and disposed of by the Court of Session.”

Although this amendment by Act No. 2 of 1989 came into force w.e.f. 29th May, 1989 *vide* notification No. 2/89, dated 29-5-1989, issued by the Government of India yet even after the lapse of more than thirty years, some of the State Governments have not constituted separate Special Courts thereby making the provision redundant. The courts of Sessions Judges are already overburdened. The Central Government should, therefore, take up the matter with the State Governments so that these Special Courts under the Act, keeping in view the pendency and institutions of such cases, are constituted for the speedy trial of the offences under the Narcotic Drugs and Psychotropic Substances Act in each and every State immediately.

It must be remembered by every State Government that the administration of criminal justice is the primary duty of the State Government and the constitution of the Special Courts envisaged in the Acts passed by the Parliament should not be held up due to financial constraints. The State Government cannot avoid its constitutional obligation to provide speedy trial to the accused by impleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. Where under-trial prisoners have been in jail for periods longer than the maximum term for which they would have been sentenced, if convicted, their detention in jail is totally unjustified and in violation of the fundamental right to personal liberty under article 21 of the Constitution of India. Their detention in jail being illegal they should be released forthwith [*Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, AIR 1979 SC 1369*].

**(2) Section 52-A of the NDPS Act to be complied with in letter and spirit.**

The most important provision has been made by inserting section 52-A in the Act for the disposal of case property in the NDPS cases making inventory prepared and attested by the Magistrate as primary evidence. Section 52A of the Act provides as under: -

“52A. Disposal of seized narcotic drugs and psychotropic substances

- (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substance, their vulnerability to theft substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official, Gazette, specify such narcotic drugs or psychotropic substance or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.
- (2) Where any narcotic drugs or psychotropic substances has been seized and forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs or, psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any magistrate, for purpose of,-
  - (a) certifying correctness of the inventory so prepared; or
  - (b) taking, in the presence of such Magistrate, photographs substances and certifying such photographs as true; or
  - (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.
- (3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application
- (4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

This provision of law must be followed strictly which will certainly lead to speedy trial of the NDPS cases under the Act.

### (3) **Burden to Bring offence under Exception on the Accused**

Once the prosecution has been able to prove the offence against the accused beyond reasonable doubt, the onus shifts on the accused to prove any exception under which the offence has been committed by the accused under section 35, section 54 and section 66 of the Narcotic Drugs and Psychotropic Substances Act which provide as under:-

"35. In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The *Explanation* to this section 35 makes it clear that 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact and further that for the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability".

"54. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—(a) any narcotic drug or psychotropic substance or controlled substance; (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated; (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

"66. Presumption as to documents: Where any document—(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or (ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person, and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the court shall—

- (a) presume, unless contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which

the court may reasonably presume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document. Therefore, in all these cases the presumption of law has to be rebutted by the accused by leading cogent and reliable evidence."

In *Thana Singh Vs. Central Bureau of Narcotics* (2013) 2 SCC 590, Hon'ble Supreme Court observed and passed directions as under:-

**(1) Adjourments**

The lavishness with which adjourments are granted is not an ailment exclusive to narcotics trials; courts at every level suffer from this predicament. The institutionalization of generous dispensation of adjourments is exploited to prolong trials for varied considerations. Such a practice deserves complete abolishment.

No NDPS court would grant adjourments at the request of a party except where the circumstances are beyond the control of the party. This exception must be treated as an exception, and must not be allowed to swallow the generic rule against grant of adjourments. Further, where the date for hearing has been fixed as per the convenience of the counsel, no adjourment shall be granted without exception.

**(2) Examination of Witnesses**

*Between harmonizing the rights and duties of the accused and the victim, the witness is often forgotten. No legal system can render justice if it is not accompanied with a conducive environment that encourages and invites witnesses to give testimony. The web of antagonistic litigation with its entangled threads of investigation, cross-examination, dealings with the police etc., as it is, lacks the ability to attract witnesses to participate in a process of justice; it is baffling that nonetheless, systems of examination that sprout more disincentives for a witness to take the stand are established. Often, conclusion of examination alone, keeping aside cross-examination of witnesses, takes more than a day. Yet, they are not examined on consecutive days, but on different dates spread out over months. This practice serves as a huge inconvenience to a witness since he is repeatedly required to incur expenditure on travel and logistics for appearance in hearings over a significant period of time. Besides, it often causes unnecessary repetition in terms of questioning and answering, and also places greater reliance on one's ever-fading memory, than*

*necessary. All these factors together cause lengthier examinations that compound the duration of trials.*

The concerned courts to adopt the method of “session's trials” and assign block dates for examination of witnesses. It would be prudent to return to the erstwhile method of holding “session's trials” i.e. conducting examination and cross-examination of a witness on consecutive days over a block period of three to four days. This permits a witness to take the stand after making one-time arrangements for travel and accommodation, after which, he is liberated from his civil duties qua a particular case.”

### **(3) Workload**

The courts are unduly overburdened, an outcome of the diverse repertoire of cases they are expected to handle. We are informed by the Narcotics Control Board that significant time of the NDPS Court is expended in dealing with bail and other criminal matters. Besides, many states do not even have the necessary NDPS courts to deal with the volume of NDPS cases. The court ordered that:

- (i) Each state, in consultation with the High Court, particularly the states of Uttar Pradesh, West Bengal and Jammu & Kashmir (where the pendency of cases over five years is stated to be high), is directed to establish Special Courts which would deal exclusively with offences under the NDPS Act.
- (ii) The number of these courts must be proportionate to, and sufficient for, handling the volume of pending cases in the State.
- (iii) Till exclusive courts for the purpose of disposing of NDPS cases under the NDPS Act are established, these cases will be prioritized over all other matters; after the setting up of the special courts for NDPS cases, only after the clearance of matters under the NDPS Act will an NDPS court be permitted to take up any other matter.

### **(4) Narcotics Labs**

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.... The Court has passed the following directions in respect of Narcotic Labs:

- (i) The Centre must ensure equal access to CFSL's from different parts of the country. The current four CFSL's 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 CFSL's must be established, especially to cater to the needs of southern and eastern parts of the country.
- (ii) 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.
- (iii) Authorities [FSL & CFSL] 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 concerned agencies.
- (iv) The Directorate of Forensic Science Services, Ministry of Home Affairs, must take special steps to ensure standardization of equipment across the various forensic laboratories to prevent vacillating results and disallow a litigant an opportunity to challenge test results on that basis.

**(5) Personnel**

- (i) Directorate of Forensic Science Services, Ministry of Home Affairs to address shortage of staff. Shortage of staff is bound to hamper the smooth functioning of these laboratories
- (ii) Steps must be taken by the concerned departments to improve the quality and expertise of the technical staff, equipment and testing laboratories.

**(6) Re-testing Provisions**

- (i) After the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter.
- (ii) Any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge.
- (iii) An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/resampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of retesting/re-sampling is strictly prohibited under the NDPS Act.

(7) **Monitoring**

Nodal officers be appointed in all the departments dealing with the NDPS cases, for monitoring the progress of investigation and trial. This nodal officer must be equivalent or superior to the rank of Superintendent of Police, who shall ensure that the trial is not delayed on account of non-supply of documents, non-availability of the witnesses, or for any other reason.

(8) **Public Prosecutors**

The District and Sessions Judge shall make recommendations for appointments of public prosecutors in consultation with the Administrative Judge/Portfolio Judge/Inspecting Judge, in-charge of looking after the administration of the concerned Sessions Division.

(9) **Other Recommendations**

Filing of the charge- sheet and supply of other documents must also be provided in electronic form. However, this direction must not be treated as a substitute for hard copies of the same, which are indispensable for court proceedings. [See: Section 207 of the Code of Criminal Procedure, 1973]

The above directions and guidelines have binding force in view of Article 141 of the Constitution of India which lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India. We, being the judges, prosecutors and the investigating agencies must strive together for speedy investigation and trial of cases under the NDPS Act.



## Financial Investigation under Chapter VA of the NDPS Act, 1985 An Overview

**Dr. P. K. Prusty, IRS**

Competent Authority & Administrator, Delhi

### Background of forfeiture laws

- Chapter Va of Narcotic Drugs & Psychotropic Substances Act 1985
- Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act - 1976
- Prevention Of Money Laundering Act- 2002

### UN Plenipotentiary Conference 1988-Convention for Identification, Tracing, Freezing, Seizure and Confiscation of the Properties Related to Drug Crimes

#### ADDRESS IN THE PREAMBLE :

- “Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organisations to penetrate, contaminate and corrupt the structure of government, legitimate commercial financial business, and society at all its levels”
- “Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for doing”

### The NDPS Act 1985 and The PITNDPS Act 1988

- As per the applicability of the chapter Va of the NDPS Act 1985, the proceeding against the illegally acquired property of any person/persons is initiated by passing of a seizing or freezing order.
- As per the PITNDPS Act 1988, the proceeding against the illegally acquired property of any person/ persons is initiated by issuance of a detention order.

## PROVISIONS OF CHAPTER VA OF NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985

### Chapter VA : Forfeiture of Illegally Acquired Property

As per the scheme of this chapter, illegally acquired property held by the persons to whom this chapter applies is liable to be traced, identified and seized or frozen by the officers empowered under the section 53 of the Act and every officer-in charge of a police station and is finally forfeited by the competent authority.

### Contents of Seizing or Freezing Order

- The freezing order so prepared u/s 68(F)(1) of NDPS Act 1985 should bear the freezing/seizing order number with date.
- Full name (with aliases) of the accused person, father's name and complete address of the arrestee/convict or against whom warrant/authorization of arrest is issued should be mentioned in the freezing/seizing order.
- FIR number & date (with copy of FIR)
- Date of arrest or issue of authorization/arrest warrant is mandatory to count 6 years of the acquisition of the property.
- In case of arrests, statement of accused be recorded inquiring about his occupation, house hold expenses/investments, properties acquired and the sources of income etc. The properties so acquired or inherited be verified through any inquiry, investigation or survey and all pertaining documents be attached with the freezing order. Same be done in case of the relatives, accomplices or associates.
- If the person could not be arrested or is absconding arrest, it shall be clearly mentioned in the order.
- Quantity and nomenclature of contraband substances found/seized be mentioned as per the schedule (section 2 XXVII) of the NDPS Act 1985.
- Details of previous cases registered, with status of the prosecution or conviction, if any.
- If convicted, date of judgment and terms of imprisonment awarded.
- The relevant sections along with the sub section under which the affected person has been booked/charged should be mentioned clearly.
- In case of vehicle, a photocopy of the registered certificate of the vehicle must be enclosed alongwith supporting documents. If the property is held by a relative/associate, mention full name/address and relationship with the Accused.
- Properties to be seized/freezed should be identified properly mentioning complete

particulars along with supporting documents. Value of the property should be assessed on the date of acquisition and indicated clearly.

- Freezing Order passed u/s 68F (1) of NDPS Act, 1985 should be received in the office of Competent Authority, New Delhi within 48 hours of its being made.
- Copy of the order, must be served on the affected person as well as endorsed to all concerned authorities. In case of movable property, the copy of freezing order should invariably be sent to the concerned controlling authority. For example if bank account is seized then it is pertinent to mention the concerned bank, if vehicle is seized then it is pertinent to mention the concerned RTO. In case if any immovable property is seized then the copy of the order should always be endorsed to the concerned Distt. Collector, Registrar/Sub-registrar.

### **Application of NDPS Act 1985 Section 68 A(2)**

The Act is applicable to the following classes of persons :

- (a) Convict
- (b) Convict Outside India
- (c) Detenue
- (d) Relative of convicts
- (e) Associate
- (f) Present Holder

### **Definitions of Associate u/s Section 68 B(b)**

- (b) "associate" In relation to a person whose property is liable to be forfeited under this chapter, means-
  - i. Any individual who had been or is residing in the residential premises (including out-houses) of such person;
  - ii. Manager/accountant
  - iii. Association, body, partnership firm or private company
  - iv. Member, partner or director of an association, body, partnership firm or private company referred to in sub-clause (iii)
  - v. Manager or accountant of any association, body, partnership firm or private company referred to in sub-clause (iii);
  - vi. Trustee
  - vii. Any other person whom the competent authority considers to be holding property belonging to any of the above persons on their behalf.

### **Some Important Definitions U/s 68 B**

- 68B(e): Freezing: means temporarily prohibiting the transfer, conversion, disposition

or movement of property by an order issued under section 68F;

- 68 B(h): Property means property and assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

## Section 68 b (i)

### Relative means :

- Spouse of person
- Brother
- Brother or sister of spouse
- Any lineal ascendant or descendant
- Any lineal ascendant or descendant of spouse
- Spouse of detainee, convict, arrestee, relative, associate, holder
- Any lineal descendant of detainee or convicted person

## Section 68E : Identifying Illegally Acquired Properties

- (1) Every Officer empowered u/s 53 and every SHO of a police station shall, on receipt of information if satisfied that any person to whom this chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.
- (2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account -in any bank or public financial institution or any other relevant matters.
- (3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

## Seizing or Freezing of Property (Section 68F)

- Where any officer investigating u/s 68E has reasons to believe that any property has an illegally acquired property, he may make a seizing or freezing order and copy of such order shall be served on the person concerned.

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority

within forty-eight hours of its being made.

- Section 68 F(2): Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

## **The Financial Investigation**

### **A. THE AIM OF FINANCIAL INVESTIGATION :**

To ascertain :

- A) Assets of the accused and his/her beneficiaries (relatives and associates).
- B) The acquisition cost and value of the assets.
- C) The legitimacy of earnings used for the acquisition of assets.
- D) The illegal assets acquired by the accused and his/her beneficiaries (relatives and associates).
- E) The legitimacy of the money used for acquisition of the assets and its nexus with the accused.

## **The Concept Of Tainted Property**

Any property, which has been acquired either partly or fully through illegal income of drug trafficking or smuggling itself becomes tainted and hence is liable to forfeiture. The property, irrespective of the activities of its owner is a tainted property, if any part of its acquisition cost has been financed through tainted income.

### **C. The Stages Of Financial Investigation**

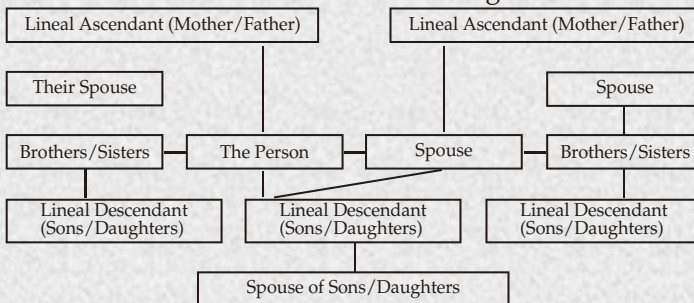
Once, a person is booked for an offence under NDPS Act, a parallel investigation with an aim to unearth the assets created by the concerned person and his relatives and associates through illegal income earned from drug trafficking has to be initiated. This investigation is primarily an investigation into the finances of the person and hence in common parlance known as financial investigation. This can be carried out in several stages.

#### **STAGE 1**

- a) "When to start": Once the enforcement officer receives an information to his satisfaction that a person to whom provisions under chapter VA of the Act applies holds illegally acquired properties, it is mandatory for him under Section 68E of the Act to take all the step necessary for tracing and identifying illegally acquired properties.
- b) "In which case to start" : Applicable to cases as per provisions contained in section 68A of the Act.

## STAGE 2

- d) Once, it has been decided that a financial investigation is to be carried out, the investigating officer has to first collect details of relatives and associates of person who may either be involved with such a person in illegal activities or who are in some way or other getting financial benefits from the person. A pictorial diagram of the relatives and associates is shown in the following tree chart :



### The possible sources for collection of this information are:

1. Interrogation of the person and his family members.
2. Enquiries in the neighbourhood area.
3. Enquiries from competitors/rivals of the person.
4. Inspection of bank accounts details.
5. Inspection of business and other financial documents like:
  - a) Books of accounts of firm/company of the person.
  - b) Income Tax Returns if any, of the person and his family members.
  - c) Municipal Tax payment receipts.
  - d) Vehicle/housing loan documents
  - e) Share certificates/bonds
  - f) Documents pertaining to properties

To make the data collection more systematic, a format has been devised which is designated as FLI-1. All possible details, even if appearing not of much significance at the first glance, should be collected and recorded in this form.

### STAGE 3: The Short Listing of Persons, Relatives and Associates:

At stage 3 of the investigation, attempt is to be made to pick up relevant information from FLI-1 and discard those, which are not found to be of much use. For determining this, following points may be examined:

- a) What is the occupation of the particular relative/associate and what may be his/her income?
- b) Whether his/her standard of living is beyond his/her known sources of income?
- c) Whether, there are indications of the person getting some part of illegal money, directly or indirectly through the accused person?

**For finding answers to these questions, one may rely upon the following sources:**

1. Interrogation of the person and his family members.
2. Enquiries from competitors/rivals of the person.
3. Inspection of bank accounts & checking names of other joint account holders.
4. Inspection of business and other financial documents like:
  - Books of accounts of firm/company of the accused person
  - Income Tax Returns, if any, of the accused person and his family members
  - Municipal Tax payments receipts
  - Vehicle/housing loan documents
  - Share certificates/bonds
  - Documents pertaining to properties

The investigating officer has to make a qualitative judgment about the possible link of the relatives and associates with the person and once, he is satisfied that there are prima-facie evidences of link, the details of this person may be taken on record by filling them up in FLI-2. The completion of FLI-2 brings the case to the level of tracing and identification of the properties, which is the job in stage 4.

**STAGE 4: The Tracing Of The Assets**

This involves collection of data about the property holdings of the persons short listed in FLI-2. The first source of information for this, is the person himself and the investigating officer may also use powers granted under the Act to carry out searches to find out documents and evidences pertaining to the illegal properties acquired by these persons.

A few of the other possible sources are:

- a) PUBLIC AGENCIES:
  - i. The Income Tax Department
  - ii. The Municipal Bodies
  - iii. The Transport Authority
  - iv. Registrar of Companies
- B) THE FINANCIAL INSTITUTIONS
  - i. Banks:
  - ii. Stock Exchanges:

- iii. Mutual fund Companies:
- iv. Housing Finance Companies:
- v. Other Finance Companies:

## C) INDIVIDUAL RECORDS

- i. Books of accounts.
- ii. IT Returns.
- iii. Loan Applications.
- iv. Balance Sheets.
- v. Other financial records.

## D) INDIVIDUALS

- i. The person himself
- ii. The informants
- iii. The neighbours
- iv. The Co-workers
- v. The business associates
- vi. The relatives

Every attempt, thus should be made to accurately identify the properties at this stage. The details of these properties may be recorded in FLI – 3.

## STAGE 5: THE TAINTED PROPERTY

This involves evaluation of the properties for possible taint. Properties of persons figuring in FLI-2, if not acquired through legally earned income, is tainted property, attracting forfeiture proceedings. Very often seizing/freezing orders are challenged on the ground that it does not contain grounds of seizing/freezing. Thus, it becomes vital that the order contains grounds of seizure, which should be able to substantiate that the officer passing the seizing/freezing order has reasons to believe that the assets may be liable for forfeiture under the NDPS Act. In nutshell, what the investigating officer shall aim to find is that whether there is any taint of illegal income on the property and if it is there, whether there are sufficient reasons to believe that the property is liable for forfeiture. These two aspects should essentially be examined and a conclusion should be arrived at before passing the freezing/seizing order.

Since the officer is not required to go into the last details, he should consider the acquisition cost and acquisition time of the property and compare it with the possible legal source of income of the person at the time of acquisition. Any large gap between the possible source of the acquisition and the estimated legal income at the time of acquisition should be enough for the investigating officer to have reasons to believe that the property is liable for forfeiture. Such properties should be filled in FLI-4.

## STAGE 6: Preparing details of tainted property

The properties figuring in FLI-4 are the properties liable for forfeiture and hence should be

frozen. Before freezing, it should be ensured that all details of the properties are properly taken on record. The details of properties which should be collected are:

**1. Agricultural Land**

- |                               |   |
|-------------------------------|---|
| a) Name of the owner/owners   | b) Acquisition date & cost                    |
| c) Present value              | d) Tehsil and District                        |
| e) Village and Police station | f) Khata/Khasra/Khatauni number etc.          |
| g) Area (i.e. Acres)          | h) Boundary i.e. landmarks on four directions |

**2. House/Building:**

- |  |   |
|--|---|
| a) Name of the owner/owners                          | b) Acquisition date & cost                |
| c) Present value                                     | d) Name of the Colony/Mohalla/<br>Village |
| e) Name of the street, House number, building number |   |
| f) Name of the city/village                          | g) Postal address                         |

**3. Bank Accounts**

- |                                     |                        |
|-------------------------------------|------------------------|
| a) Name of the Bank                 | b) Branch Address      |
| c) Accounts Names, if joint account | d) Account number      |
| e) Date of Opening of account       | f) Current Balance     |
| g) Pass book/Statements             | h) Credit card details |

**4. Fix Deposits**

- |                             |                              |
|-----------------------------|------------------------------|
| a) Name of the Bank/Company | b) Initial Investment Amount |
| c) Date of Deposit          | d) Maturity Date             |

**5. Investment in Securities/Bonds/Mutual Funds/Insurance policies:**

- |                     |  |
|---------------------|--|
| a) Company details  | b) Document details, like distinctive number, policy number etc. |
| c) Acquisition cost | d) Acquisition date  |
| e) Present value    |  |

**6. Vehicles:**

- |                           |                        |
|---------------------------|------------------------|
| a) Name of the owner      | b) Registration Number |
| c) Registration authority | d) Date of Purchase    |

- e) Date of Manufacture
- f) Purchase Price

**7. Other Valuables:**

- a) Jewellery/Art/Antique
  - Description
  - Possible acquisition date
  - Present value.
- Weight
- Possible acquisition cost

**8. Any Other Asset of Significant Value:**

- a) Description
- b) Possible acquisition date
- c) Possible acquisition cost
- d) Present value.

**Stage 7: The seizing/freezing order**

The information collected in these 4 stages has to be recorded in a seizing/freezing order. As already discussed, the seizing/freezing order is the first order in the process of forfeiture proceedings and thus due care should be taken in passing the order.

**Forfeiture of properties**

- Notice of forfeiture of property – Section 68H
- Forfeiture of property – Section 68 I
- Fine in lieu of forfeiture – Section 68K
- Taking physical possession of forfeited properties – Section 68U

**Burden of proof –section 68J**

The burden of proof shall be on the affected person

**Section 68m: Certain transfers to be null and void**

Where after the making of an order under sub-section (1) of section 68F or the issue of a notice under section 68H or under section 68L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under the Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68-1, then, the transfer of such property shall be deemed to be null and void.

**Section 68 O: Appeals**

Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority made under section 68F, section 68-1, sub-section (I) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal.

### Bar of jurisdiction section 68Q

- No civil court has jurisdiction in respect of any matter
- No injunction shall be granted by any court or authority in respect of any action taken under Chapter VA.

### Competent authority & administrators

Sl	Competent Authority	Jurisdiction
1	Kolkata	State Of Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Odisha, Sikkim, Tripura, West Bengal And Andaman & Nicobar
2	Chennai	States Of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Lakshdweep & Pondicherry
3	New Delhi	States Of Haryana, Himachal, J&k, Punjab, Rajasthan, Chandigarh And Delhi, Bihar, Jharkhand, Uttar Pradesh And Uttrakhand
4	Mumbai	States Of Gujarat, Goa, Maharashtra, Mp, Chattisgarh, Daman & Diu And Dadra & Nagar Haveli

Earlier there were 6 competent authorities including one at Lucknow, now merged with New Delhi and other at Ahmadabad, merged with Mumbai.

### 68R: Competent authority and appellate tribunal to have powers of civil court

The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:

- summoning and enforcing the attendance of any person and examining him on oath
- requiring the discovery and production of documents
- receiving evidence on affidavits
- requisitioning any public record or copy thereof from any court or office
- issuing commissions for examination of witnesses or documents
- any other matter which may be prescribed.

### 68S. Information to competent authority

- Notwithstanding anything contained in any other law, the competent authority shall

have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

2. Every officer referred to in section 68T may furnish suo moto any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Chapter.

**68T: Certain officers to assist administrator, competent authority and appellate tribunal**

Officers of the following departments are empowered and required to assist the Administrator appointed u/s 68G, Competent Authority and the Appellate Tribunal:

- |  |   |
|--|---|
| a. Narcotics Control Bureau              | b. Customs Department   |
| c. Central Excise Department             | d. Income-tax Department  |
| e. Enforcement appointed under FERA 1973 | f. Police   |
| g. Narcotics Department Bureau           | h. Central Economic Intelligence  |
| i. Directorate of Revenue Intelligence   | j. Central or State Government as specified in this behalf by notification in the Official Gazette. |

**Prime duties of the seizing officer**

- Registering case under proper sections and sub sections (section 15 to 29 of NDPS Act)
- Service of freezing/seizing order upon all accused person's
- Presence at the time of confirmation proceedings.
- Proof of service, Panchnama or affixture for all AP's
- Follow up of notices/summons/orders
- To provide status of judgments timely
- Help administration at time of possession for identification of properties
- Update self with recent judgments/orders etc.

## **CONCLUSION**

- Freezing/Seizing orders are the foundation stone upon which is built the superstructure of forfeiture order.
- Hence, the freezing/seizing order has to be foolproof and the following point should be kept in mind :
  - i. There should be proper 'Reasons to Believe' which should be recorded in writing u/s 68E of the NDPS Act, 1985.
  - ii. After recording of the reasons the IO should proceed with the investigation.
  - iii. The facts gathered in the investigation should be incorporated systematically in the freezing/seizing order.
  - iv. The freezing/seizing order shall be sent to the jurisdictional competent authority within 48 hours of its being made.
  - v. A copy of the freezing/seizing order should be supplied to the accused person and copy of proof of service to respective CA's.
  - vi. The freezing/seizing order must contain value of the properties, date of acquisition with documentary proofs.
  - vii. The IO concerned should represent before the competent authority during the confirmation proceedings.
  - viii. The IO should extend all possible assistance to the Competent Authority during pre-forfeiture proceedings.



## Vote of thanks

**Jitendra Kumar**  
Director, BJA

Good afternoon, Hon'ble Dignitaries and Respected Participants.

This is a matter of privilege for me to propose the Vote of Thanks on behalf of Bihar Judicial Academy.

First of all, I acknowledge my deep gratitude to Hon'ble the Chief Justice, Patna High Court cum Patron in- Chief of Bihar Judicial Academy for sparing full two day valuable time to grace the occasion. The presence of your Lordship was not only highly motivating and inspiring for all of us, the thoughtful and enlightening speech of your Lordship added a new dimension to the discourse making the deliberations an open academic debate. Every body remained engrossed in the seminar throughout the day on account of keen interest, probing questions and valuable suggestions of your Lordship. So, once again, I express my sincere gratitude to your Lordship.

I also express my heartfelt gratitude to Hon'ble Mr. Justice Dinesh Kumar Singh, Judge, Patna High Court cum Chairman of the Academy for gracing the occasion and extending all support and guidance throughout the preparation. We are also thankful to your Lordship for very informative and illuminating Speech.

I am also highly grateful to Hon'ble Mr. Justice Ashwani Kumar Singh , Judge, Patna High Court cum chairman of NDPS Committee...Your Lordship along with Hon'ble Mr. Justice Ashutosh Kumar, Judge, Patna High Court cum member of the NDPS Committee has been guide and philosopher to us in regard to the present Seminar. Your Lordships have guided and motivated us at every stage of the preparation devoting considerable time despite busy schedule and time constraint. We are also thankful to your Lordship for illuminating and thoughtful introductory speech.

I also acknowledge my deep gratitude to-

- Hon'ble Mr Justice Ahsanuddin Amanullah
- Hon'ble Mr Justice Aditya Kumar Trivedi

- Hon'ble Mr Justice Chakradhari Sharan Singh
- Hon'ble Mr. Justice Prabhat Kumar Jha
- Hon'ble Mr. Justice Ashutosh Kumar
- Hon'ble Mr. Justice Birendra Kumar
- Hon'ble Mr. Justice Anil Kumar Upadhyay
- Hon'ble Mr. Justice Rajiv Ranjan Prasad
- Hon'ble Mr Justice Sanjay Kumar
- Hon'ble Mr. Justice Madhuresh Prasad
- Hon'ble Mr Justice P C Jaiswal
- Hon'ble Mr Justice Anjani Kumar Sharan
- Hon'ble Mr. Justice Anil Kumar Sinha
- Hon'ble Mr. Justice Prabhat Kumar Singh, and
- Hon'ble Mr. Justice Partha Sarthy, Judges of Patna High Court

for sparing valuable time out of busy schedule and gracing the occasion and Chairing different sessions of the Seminar. I am thankful to all your lordships for valuable contributions made to the deliberations. I am thankful to Hon'ble Mr. Justice Ashutosh Kumar also for insightful concluding speech.

I am also thankful to Add. Solicitor General, Shri S. D. Sanjay for his gracious presence on the occasion.

My sincere and special thanks also goes to the esteemed speakers who have given erudite speech and explained the legal intricacies of NDPS Act to the benefits of the participants. Hence, I am highly grateful to –

- Hon'ble Mr. Justice K. Abraham Mathew, former Judge, Kerala High Court.
- Dr. Jyoti Dogra Sood, Associate Professor, Indian Law Institute , New Delhi
- Dr. J.N. Barowalia, former Princiapl Law Secretary , Government of Himachal Pradesh.
- Sri P K Prusty, Competent Authority and Administrator, NDPS Act.
- Sri J S Gangwar, ADG, Special Branch, Patna,
- Sri Subrata Biswas, Special Excise Commissioner, West Bengal,
- Sri DS Bist, Joint Commissioner, Competent Authority and Administrator, and

- Sri Vishwajit Dayal, Bihar Police Service, Add. S.P. (EOU), Patna

My sincere thanks also goes to the participants who have shown keen interest in the subject and actively participated in the Seminar making it lively and meaningful. I hope that you are now in a better position to appreciate the safeguards of higher standard provided in the Act in favour of the accused to prevent false implication and wrongful conviction in view of the stringent nature of the Act . Now you are also aware that most of the acquittals result from non-compliance of the procedural technicalities regarding the aforesaid safeguards rather than on account of the merit of the case. Needless to say that you are now better equipped to deal with drug abuse and trafficking in contraband to the peril of the culprits and to the benefits of the nation.

I also extend my heartfelt thanks to the Media personnel who are instrumental in dissemination of the deliberations to the people at large.

Last but not the least, my special thanks also goes to all the Judicial Officers and staff of the Academy who have worked tirelessly to make the Seminar flawless and a grand success.

**Thank You**



## Leading Case-laws of Hon'ble Supreme Court on NDPS Act

**Pranaw Shankar**

Addl. Director, Bihar Judicial Academy.

In this compilation, the important case-laws, along-with their ratio have been mentioned. Some topics such as “*search under section 42, 43 and 50 of NDPS Act*”, and “*Bail*” have received more attention as they are frequently agitated before the NDPS court. Also, presumption under section 35 and 54 of the Act has been dealt. Other topics such as non-examination of seizure-list witnesses, etc. that are governed by general principles of criminal trial is left out. This compilation contains important case-laws, as updated till August 2020, under the NDPS Act.

### WHAT IS POPPY STRAW:

1. **Ajaib Singh v. State of Punjab, (2000) 4 SCC 510. AIR 2000 SC 3374.**

In the case, the accused was found to be in possession of 10 kilograms of poppy husks. The primary question involved in appeal was whether poppy husks would fall within the expression “poppy straw”. It was held that: Poppy husk, though not defined in NDPS Act, but would be covered under the definition of the term Poppy straw. Any part of opium poppy other than “poppy seeds” would be covered under the definition of “poppy straw”. For an offence under Section 15 it is not at all necessary that “poppy straw” should have been used or made into “opium”.

### EFFECT OF IO and INFORMANT BEING SAME PERSON UNDER NDPS ACT

2. In **Mohan Lal v. State of Punjab, (2018) 17 SCC 627**, the Hon'ble Supreme Court held that if the Informant and the IO of the case under NDPS Act is the same then the trial will vitiate. However the ratio of the Judgment as laid down in Mohan Lal case was made prospective. The law as laid down in Mohan Lal's case (*supra*) would apply on cases lodged after the date of the judgment. Later, in **Varinder Kumar vs State of HP (2019) SCCOnline SC 170**, the Supreme Court held that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal (2018) 17 SCC 627* shall continue to be governed by the individual facts of the case. But a 3-judge bench doubted the correctness of Mohan Lal's case and referred the

matter to a higher bench.

**Finally**, a Constitution bench of the Honorable Supreme Court of India, in **Mukesh Singh vs State (Narcotic Branch of Delhi), MANU/SC/0660/2020; (2020) 10 SCC 120**, overruled the Mohan Lal case (supra) and held that merely because the informant and the IO is the same, it cannot be said that the trial is vitiated automatically. The Constitution bench held that the question of bias and prejudice will be dealt individually, based on facts of the case.

## Presumption Under section 35 and 54 of the NDPS Act.

### 3. **Megh Singh v. State of Punjab, (2003) 8 SCC 666: AIR 2003 SC 3184.**

**Here**, the accused along-with 2 other persons were found sitting on gunny bags containing poppy husk. Seeing the police, the other 2 accused ran away but Ajaib Singh was apprehended. 3 questions were raised in Appeal; first, when did the presumption, as mentioned in section 35 of the Act, started running. Second, what is “possession”? And third, when will section 50 of the Act will apply? **The Hon'ble Supreme Court** held that once the prosecution establishes possession of narcotics / psychotropic substance with the accused, then the onus to prove that the narcotics was not recovered from him, devolves on the accused.

The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. The same meaning cannot be ascribed to the word possession, all the time. Section 50 only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. *The Supreme Court referred to the Judgement of the Constitution Bench in Baldev Singh case [(1999) 6 SCC 172] where it was held that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles.*

**Note:-** This position of law was also highlighted in the case-law of Madan Lal v. State of H.P. [(2003) 7 SCC 465].

### 4. **Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513: AIR 2000 SC 821.**

There were 2 questions before the Hon'ble Supreme Court: **first**, How can the accused discharge the burden of proof cast on him under section 35 of the NDPS Act? And **second**, What should be the standard of proof for proving a case under NDPS Act? To these questions, the Supreme Court answered that an accused can discharge the burden of proof cast on him under section 35 in 3 different ways: **First**,

by dissecting the prosecution material itself, **second**, by eliciting answers from the witnesses, and **third** by adducing defence evidence. Further, it was held that the standard of proof required for proving the case is proof beyond reasonable doubt.

5. **Mohan Lal v. State of Punjab, (2018) 17 SCC 627: AIR 2018 SC 821.**

The Supreme Court was faced with twin questions in the case: (i) What will happen if the IO and the Informant were the same person, in a case involving NDPS Act? And (ii) When does the burden of proof, as envisaged under section 35 and 54 of the NDPS Act, starts to operate against the accused? It was held that in matters relating to NDPS Act, the informant and the investigator must not be the same person. [Para- 30 of the Mohan Lal case (*Supra*)]. In cases under NDPS Act, the court must understand that by virtue of section 35, there is reverse burden of proof on the accused. It is the accused who has to show that he is not guilty. There is a presumption of guilt. But that presumption is rebuttable. The burden operates against the accused when the prosecution proves its case against the accused.

6. **Baldev Singh v. State of Haryana, (2015) 17 SCC 554: 2016 CrLJ 154.**

A team of police personnel stopped a tractor with trolley and the accused was apprehended and was inquired about the gunny bags of poppy husk lying in the trolley. The appellant was given option of being examined either before the First Class Magistrate or gazetted officer in connection with the recovery of poppy husk from his trolley. The appellant chose the Sub-Inspector and as per rules Sub-Inspector searched the trolley. A total of about thirteen quintals and twenty kilograms of poppy husk was recovered. Upon analysis the samples were found to be poppy straw. The question before the court was: When does the burden of proof as envisaged under section 35 and 54 of the NDPS Act starts to operate? **It was held that** once the recovery of the contraband from the accused is proved then section 35 of the NDPS Act comes into play. And in cases under NDPS Act, the court must understand that by virtue of section 35, there is reverse burden of proof on the accused. There is a presumption of guilt. But that presumption is rebuttable.

7. **Noor Aga v. State of Punjab, (2008) 16 SCC 417**

The accused, intercepted at airport, was found carrying a carton having a concealment in between the layers of carton. The cartons were checked and about 22 packets of polythene containing a brown powder weighing 1 kg 400 gm was recovered. Upon test, the brown powder was said to have contained diacetyl morphine. The question before the court was as to when did the presumption under

section 35 and 54 of the NDPS Act operate? **It was held that** Section 35 and 54 creates reverse burden of proof on the accused, but the reverse burden comes into picture only when the prosecution has discharged the initial burden of proving the case. The prosecution cannot claim to rely on these 2 sections and sit idle. The prosecution has to prove the case beyond reasonable doubt. The court held that Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused.

## **Search under section 42, 43, and 50 of the NDPS Act:**

**Of all the legal issues that have arisen in cases relating to NDPS Act, the issue relating to search and seizure under section 42, 43, and 50 have been most vexatious. The issues were dealt, twice, by the Constitution Bench of the Hon'ble Supreme Court.**

### **2. State of Punjab vs. Baldev Singh [(1999) 6 SCC 172: 1999 SCC(Cri) 1080]**

The issue, *inter alia*, before the Constitution Bench was (i) when will section 42 and 50 of the Act be attracted? And (ii) whether the provisions of Section 50 are mandatory or directory and, if mandatory, to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the *protection* has been incorporated in Section 50 for the benefit of the person intended to be searched.

It was held that Section 42 or section 50 applies only when the empowered officer or the police had prior information of the offence being committed under NDPS act. The language of Section 50 is implicitly clear that the search has to be in relation to 'a person' as contrasted to search of premises, vehicles or articles. Second, it was also held, that provisions of section 50 were imperative and the IO or the empowered officer was under duty to inform the accused of his right to be either searched before a gazetted officer or before a magistrate. Failure to do so may render the recovery suspect, and may also vitiate the trial in appropriate cases such as where the conviction is solely on basis of possession of the illicit article.

### **3. State of Haryana v. Jarnail Singh, (2004) 5 SCC 188 : 2004 SCC (Cri) 1571.**

The Supreme Court in this case held that the rigours of section 50 of the NDPS act will not apply in cases where the body or person is not checked. Search of vehicle, is not personal search. Further, if the checking is done of the other objects in the possession of the person, then provisions of section 42 of the Act will apply. But, if

the search is carried out in a public place then the provisions of section 42 will not apply. It was also held that here that there is no provision in Section 43 of the Act, that if a public conveyance is searched in a public place, then the officer making the search is required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act.

**4. Krishna Kanwar v. State of Rajasthan, (2004) 2 SCC 608 :**

The Supreme Court in this case was concerned with the application of Section 42 of the Act. The court held that the provisions of sec 42 comes into picture only when 2 conditions are fulfilled: **first**, there should be prior information, and **second**, information must relate to the commission of offence under chapter IV of the Act. If any of these are missing then section 42 wont apply. The court further noted that if the officer has recorded grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

**5. Raghbir Singh v. State of Haryana [(1996) 2 SCC 201:**

The primary question before the 3-Judge bench of the Supreme Court was that whether a person to be searched under Section 50 of the NDPS Act, has a right to be given an option of being searched either by a Gazetted Officer or by a Magistrate. In compliance with the provisions of section 50 of the NDPS Act, the accused has to present his choice, either to be searched in presence of a gazetted officer or a magistrate. The Court agreed with the observation made by a *Bench of two Hon'ble Judges in Manohar Lal v. State of Rajasthan [(1996) 11 SCC 391* wherein it was held that the choice of the magistrate or the gazetted officer has to be done by the officer conducting the search, and not the accused.

**6. M. Prabhulal v. Directorate of Revenue Intelligence, (2003) 8 SCC 449.**

In this case, one of the contention raised by the defence was that he should be acquitted because the DRI had previous information and yet the raiding officer, a gazetted officer, failed to follow the standards as laid down in section 42(2) of the NDPS Act. The Supreme Court held that if the gazetted officer has conducted the search himself then in such cases, he has not to follow the rigours of section 42 of the Act. It said that a gazetted Officer has been differently dealt with and more trust has been reposed in him Section 50 of the NDPS Act which gives a right to a person about to be searched to ask for being searched in the presence of a Gazetted Officer.

7. Narayanaswamy Ravishankar v. Directorate of Revenue Intelligence. (2002) 8 SCC 7, In this case, A three-Judge Bench of this Court considered the question, whether the empowered officer was bound to comply with the mandatory provisions of Section 42 before recovering heroin from the suitcase of the appellant at the airport or railway station and subsequently arresting him. Answering the above question in the negative, the Court held that in cases where search and seizure took place at the airport, which is a public place, then the provisions of Section 43 of the NDPS Act would be applicable. Further, Section 42 of the NDPS Act was inapplicable such case, as the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.

**8. Raju v. State of W.B., (2018) 9 SCC 708:**

As per the facts of the case, upon prior information, a raiding team intercepted the accused who was found with a bag containing narcotics, near a club, from a road, which was neither a building or a conveyance or an enclosed space. His personal search yielded some cash. In evidence, the informant deposed that he merely informed the superior i.e. ACP, Narcotics branch, but did not *diarise* it elsewhere. The question before the court was whether the conviction would vitiate on grounds of non-compliance of section 42 of the Act. The Hon'ble Supreme Court held that when the offence is committed in any building, conveyance, or an enclosed space then only section 42 of the NDPS Act is applied. Section 43 applies in cases when the search and seizure is done in public place. Compliance with Section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in a building, conveyance or an enclosed place.

**9. Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609**

The question before the Constitution Bench of the Hon'ble Supreme Court was whether Section 50 of the NDPS Act casts a duty on the empowered officer to "inform" the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate, if he so desires or whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a gazetted officer can be said to be due compliance with the mandate of the said section? The Constitution Bench held that the person intended to be searched under section 50 of the Act has to be apprised of his rights and he cannot be searched unless the gazetted officer or the magistrate so directs. It was also held that insofar as the

obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. The Supreme Court held that the concept of "substantial compliance" as laid down in *Joseph Fernandez v. State of Goa*, (2000) 1 SCC 707 and *Prabha Shankar Dubey v. State of M.P.*, (2004) 2 SCC 56 was incorrect.

**10. Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) at page 554**

In this case, a constitution bench was constituted to resolve the conflicting opinion as laid down in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* (2000) 2 SCC 513], wherein a 3-Judge Bench of this Court held that compliance with Section 42 of NDPS Act is mandatory and failure to take down the information in writing and forthwith send a report to his immediate official superior would cause prejudice to the accused. And in *Sajan Abraham v. State of Kerala* [(2001) 6 SCC 692], wherein a 3-Judge Bench, held that Section 42 was not mandatory and substantial compliance was sufficient.

The Constitution bench held that if the authorities fail to comply with the provisions of the section 42(1) and (2) then the case will fail. If the authority commits a delay in sending the information, as prescribed in section 42, and the delay is unexplained then the case will fail. But if the delay is explained then the compliance will be said to have been done. *While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42.*

**"PUBLIC PLACE" UNDER SECTION 43 OF NDPS ACT:**

**11. Narayanaswamy Ravishankar v. Asstt. Director, Directorate of Revenue Intelligence, (2002) 8 SCC 7 :**

The question before the Supreme Court was whether Airport was a public or private place and searches done at the airport would be covered under section 42 or 43 of the Act. The Supreme Court held that the airport is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.

## DEFINITION OF “PERSON” UNDER NDPS ACT FOR PURPOSE OF SEARCH:

### 12. **State of H.P. v. Pawan Kumar, (2005) 4 SCC 350 :**

The question before the Supreme Court is whether the safeguards provided by Section 50 of the NDPS Act regarding search of any “person” would also apply to any bag, briefcase or any such article or container, etc., which is being carried by him. The Supreme Court while answering the question, Who is a “person” under NDPS act, for the purpose of the Act, held that a 'person' is body of a human being, presented to the public view usually with its clothing and coverings. The court also held that the word, 'person', has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word “person” would be — “the body of a human being as presented to public view usually with its appropriate coverings and clothing including footwear.

### 13. **Ajmer Singh v. State of Haryana, (2010) 3 SCC 746 :at page 752.**

The Honorable Supreme Court was again confronted with the question, that will the provision of Section 50 of the Act also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act? Answering this question, the Court held that search of suitcase, bag, hand-bag etc won't be covered under the protection of section 50 of the Act because, Section 50 expressly speaks of search of 'person' only.

### 14. **Arif Khan v. State of Uttarakhand, (2018) 18 SCC 380 :at page 385**

The accused was apprised of his right to be searched in the presence of either a Magistrate or a gazetted officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the accused gave his consent in writing to be searched by the police officials (raiding party). The Hon'ble Supreme Court found that this consent too could not do away with the mandatory provision of section 50 of the NDPS Act. The accused was apprised of his right to be searched in the presence of either a Magistrate or a gazetted officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the accused gave his consent in writing to be searched by the police officials (raiding party). The Hon'ble Supreme Court found that this consent too could not do away with the mandatory provision of section 50 of the NDPS Act. The right to be searched by a magistrate or a gazetted officer is an absolute right and it cannot be waived by even

by the accused. **24.4.** *Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer.*

### **EFFECT OF NON-SEALING OF SEIZED ARTICLES:**

**15. Ouseph v. State of Kerala, (2004) 10 SCC 647:**

In this case, the contraband was seized from the room belonging to the accused and there was no evidence whatsoever to show that at the time of seizure, the contraband was sealed. The contraband was handed over to Inspector of Police and even then there was no evidence to show that this contraband was sealed. Rather, the police officers deposed that the same was not sealed, though they contended that it was kept in safe custody. The sample was taken and the same was sent nearly after a month of obtaining permission of the court. Till this stage, the seized contraband was not kept in a sealed condition. Under the NDPS Act, the sealing of the seized articles is not mandatory, but the non-sealing of the article will create a doubt. And that doubt can vitiate the trial.

### **EFFECT OF NON-EXAMINATION OF INDEPENDENT WITNESS:**

**16. Dharampal Singh v. State of Punjab, (2010) 9 SCC 608: (2010) 3 SCC (Cri) 1431**

The facts of the case was that policemen were on a routine picket duty and during the duty they signalled a car to stop. The SHO apprised them that they intend to search their car and whether they wish to be searched in the presence of a Magistrate or a gazetted officer. Both of them expressed their desire to be searched by a gazetted police officer and accordingly the SP reached there. An attempt was made to join independent persons to become witness to the search but none were available. Hence, the car was searched by SHO in the presence of the Superintendent of Police and during search a gunny bag containing opium, wrapped in a glazed paper was recover. The accused challenged the conviction on the grounds that independent witnesses were not examined. The Supreme Court negated the claim of the accused and held that merely because independent witnesses have failed to support the case of the prosecution, the case of the prosecution cannot be thrown out. See also : ***Daulat Ram vs. Crime Branch (Narcotics) (2011) 15 SCC 176*** on this point.

## **MAALKHANA REGISTER and SEIZED ARTICLES UNDER NDPS ACT:**

### **17. State of Rajasthan v. Gurmail Singh, (2005) 3 SCC 59**

Occasionally, the use of maalkhana register, and the seized article are also made in the trial. In one such instance, one of the issues before the Supreme Court was the non-production of the maalkhana register. Further, the sample of the seal that was used to seal the contraband was also not sent to the forensic laboratory. In such circumstance, the Supreme Court found the evidence insufficient to rely on the evidence and acquitted the accused.

## **ROLE AND EFFECT OF CONFESSION OF THE ACCUSED IN NDPS ACT CASES:**

### **18. Ravindran v. Supdt. of Customs, (2007) 6 SCC 410 : (2007) 3 SCC (Cri) 189:**

*One of the question before the Supreme Court was whether the confessional statement of accused is sufficient to uphold his conviction particularly when the same has been retracted and there is no other reliable evidence to convict him. The Supreme Court while deciding this issue held in para-22 that where there was no material against the accused besides the retracted confession then the court cannot convict the accused.*

### **19. Mohammed Fasin v. State, (2019) 8 SCC 811, AIR 2019 SC 4427.**

*In this case, the sole material on which the accused was convicted was the confessional statement of the accused and that of the co-accused. The Supreme Court observed that even if it proceeded on the premise that the confession was admissible then also, the trial Court before convicting an accused had to be satisfied that the confession was a voluntary statement, free from any pressure and also that the Accused was apprised of his rights before recording the confession. The confession of the co-Accused, which was used a corroborative piece of evidence, was of no material value. So when the prosecution had gathered no evidence to link the accused with the commission of the offence. Other than the confessions, then the even assuming that the these confessions were admissible then also the evidence was insufficient to convict the Accused.*

## **Effect of non-production of seized contraband before Court in NDPS case:**

### **18. State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85.**

In this case, the police recovered 7 bags of poppy straw weighing 223 kg ,from a

vehicle. From every bag two samples of 500 gm were taken and two such samples were sealed. Remaining quantity of 2500 gm was put in a separate pouch. The bags weighing about 223 kg were also sealed and Panchnama was recorded which bore the signatures of the accused and other persons. The seized contraband was not produced in the trial court. During arguments, the accused relied on various case-laws where the accused were acquitted on the non-production of the contraband.

The Court after discussing various case-laws finally held that If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the court especially when the seized contraband is bulky.

**19. Vijay Pandey vs. State of Uttar Pradesh: AIR 2019 SC 3569, 2019(10) SCALE 129.**

The facts of the case was that the police intercepted and arrested the accused in front of his house with a plastic bag having contraband. The police did not associate any local person as witness. Further, the sample produced in the court neither had the name nor any thing worth decipherable written on it. The Supreme Court held that the failure of the prosecution to relate the seized sample with that seized from the accused made the case no different from failure to produce the seized sample itself. The court further held that the mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested had to be co-related. So the accused was acquitted.

**20. Jitendra v. State of MP, (2004) 10 SCC 562.**

As per the facts of the case, the material objects viz. one kilogram *charas* allegedly seized from one accused, and one kilogram *ganja* was allegedly seized from the possession of first accused's mother, were not at all produced at the trial. The prosecution said that the recovered articles were kept in the *maalkhana*, neither were the material objects was produced during the trial, nor was the *maalkhana moharir* examined during the trial to prove that the packets in which the samples were sealed had remained in the *maalkhana* from the time of their receipt to the time of their dispatch to the FSL. The Hon'ble SC held that the best evidence would be the seized article which should have been marked as an exhibit.

**Note:** Section 52A of the Act also comes in play. Read: Union of India vs Mohan Lal 2016 (1) SCC (Cri.) 864, in detail.

## FORFEITURE OF PROPERTY UNDER NDPS ACT

### 21. **Aslam Mohammad Merchant v. Competent Authority, (2008) 14 SCC 186:**

The Supreme Court was concerned with the Interpretation and application of Chapter V-A of NDPS Act providing for forfeiture of property derived from or used in illicit traffic. The primary question was when and which property can be forfeited under Chapter-VA of the Act.

The court, speaking through Hon'ble Justice Mr. S B Sinha, analysed the entire chapter as a whole, and dealt with almost all the aspects of the forfeiture of the property.

While dealing with the statutory requirements for the forfeiture of property, the court held that the property sought to be seized must be derived from or used in illicit traffic. Illegally acquired property, in relation to any person to whom the Chapter applies, would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from property. The court also held that the tracing of the property helps in determining the property. Further, the direction to forfeit a property is in 2 parts, **First**, it has to be identified in terms of Section 68-E of the Act. For the said purpose, a satisfaction must be arrived at by the authority specified therein to the effect that the person concerned had been holding any illegally acquired property. **Second**, on the basis of such information, he is entitled to take steps for tracing and identifying the property. The authority is also entitled to seize or freeze such a property.

## GUIDELINE TO DETERMINE WHETHER THE SEIZED CONTRABAND IS OF “SMALL QUANTITY” OR “COMMERCIAL QUANTITY”.

### 22. **Hira Singh vs. Union of India (UOI): 2020 SCC OnLine SC 382, MANU/SC/0383/2020.**

In **Micheal Raj vs. Narcotic Control Bureau (2008) 5 SCC 161** it was held that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for purpose of imposition of punishment it is the content of narcotic drug or psychotropic substance which shall be taken into consideration.

But, this was challenged in **Hira Singh case (supra)**. Here the question was whether while determining small or commercial quantity in relation to narcotic drugs or

psychotropic substances in mixture with one or more neutral substance(s), quantity of neutral substance(s) was to be taken into consideration along with actual content. **The court overruled the E. Micheal Raj Judgment** and held that while holding that in the mixture of a narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance is not to be taken into consideration and it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity".

### **BAIL UNDER NDPS ACT:**

#### **23. Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar, (2001) 2 SCC 562**

The power of the courts to grant bail in offences under section 39 of the NDPS is subject to limitations, both, under section 439 of the CrPC read with section 37 of the NDPS Act. So both the conditions needs to be fulfilled for grant of bail. The court held that the **first**. condition is that the prosecution must be given an opportunity to oppose the application, and the **second** is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. The court further stated that if either of these two conditions is not satisfied, the bail cannot be granted.

#### **24. Babua v. State of Orissa, (2001) 2 SCC 566.**

While discussing the bail in NDPS Act, their Lordships of the Supreme Court observed that the liberty of a citizen has got to be balanced with the interest of the society. Their lordships held that in cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the court, and the validity of Section 37(1)(b) having been upheld there was no other option.

#### **25. Collector of Customs v. Ahmadaliev Nodira, (2004) 3 SCC 549 :**

*The Supreme Court in this case explained the expression "reasonable grounds" used in section 37(b)(ii) of the NDPS Act. The court held that the term means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief as noted in the provision requires the court to take note of existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.*

**26. *Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798 : at page 802:***

The Supreme Court held that a court while deciding the bail application under section 37 of the NDPS Act is not supposed to return a verdict of guilt or no guilt, rather it has to see whether there exist reasonable grounds to believe that the accused has committed or not committed the act. The Supreme court emphasised that the court granting bail u/s 37 of the Act has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

**27. *State of Kerala vs Rajesh. 2020 SCC OnLine SC 81, AIR 2020 SC 721,***

The Apex Court in this case held that, the scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non- obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied: **First**, the prosecution must be given an opportunity to oppose the application; and the **second**, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

**[Note:** The effect of variation in the weight of sample sent to the FSL and that received by the FSL will depend on several factors, including the quality of scales used for weighing the sample. Further, unless the variation in weight is too much, and that there are chances of tampering with the sample, the variation alone wont have impact on the prosecution's case]



## Important Case laws of Hon'ble Patna High Court on NDPS Act, 1985

**Ankur Gupta**

Deputy Director, BJA.

1. Seized drugs were neither sealed nor sample taken on the date of seizure. 25 packets were alleged to have been seized while sample was taken from only 01 packet. Seized articles were not weighed and there was discrepancy in the statement of the witnesses regarding sending of sealed articles to the Police station. Photograph of the drugs were not taken nor representative sample was drawn in presence of any magistrate. Keeping the seized articles in unsealed condition for over a month, taking substances out of it in absence of accused or any independent witness for sampling and sealing of the sample by general seal create suspicion of tampering. Provision of Section 52, 55 and 57 were not followed, Hence, conviction was set aside.

*Pintu Bhagat vs. State of Bihar 2016 (1) PLJR 771*

2. Seized articles were placed before the Magistrate after three months from the occurrence. No cogent evidence was produced that alleged quantity of Ganja was seized from the conscious presence of the appellant. There was noncompliance of Section 52A of the NDPS act The Prosecution relied on the confession of the accused recorded under Section 67 of the NDPS act. The accused in his confession statement has only said that he did not know that there was Ganja in the vehicle and indicated that Devi sau told him that there was bearing in the vehicle which was to be handed over to one Khan at Barh. He also said in his confession statement that Devi sau was actual driver who had handed over the steering of the vehicle to the accused and had left the vehicle on the pretext of clearing the Jam. The confession statement was found to be exculpatory in nature and was not found admissible. The accused was accordingly acquitted.

*Shiv Shankar Dixit vs. Union of India 2017 (1) PLJR 671*

3. A petition for release of vehicle was rejected by the District Judge on the ground that any conveyance used to carry any Narcotic Drug or Psychotropic substance is liable for confiscation under sub section 1 or sub section 2 of the NDPS act and also on the ground that since investigation was still pending, it will not be proper to release the vehicle. It was held that section 60(3) of NDPS act does not put a bar for release of vehicle during the pendency of investigation or trial by the court.

*Parmanand Choubey vs. State of Bihar 2017 (2) PLJR 540*

4. Neither the informant nor the investigating officer stated that they had informed their superior officers regarding apprehension of the Appellants with huge quantity of Charas. The informant has also not said anything regarding sealing of the seized articles by him. There was no positive evidence by way of producing Malkhana Register to substantiate that seized articles were kept in Malkhana. The seized articles were not produced and the investigating officer was completely silent over the fact that seized quantity was destroyed in term of Section 52 A of NDPS act after preparing samples in presence of Magistrate nor had he stated that the contraband was available in Malkhana. The conviction was accordingly set aside.

*Mozammil Sheikh vs. State of Bihar 2017 (2) PLJR 534*

5. The seized Brown Sugar was not produced before the court and no explanation was offered for non-production. Mere oral evidence that the material was seized from the accused was not sufficient to make out an offence under the NDPS act. The superior officials were not informed about the apprehension of the accused and seizure of the articles. The Prosecution was completely silent with regard to preparation and sealing of sample. These lacunas were found fatal for the Prosecution and Conviction was set aside.

*Mozammil Sheikh vs. State of Bihar 2017 (2) PLJR 534*

6. The Hon'ble court while reiterating the law laid down in State of Rajasthan vs. Ram Chandra AIR 2005 SC 2221 observed that when a person is about to be searched the requirement of section 50 would be that the officer proposing to effect the search cannot act in a dual capacity: first as an officer authorized under section 42 to search a person and second as the Gazetted officer in whose presence the option of search is given to the accused. Officer conducting the search cannot discharge the dual function both under section 42 and section 50 of the NDPS Act.

The informant has said in his testimony that the SDM was leading the raiding party and it was in his presence that the seizure and sampling was done but the SDM was not examined and even his signature was not available on the seizure list. Moreover,

the seized Ganaja was kept in 9 packets but the seal was available only on 6 packets. There was unexplained delay of 20 days in sending the samples to the FSL. The seizure witnesses also denied having any knowledge of the seizure. All these circumstances were found to be fatal to the prosecution case and led to the acquittal of the accused.

*Muneshwar Pandit vs. State of Bihar 2018 (1) PLJR 494*

7. 200 grams of Heroin was found hidden between the speedometer and visor of the bike from which two samples of 5-5 grams each (S1 and S2) were drawn and sealed with the department seal at the spot. The rest 190 grams were of the recovered substance was heat sealed in transparent polythene packet and was put in a paper envelope and sealed by the department seal which was signed by the seizing officer, independent witnesses and the owner of the goods. Even though the samples were produced before the court but the original seized articles were not produced.

The sample taken from the seized bulk was on record and the report of the FSL on the sample taken stated that the sample was that of Heroin and Morphine and the certificate of the articles seized was also proved. These facts coupled with the confessional certificate of the accused under section 67 was found sufficient for conviction of the accused even though the original contrabands that were seized were not produced before the Court.

*Ram Narayan Shah vs. Union of India 2018 (1) PLJR 386*

8. Charas was alleged to have been recovered from the possession of the accused in presence of BDO. The statement of the BDO showed that he reached the place of occurrence after the seizure. The informant has not said anything in his report about asking the accused for taking his search and about consent by the accused for his search before the magistrate/gazetted officer. There is nothing on record to indicate that the informant made the accused aware that B.D.O. Fatuha is present before him. There is nothing on record to indicate that the informant informed the accused about his right of being searched before a gazetted officer or a magistrate. The seized contraband was sent to F.S.L. for examination on 16.11.2013 while the same was seized from the possession of the accused on 9.11.2013. The whereabouts of the contraband for these seven days was not explained. The seizure and arrest were not reported by the Informant to the Senior Police Officers within 48 hours and thereby Section 57 of the NDPS Act was not complied. The seized contraband was not produced before the trial court and no explanation was given. Benefit of Doubt was given to the accused.

*Tuntun Gope vs State of Bihar 2018 (1) PLJR 777*

9. Seized Charas was not kept in Malkhana, the sample was not sealed, sample was not prepared in presence of the Magistrate even after appointment of Magistrate and the seized material was sent to laboratory examination after about one and half years of its seizure. The independent witnesses were not examined and the remaining witnesses were all police officers. No explanation was provided by the prosecution for non-production of the Charas as an exhibit in the trial. The contention of the prosecution that the confession of the accused recorded under section 67 of the Act is sufficient for awarding punishment also did not find favour with the Court since the accused was kept at SSB camp for 24 hours and therefore presumption can be drawn that the confession was not voluntary. Hence the accused was acquitted

*Raj Kumar vs. State of Bihar 2018 (2) PLJR 214.*

10. Seizure list witnesses were not examined by the prosecution. Instead, defence has examined one of them as defence witness. The said witness has not supported the prosecution case of raid of the houses of the appellants by the police personnel and recovery and seizure of the contrabands from their house. There is nothing on record to show that on receiving the secret information and making the sanha entry, the informant had sent either the information or the copy of the sanha entry to the immediate superior officer. Thus, there was utter violation of Section 42 (2) of NDPS act.

There was nothing on record to show that the seized Ganja was either sealed at the place of occurrence by the informant or at the police station by SHO as none of the witnesses examined by the prosecution has stated so. This aspect creates serious doubt about the seizure of the contraband, its quantity and taking of the sample and sending the same to FSL. The samples were not collected from each packet of the seized Ganja separately nor by mixing the contents of each packets together. All these aspects were found to be fatal to the prosecution case and accordingly the case was found fit for acquittal of the accused.

*Bhulan Das vs. State of Bihar 2018(2) PLJR 361*

11. No evidence was offered to show the search and seizure was made in front of any gazetted officer or magistrate. Sampling was also not done as per standing order no:01/98 or 01/89 issued under the section 52A. The seized article was sent for examination after a month of seizure. There was violation of section 57 of NDPS act. The informant himself was the investigating officer of the case. All these circumstances were found sufficient for the acquittal of the accused, the case.

*Sharawan Prasad vs. State of Bihar 2018 (3) PLJR 93*

12. Possession of any of the drugs covered under the schedule H & H1 without any license attracts the offence punishable under the NDPS act. Huge quantities of Corex Cough Syrup, Fortwin Inj. & Ativan Tabs. were recovered from the shop of the accused. These drugs contained ingredients specified in schedule H & H1. The accused had license only to sell schedule C & C/1 drugs. Therefore, the order rejecting discharge petition of the accused was affirmed by the Hon'ble Court.

*Amit Kumar vs. State of Bihar, 2018 (3) PLJR 90*

13. The seizure list witnesses were not examined. The search was carried on information received but this information was not recorded in writing. Inventory of seized Ganja was not proved and entry register of Malkhana where the seized Ganja was kept and from where it was set to have been taken out for destruction was not proved, as such there was no compliance of section 52(A)(2) and of section 50 of the NDPS act. None of the provision regarding search, seizure, preparation of inventory and destruction of contraband articles, certification etc. were followed. Hence conviction and sentence were set aside.

*Md. Samsul vs. Union of India 2018 (4) PLJR 261*

## *Glimpses from the Seminar*



Felicitation of Hon'ble Mr. Justice Amreshwar Pratap Sahi, The Then Chief Justice, Patna High Court-cum- Patron in Chief, Bihar Judicial Academy  
By Ms. Ranjeeta Kumari, JMFC, Ara.



Presentation of Memento By Ms. Ranjeeta Kumari, JMFC, Ara, to Hon'ble Mr. Justice Amreshwar Pratap Sahi, The Then Chief Justice, Patna High Court-cum- Patron in Chief, Bihar Judicial Academy

## *Glimpses from the Seminar*



Felicitation of Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge, Patna High Court-cum-the then Chairman, Bihar Judicial Academy by Kanchan Yadav, JMFC, Muzaffarpur



Presentation of Memento to Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge, Patna High Court-cum- the then Chairman, Bihar Judicial Academy by Kanchan Yadav, JMFC, Muzaffarpur

## *Glimpses from the Seminar*



Felicitation of Hon'ble Mr. Justice Ashwani Kumar Singh, Judge, Patna High Court-cum-Chairman, the then NDPS Committee, Patna High Court by Shweta Singh, JMFC, Siwan



Presentation of Memento to Hon'ble Mr. Justice Ashwani Kumar Singh, Judge, Patna High Court-cum- Chairman, the then NDPS Committee, Patna High Court by Shweta Singh, JMFC, Siwan

## *Glimpses from the Seminar*



Presentation of Memento to Mr. Jitendra Kumar, Director, Bihar Judicial Academy  
by Smita Kumari, JMFC, Darbhanga



Felicitation of Mr. Jitendra Kumar, Director, Bihar Judicial Academy  
by Smita Kumari, JMFC, Darbhanga

## *Glimpses from the Seminar*



Lighting of Lamp by Hon'ble Mr. Justice Amrehwar Pratap Sahi, the then Chief Justice, Patna High Court-cum- Patron in Chief, Bihar Judicial Academy.



Lighting of Lamp by Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge, Patna High Court -cum-the then Chairman, Bihar Judicial Academy.

## Glimpses from the Seminar



Lighting of Lamp by Hon'ble Mr. Justice Ashwani Kumar Singh, Judge, Patna High Court-cum-Chairman, NDPS Committee, Hon'ble Patna High Court



Lighting of Lamp by Mr. Jitendra Kumar, Director, Bihar Judicial Academy

## *Glimpses from the Seminar*



Inaugural Address by Hon'ble Mr. Justice Amreshwar Pratap Sahi, the then Chief Justice, Patna High Court-cum-Patron-in-Chief, Bihar Judicial Academy



Inaugural Address by Hon'ble Mr. Justice Amreshwar Pratap Sahi, the then Chief Justice, Patna High Court-cum-Patron-in-Chief, Bihar Judicial Academy

## *Glimpses from the Seminar*



Address by Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge, Patna High Court-cum-the then Chairman, Bihar Judicial Academy



Address by Hon'ble Mr. Justice Ashwani Kumar Singh, Judge, Patna High Court-cum-Chairman, NDPS Committee, Patna High Court

## *Glimpses from the Seminar*



Address by Hon'ble Mr. Justice Ashutosh Kumar, Judge, Patna High Court



Address by Hon'ble Mr. Justice K. Abraham Mathew, Former Judge, Kerala High Court

## Glimpses from the Seminar



Address by Dr. Jyoti Dogra Sood, Associate Professor, ILI, New Delhi



Address by Mr. Subrata Biswas  
Special Excise Commissioner (Enforcement), Govt. of West Bengal

## *Glimpses from the Seminar*



Address by Dr. Jyoti Dogra Sood, Associate Professor, ILI, New Delhi



Compering by Mr. Pranaw Shankar, Additional Director, Bihar Judicial Academy

## *Glimpses from the Seminar*



Compering by Ms. Saba Alam, Assistant Director (R&T-II), Bihar Judicial Academy



Compering by Ms. Seema Kumari, Assistant Director (R&T-I), Bihar Judicial Academy

## *Glimpses from the Seminar*



Vote of Thanks by Mr. Jitendra Kumar, Director, Bihar Judicial Academy



Hon'ble Judges of Patna High Court and Participants

## *Glimpses from the Seminar*



Hon'ble Judges of Patna High Court and Participants



Hon'ble Judges of Patna High Court and Members of Directorate of Bihar Judicial Academy

## *Glimpses from the Seminar*



Members of Directorate and Staff of Bihar Judicial Academy



Members of Directorate and Staff of Bihar Judicial Academy





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