

Drug Trafficking

539-1. The offences under the Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985 are heinous in nature and directly or indirectly amount to poisoning large number of people to ultimate death. This crime is a serious threat to the life of the victims and poses a danger to society at large. The Police Agencies all over the world are fighting this crime. As a result of UN Conventions on the issues relating to drugs several countries have brought about more or less similar legislations to deal with this crime. The NDPS Act has replaced the Opium Act and the Dangerous Drugs Act. The Act has provided for deterrent punishment by providing for imprisonment up to 20 years and fine up to Rs.2 lakhs. Section 35 provides for presumption of culpable mental state on the part of accused from whose possession narcotic drugs are seized. Several departments are empowered to deal with these cases including the police. The offences under this Act are cognizable and non-bailable.

- A. All first class Magistrates and all Gazetted officers of departments empowered to deal with these cases are competent to search any suspected premises either by themselves or issue warrants to persons above the rank of an attender or a constable for search.

- B. In cases of emergency, the persons who are entitled to search by virtue of warrant issued by those Gazetted officers are competent to search even without a warrant but should report

searches and seizure if any immediately to such officers competent to issue warrants.

- C. But for the special procedure for investigation provided in the Act, the police have to adopt the same procedure as laid down in Chapter 12 of CrPC.
- D. There are two different procedures for searches and seizures. While the search of premises is to be carried out as laid down above, different procedure is prescribed for search of persons. When a person is to be searched, he must be informed in writing whether he would like to be searched by the police officer conducting the search or in the presence of a Gazetted officer or a Magistrate (section 50). If he opts for taking him to a Gazetted officer or a Magistrate, the person conducting the search can detain him till such time.
- E. Any Gazetted officer or any person entrusted with the warrant by a Gazetted officer or when such person in case of emergency conducts search without warrants, if the above persons are not SHOs, they shall forward the arrested person and the material seized without un-necessary delay to the officer in charge of the nearest police station (section 52) and the officer in charge shall take charge of and keep in safe custody such articles pending the orders of a magistrate (section 55). The arrested person shall be re-arrested and forwarded to the nearest magistrate for remand (section 43 CrPC).
- F. The failure on the part of the officer in charge of the police station to follow the above procedure (order) or refusal to take charge of such person or material will render him liable for

punishment up to one year or fine or both (section 59 NDPS Act)

2. Sections 15 to 32 of the NDPS Act lay down the punishments for various offences. Most offences except possession of small quantity for personal consumption are punishable with minimum of 10 years and a maximum of 20 years of imprisonment. Section 27, which deal with possession of small quantity for personal consumption has lesser punishment. The thrust of the Act is on trafficking, which include cultivation, manufacture, transport, export and import of the drugs and their distribution. The Act also provides for forfeiture of property derived from, used in, illicit traffic in narcotics for which detailed procedure has been laid down in sections 68-A to 68-Y. Section 52-A permits disposal of seized property after taking an inventory and photographs which can be e accepted as evidence as they are certified by the concerned Magistrate.

3. State Government had promulgated the Sikkim Drugs Act, 2006 to control, regulate and prevent the abuse of drugs and control substances with abuse potential being misused by addicts and traffickers. Section 7 of Sikkim Anti Drugs Act, 2006 prohibits sell or stocks for sale or trade or transport etheir inter-state or intra-state, of any contolled substance without a valid licence under the Drugs and Cosmetics Act 1940 or Sikkim Trade Licence Act. However, possession of small quantities of such substances for medical purpose with a valid prescription, or for a legal use, is permissible provided that the amount of such controlled substance in possession shall not be beyond the limit mentioned in the prescription. The offences under SADA are cognizable and nonailable.

3. The most important point to proved in all cases of narcotic

drugs and psychotropic substances is possession of the drug. Any omission or non-compliance with the legal requirements laid down in the search or seizure will vitiate the proceedings and may result in acquittal of the accused. Whether it is transport, distribution or cultivation or manufacture, it is the possession of the drug that has to be proved by the prosecution. Even preparation, attempt, abetment and conspiracy relating to these drugs are also punishable. The Act also provides for enhanced punishments for subsequent offences.

Guidelines issued by the Narcotics Control Bureau, New Delhi

540. Some of the mandatory provisions and points to be remembered are indicated below:

1. A gist of information received should be incorporated in the Police Station records and the same should be intimated to the immediate superior officer and also entered in the general diary.
2. The accused should be informed about the grounds of his arrest as in all other cases of arrest (section 52 CrPC).
3. Report of arrest and seizure should be forwarded to the immediate superior officer within 48 hours under acknowledgement. All these records are required to be produced in court before trial.
4. Since the prosecution has to prove possession of the drugs beyond doubt before any presumption can be raised, it is necessary to follow the guidelines given below in the matter relating to raid or search by the Police Officers.

- 5-A. All officers deployed for search should carry their Identity Card.
- B. There should be a prior planning including survey of the place where the search has to be undertaken.
- C. The officer-in-charge of the search should deploy his officers in such a manner that all the entrances/exits are properly guarded.
- D. All incoming telephone calls should be received by the searching officers only. No person within the premises should be allowed to talk on phone with any person outside.
- E. Immediately on entering the premises, the occupants should be instructed not to converse with each other.
- F. The searching officers should examine every document and record and decide its worth for purposes of recovery and seizure.
- G. Samples should be drawn as per the procedure prescribed.
- H. The documents/records to be seized should be numbered serially and a brief description of the file/records and the period to which it belongs should be mentioned in the seizure memo.
- I. The statements of the persons concerned should be recorded on the date of search itself lest the party tutor them. For this purpose, a brief and immediate scrutiny of the records/documents should be done.

- J. Soon after the commencement of the search the contact telephone number of the party should be given to the officer who is monitoring the search/raid. He should be apprised of the commencement of the search and its progress from time to time and the important material that has come to notice till then. Before withdrawal from the search, as far as possible, clearance from the same officer should be taken unless the search party has already briefed him in this regard.
- K. All papers including search warrant (executed) and the seizure memo, the initial intelligence and other papers given before proceeding on search should be returned to the person who issued the warrant.
- L. Search / Raid party should invariably carry with them a drug identification / testing kit and should also have kit bag containing certain essentials like, screw driver, torch, flash light, mirror, walkie talkie, binocular, night vision devices, hand cuff, seal, sealing materials, emergency medical kit etc.

Points to be noted while recording Seizure Memo

- 541-1.** Name, occupation, age and address of Witnesses.
2. Time, date and place of proceedings.
 3. Reason for search
 4. Authority for search

5. Identify yourself by showing Identity Card, mention the same in Seizure memo.
6. Mention names of a few other officers included in the search party.
7. Offer personal search of each member
8. Mention presence of the occupants of the premises/person to be searched.
9. Mention description of place to be searched.
10. Give graphic description of the search operation e.g., who opened the suitcase, who had the key, from where the incriminating documents or contraband was recovered, how it was concealed etc.
11. Test drugs with field testing kit and mention results.
12. Mention where and how the weighment of contraband goods was done. Give gross weight, net weight.
13. Mention value of contraband to be seized.
14. Mention number of samples drawn and their weight, what identification marks were given to contraband samples and documents proposed to be seized/taken over.
15. Mention time of conclusion of seizure.

16. Offer personal search on conclusion of search before leaving the place of search.
 17. Take photographs, finger prints wherever possible.
 18. Mention money and valuables given back to the person searched or seal them for handing over later in the court.
 19. Seal contraband and exhibits mentioning seal No.
 20. Take signature of witnesses, officer writing the seizure memo and the person being searched on labels pasted on contraband, exhibits and documents.
 21. Mention provisions of law under which the seizure was done.
 22. Mention any important event taking place during search e.g., arrival of more officers or persons etc.
 23. Give a copy of seizure memo to the persons searched and obtain receipt from him.
- 542.** Procedure of drawal, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances.
1. All illicit narcotic drugs or psychotropic substances recovered from a person, place, conveyance etc. are liable to confiscation (sections 60 to 63 NDPS Act). Further, they constitute important evidence for any act, omission or commission on the part of a person rendering him liable for punishment under Chapter IV of the NDPS Act, 1985. Most of the narcotic drugs

and psychotropic substances cannot be conclusively proved to be such drug or substance merely by visual examination in the trial Court and hence the drugs seized should be sent for chemical examination to FSL. The disposal of the confiscated goods should be as per the orders of the court.

2. If the drugs seized are found in packages/containers the same should be serially numbered for purposes of identification. In case the drugs are found in loose form the same should be arranged to be packed in unit container of uniform size and serial numbers should be assigned to each package/container. Besides the serial number, the gross and net weight, particulars of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board Label, should be affixed with the seal of the seizing officer and the above details should be recorded.

Place and time of drawl of sample

3. Samples from the narcotic drugs and psychotropic substances seized, must be drawn at the place of recovery, in duplicate, in the presence of search witnesses and the person from whose possession the drug is recovered and a mention to this effect shall invariably be made in the seizure memo drawn on the spot.

Quantity of different drugs required in the sample

4. The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish

where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the package/containers should be mixed well to make it homogeneous and representative before the sample in duplicate is drawn.

Number of samples to be drawn in each seizure case

- 5-A. In the case of seizure of a single package/container one sample in duplicate is to be drawn. It is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.
- B. 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 UN kit, conclusively indicating that the packages are identical in all respects, the packages/container may be carefully bunched in lots of 10 packages/containers. In case of seizure of Ganja and Hashish, the packages/containers may be bunched in lots of 40. For each lot of packages/containers, one sample in duplicate may be drawn.
- C. After making such lots, in the case of Hashish and Ganja, if 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.
- D. 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 remaining

package/containers.

- E. 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.

Numbering of packages/containers

- 6-A. Subject to the detailed procedure of identification of packages/ containers, as indicated, 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, on both the samples. It should carry the serial number of the packages and marked as P-1, 2, 3, 4 and so on.

- B. All samples must be drawn and sealed in the presence of the accused, search 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. If the person, from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the samples.

Packaging and Sealing of Samples

7-A. The sample in duplicate should be kept in neat sealed plastic bags, as it is convenient and safe. The plastic bag container should be kept in paper envelope, properly marked as original or duplicate. Both the envelopes should also bear the S.No. of the package(s) container(s) 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. 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 FSL.

B. All drugs should be properly classified, carefully weighed and samples drawn on the spot of seizure.

C. After sampling, detailed inventory of such packages/containers should be prepared for being enclosed to the seizure memo, Original wrappers must also be preserved for evidentiary purposes.

D. After completion of seizure memo, the drugs should be packed, in heat sealed plastic bags. For bulk quantities of ganja, instead of plastic bags, gunny bags may be utilized.

8-A Agencies of the Central and State Government, who are vested with the powers of investigation under the law, specifically designate their godowns for storage purposes.

B. All drugs must invariably be stored in safes and vaults provided with double-locking system. Such godowns, as a matter of rule, be placed under the overall supervision and charge of a Gazetted Officer of the respective enforcement agency, who should exercise utmost care, circumspection and personal

supervision, as far as possible. Such officers should not be below the rank of Superintendent in the Departments of Customs, Central Excise, Directorate of Revenue Intelligence, Narcotics Control Bureau, CBI, BSF, and station house officer/officer in charge of a Police Station. Superintendent of State Excise, MRO, Drug Inspector of Drug Control Department, etc. in the states and enforcement agencies in Union Territories. They will personally be held accountable for safety and security of the drugs. Each seizing officer should deposit the drugs fully packed and sealed with his seal in the godown within 48 hours of seizure of such drugs, with a forwarding memo indicating Crime Number, name(s) of accused, test memo reference, description of drugs in the sealed packages/containers and other goods, if any, drug-wise quantity in each package/container, drug-wise number of packages/containers and total number of all packages/containers.

- C. The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure-I), will hand over the same to the investigating officer of the case along with the case file for further proceedings.
- D. The officer-in-charge of the godown, before accepting deposit of drugs, will ensure that the drugs are properly packed and sealed. He will also arrange the packages/containers (case-wise and lot-wise) for quick retrieval etc.
- E. The godown in-charge is required to maintain a register wherein entries of receipt should be made.
- F. It will be incumbent upon the Inspecting Officers of the various

departments mentioned to make visit to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The Inspecting Officers should record their remarks/observations.

G. The Heads of respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

9-A. Since the early disposal of drugs assumes utmost importance, the enforcement agencies should obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of Section 451 of the CrPC, 1973.

B. While preferring the application under Section 451 before the Court of Session, emphasis may be laid on 'expediency of disposal'. The grounds that may be highlighted pertain to.

- Risk of pilferage, theft and substitution
- vulnerability for abuse
- High temptations to traffickers
- diminution in the value of other articles (including conveyances) due to long storage, etc.

C. Since the filing of charge sheet is a condition precedent for expeditious issue of orders for pre-trial disposal, charge sheet should be filed within the stipulated period of 90 days of seizure/arrest, on a priority basis. This should meticulously be adhered to.

- D. While moving the application under section 451 of the criminal procedure code as above, production of all seized/articles/drugs, etc., along with the seizure memo (in original) and detailed inventory thereof is essential. The inventory should be complete in all respects and contain such particulars as may be relevant to establish nexus/identity of articles. The chemical analysis report should also be simultaneously filed.
- E. After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate commercial value (excepting opium, morphine, codein and the baine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and in accordance with the Court's order.